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NEWSLETTER #2 APRIL 2016

IN THIS ISSUE

## Welcome

Welcome to our second newsletter. We have had lovely comments on our first effort, so I hope you'll enjoy this, although perhaps the word 'enjoy' is not what people associate with reports from lawyers!

However, I am very pleased to let you know that our practice manager, Julie Orgill, has been made a partner as from 1 April. So now there are three of us as partners, with our fantastic team of other solicitors and valuable support staff.

Julie started working with me when I was a sole practitioner in 1998, working from home when I realized I could not be a 'jack of all trades' and needed help with background administration. After all, my job was to see clients, advise them and prepare documentation for them. I found myself working late into the night preparing the office accounts, checking bank reconciliations and ordering office equipment, so something had to give.

Julie answered my advertisement and it is largely through her that we have been able to develop the practice in a steady and progressive manner. A demonstration of her efficiency is that, if I say, 'wouldn't it be a good idea if'....and make a suggestion to improve something that has gone awry, the usual reply is 'it's been done.'

In 2009 she started the Chartered Institute of Legal Executives' professional examinations and, when she showed me some of the subjects she was studying, I was surprised at the depth of the material. After 6 years 'hard slog' of exams and providing CILEx with an extensive portfolio of work she has been responsible for within the firm she finally became a Fellow in 2015.

Julie is now not only involved with the firm's day to day management but also deals with client matters such as estate management/accounts, management of clients' personal affairs, wills, powers of attorneys and Court of Protection Costs applications and hopes over time to expand her fee earning capacity.

I am sure you will join me in welcoming Julie on board as a partner.

*Jennifer*



**UPDATE: Extra inheritance tax exemption for children?**

Page 2



**Stamp duty increase**

Page 3

## **UPDATE: Extra inheritance tax exemption for children?**

Following on from our last newsletter we thought we should update you on further information on the Residence Nil Rate Band ('RNRB').

The allowance will increase over a three years so that by 2020/2021, it will be £175,000. It will then increase in line with the consumer price index from 2021/22 onwards.

The legislation comes into effect in respect of deaths on or after 6 April 2017. An unused RNRB can be transferred to a surviving spouse or civil partner. Anyone who dies before 6 April 2017 will not have used their RNRB so it will be available to transfer provided his/her estate did not exceed the taper threshold. The taper threshold is £2m until 2020/21 and will increase with the consumer price index from 2021/22 onwards. What this means is that if an estate is over £2m the benefit is withdrawn by £1 for every £2 that the value of the estate exceeds the taper threshold (£2m until 2020/21).

The RNRB is given when a person passes his sole residence to a close relative. This means a lineal descendant, but it extends beyond that. The definition of 'child' includes step-children, foster children and natural children who have been adopted by a third party. An amendment at committee stage added spouses and civil partners of lineal descendants who will continue to qualify if they do not remarry.

Discretionary settlements do not qualify but it is possible to change the will by what is called a deed of variation, and if this gives the residence to a 'lineal descendant' as described above, it will be read back into the will and so the trustees of the discretionary trust can retrospectively secure the RNRB for the estate.

The RNRB is limited to one residential property but if an estate includes more than one property the personal representatives can choose which one is to qualify i.e. it would make sense for the personal representatives to choose the property worth more than

the RNRB rather than one lower and losing a part of the RNRB (perhaps unlikely to become relevant for property owners in Surrey!).

A buy to let property does not qualify. The property must at some point have been the residence of the deceased.

A residence held in trust can attract RNRB if the deceased beneficiary is treated as owning the property for IHT purposes (where a special type of trust arises) and lineal descendants inherit the property.

Draft clauses to be included in the Finance Bill 2016 were published on 9 December 2015 to preserve the RNRB where a person downsizes or disposes of a home completely on or after 8 July 2015, provided the deceased leaves assets to lineal descendants. It will be important for documentation to be kept if anyone has recently or is currently disposing of a property to assist the personal representatives in making a claim from the RNRB e.g. completion statement.

## **Law Society Wills & Inheritance Quality Scheme (WIQS)**

We are delighted to be an accredited member of the Law Society's Wills and Inheritance Quality Scheme (WIQS). This shows that we follow best practice procedures to meet the highest standards of technical expertise and client service in providing tailored wills and probate advice to consumers. Four of our solicitors and other staff are WIQS accredited.

### **Client Charter: Why choose a WIQS accredited firm?**

#### **1 – Understand the options and get advice that meets your needs**

- We will not make any misleading claims about the advantages of making a will, or pressure you into buying more complex advice that is not in your best interests.
- We will help you understand the issues in preparing a will or seeking probate advice to make a more informed choice from the outset.
- Our dedicated wills and probate service is tailored to your needs. We will explain the process, options, costs and likely timescales.

#### **2 – Receive a quality service and be kept up-to-date**

- We will provide you with the name(s) of the person(s) responsible for your matter.

- We will agree how you want us to contact you and how often.

- We will communicate with you in plain English, explaining any legal terminology.

- We will reply to your questions within 48 hours or provide a timeframe for more complex issues.

- We will tell you when unforeseen issues affect the original cost estimate and timeframe and explain the impact.

- We will treat you with dignity and respect at all times.

### **3 – Trust practices with WIQS**

- WIQS is only open to law firms or other organisations that are authorised and regulated by the Solicitors Regulation Authority (SRA).

- The Senior Responsible Officer or Head of Department must have at least three years' experience of will drafting and estate administration.

- Accredited solicitors and other staff complete mandatory training on the WIQS standard and show compliance through annual re-accreditation and ongoing enforcement checks by the Law Society.

- If you are not happy with our service or the advice received, contact our Client Care Partner. If you are not happy with our response, you can find further information about progressing your complaint on the Solicitors Regulation Authority's website – [www.sra.org.uk](http://www.sra.org.uk). The Law Society will await a decision from the regulator before taking any action.

To give you further confidence and protect you against fraud, the Law Society's accreditation process included checking the identity of our practice and all individuals delivering wills and probate advice, regulatory and insurance checks and proof of financial and risk management procedures.

Check that we are authorised and regulated by the Solicitors Regulation Authority and are WIQS accredited by searching for us on the Law Society's Find a Solicitor website: [www.lawsociety.org.uk/findasolicitor](http://www.lawsociety.org.uk/findasolicitor)

## **Stamp duty increase of 3% on additional properties**

Higher rates of 3% above the current Stamp Duty Land Tax rates (SDLT) will apply on purchases of additional residential property such as buy-to-let properties and second homes in the UK worth over £40,000 from 1 April 2016.

SDLT is generally payable on the purchase or transfer of property where the amount paid is above a certain threshold. It applies to purchases in England, Wales and Northern Ireland and is payable by the purchaser.

It is speculated that the intention behind this increase is to reduce residential property investment and support owner occupiers by reducing the incentive to purchase additional properties. The tax receipts are to help towards doubling the affordable housing budget which will help first time buyers and is part of the government's commitment to supporting home ownership.

The vast majority of residential property transactions will not pay the higher SDLT rates. In particular, the higher rates will not apply where at the end of the transaction the purchaser only owns one residential property, irrespective of the intended use of the property.

The higher rates will be 3 percentage points above the current SDLT residential rates and will be charged on the portion of the value of the property that currently falls into that band.

Band	Existing residential SDLT rates	New additional property SDLT rates
£0* - £125k	0%	3%
£125k - £250k	2%	5%
£250k - £925k	5%	8%
£925k - £1.5m	10%	13%
£1.5m +	12%	15%

e.g. if you purchase an additional property for £400,000 the position pre and post 1 April 2016 will be as follows:-

Pre 1 April 2016	Post 1 April 2016
0-125K @ 0% = £0	0-125K @ 3% = £3,750
125K-250K @ 2% = £2,500	125K-250K @ 5% = £6,250
250K-400k @ 5% = £7,500	250K-400K @ 8% = £12,000
Total £10,000	Total £22,000

If at the end of the transaction an individual purchaser owns two or more residential properties, whether the purchaser pays the higher rates will depend on whether they are replacing their main residence.

If a person owns both a main residence and a second home and sells their main residence and purchases a new one, although the person will have two properties at the end of the transaction, as they have replaced their main residence the higher rates will not apply. However, if a person is purchasing a new main residence, but rather than selling their previous main residence they will rent it out as they will own two properties and the main residence is not being replaced (as the previous main residence has not been sold) the higher rates to SDLT will apply.

In contrast to this if a person purchases their first property and uses this as a buy to let, as they will only own one property, they will not pay the higher rates of SDLT even though it is not being used as a main residence.

Married couples and civil partners living together will be treated by the government as living together as one unit. This is consistent with other areas of the tax system including Capital Gains Tax private residence relief. This means that they may own one main residence between them at any one time for the purposes of the higher rates. Property owned by either partner will be relevant when determining if an additional property is being purchased or not.

Most individuals will sell their property and purchase a new property on the

same day but in some circumstances it may be the case that the old main residence is sold some time before or after purchasing the new main residence. Where you purchase a new main residence the higher rates of SDLT will need to be paid if you have not yet sold your current/.previous main residence (as you will at that time own two properties) but if the previous main residence is sold within 36 months a refund of the overpaid SDLT may be claimed.

Individuals will not be able to elect which of their residences is their main residence. Whether HMRC consider the property is a main residence will be based on fact with a number of factors being considered including:-

- Where the individual and their family spends their time;
- If the individual has children, where they go to school;
- At which residence the individual is registered to vote;
- Where the individual works;
- The location and degree of furnishing and location of moveable possessions; and
- The correspondence and registration addresses given to various organisations.

Many parents are helping their children to get onto the property ladder and in such cases whether higher rates of SDLT will apply will depend on the structure of any transaction and in particular who owns the property purchased.

Individuals do not pay SDLT on properties they inherit and this treatment will not change with the introduction of higher rates of SDLT. Certain trust arrangements may lead to the higher rates being applicable and careful consideration needs to be given to each individual trust situation.

The higher SDLT rates will apply to purchases of buy to let and second homes with a completion date on or after 1 April 2016. If contracts were exchanged before 25 November 2015 (being the date of the Autumn statement), but completion is after 1 April 2016, the higher rates will not apply. If exchange of contracts is after 25 November 2015 and completion is after 1 April 2016 the new higher rates will apply.

## Office news

As you know, my office is based in Merrow and I recently attended Merrow Residents Association AGM and meeting where residents and businesses were encouraged to brighten up the area by entering the Guildford in Bloom competition.

We have a small courtyard and, despite being the recipient of all the leaves from the Downs in autumn (or so it seems) we try to keep it tidy and colourful with a few hanging baskets and an old bathtub full of plants.



So, we will be entering the 'best container garden' section, although we know we've got competition from our immediate neighbour across the road, whose space is always exotically colourful.

Nothing ventured.....