



Jennifer Margrave Solicitors LLP

The Old Post Office, 130 Epsom Road,
Guildford, Surrey GU1 2PX

www.jennifermargrave.co.uk

enquiries@jennifermargrave.co.uk

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Welcome

Welcome to our third newsletter. The referendum is over and the decision to leave has been made. There are new faces in government and whether we are looking to the future with fresh hope or anxious uncertainty, change is definitely in the air. It's too early to tell the long term effects, but one thing I do know for sure; we're still here, serving our clients as best we can in our field of 'elderly client law'.

Yes, we are sometimes involved in EU law relating to our specific area of wills, probate and the administration of estates and that might change now that Brexit is upon us. But even before the referendum, the United Kingdom had not totally accepted new EU succession laws which were introduced last year and the general consensus was that the United Kingdom was a 'third state' when applying these new succession laws. But that law has not really affected the way we work or give advice; that still remains the same. As most of you know we try to be approachable, but efficient, answering queries as soon as possible.

However, many clients who have properties in Europe – mainly France and Spain – are worried about these new succession laws after they read about them in newspapers and other journals.

Basically, the laws were introduced to ensure all European states 'sang from the same hymn sheet' when dealing with the administration of estates, but, just as Great Britain is an island, our 'succession laws' are different from most of those in Europe. For a start, Europe has tried to deal with three separate aspects of 'estates'; who will deal with the administration; who the heirs will be, and how tax is paid on death.

In our country, there are separate complicated but interweaving laws relating to these three aspects. Put simply, we have executors or administrators who deal with the collecting in of assets and paying the deceased's debts, but in most European countries it is the 'heirs' who deal with this, with the help of a notary. We have freedom of testamentary expression, i.e. a person can leave their estate to anyone, the cats' home if they wish, but in Europe most countries expect the estate to be distributed to a certain list of 'heirs' who cannot be disinherited.

And finally, in this country the 'death tax', called inheritance tax, is calculated according to the size of the estate but in many European countries it is paid by the 'heir' according to their relationship to the deceased. For instance, a wife may not pay any tax but if an estate passes to distant relatives, the tax might be as high as 80%.

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Bits and bobs

We all know that there can be a 'love-hate' relationship between family members, particularly siblings. Mum or dad sometimes have to knock our heads together and reminds us that 'blood is thicker than water' to which we retaliate with 'you can choose your friends....' but what happens when our folks have died and we are left to work things out for ourselves?

Most people I talk to know the strengths and weaknesses of their brother or sister so when dealing with the estate of their dearly departed parent can divide up the tasks if they are executors. One may deal with the paperwork whilst the other cleans out the fridge, cancels the milk and starts getting things organised for the charity shop. Most parents treat their children equally when dealing with the money side of things but one common element that delays estates and causes bad feeling between siblings is chattels.

Chattels are all your bits and bobs of personal belongings which can be as valuable as your most exquisite diamond ring or have as little worth as a broken saucer and includes art work, cars, pieces of furniture and the family photo album to name but a few. Even the contents of the garden shed are included in the definition.

I am sure many of us have memories of certain items in our parents' house which we loved when we were children and still admire, even as an adult, because of their sentimental association. When it comes to dividing up these chattels, we choose these items, to remind us of those happy family times and want to pass them down to our own children in years to come BUT... what happens if more than one member of the family wants the same item?

Firstly, when dealing with the administration of an estate all the chattels should be valued for Inheritance Tax purposes. That at least gives an indication as to whether something is valuable or not, with most often the general household goods such as the kitchen equipment and clothes etc being of no little or no real value, in this country.

The second point is to see if any instruction was given in the will itself or reference was made to a separate note setting out the deceased's wishes for any particular item to be left to a certain person. If it is not set out in the will itself, and it is just in a note, it is not legally binding on the executors to follow that instruction but following the wishes of the deceased as far as possible should be paramount.

If there is no note then it will be down to the executors to decide what happens to the chattels. This is where delays and problems can arise for siblings who are executors when they cannot agree. Ultimately the administration of the estate will be delayed and funds not passed over whilst these issues are resolved and it is down to us lawyers to act as 'parent' and try to 'bang your heads together'.

Emotions run high and bad feeling can arise but ultimately a decision will need to be made. We have in the past suggested that the 'toss a coin' method is used, whereby one sibling goes first and then the next chooses in rotation. On other occasions the eldest goes first. This does not always work as I have heard of a case of a pocket watch being taken by one sibling and the chain for it being taken by another rendering it pretty useless and a great deal less valuable.

It is sensible to talk to the children and find out if they have any specific wishes and tell the children what you intend to do about this.

Then the testators should leave a chattels note detailing who gets what. I am not talking about who you leave your best bed or second best bed to but who should get your engagement ring, the work of art, grandfather clock, medals and family items. It makes life much easier if the children have something specific to start with.

And don't forget it doesn't just have to be items to leave to the children, it can be to grandchildren, other family members and friends or even a collection you wish to have donated to a museum or church.

Next time you are polishing the silver or rinsing your best china give it some thought.

Intestacy

The number of enquiries about people who have died without making a will has more than doubled over the past five years, Citizens Advice says.

According to a YouGov survey, nearly two thirds of the British adult population does not have a will.

You may well have read in recent weeks that musician Prince died without a will and if this turns out to be the case there are likely to be many claims on his estate that will keep the pockets of the American lawyers full for many a year to come.

Although from the statistics it would appear that more adults in England and Wales had a will in 2015 than 2014 the YouGov survey alarmingly shows that only 38% of the public have wills.

It is important for people to make a will, especially those with children or property or financial investments, those that are unmarried and also those who are single or widowed without children so that you can make sure that your assets are given to the particular family member, friends or charities of your choice.

If there is no will rules dictate how your money and possessions should be allocated and potentially not in the way you may have wished.

Attendance Allowance

We see a number of clients who are living well at home but will admit things are not quite as easy as they used to be and they have found that they need some assistance with daily tasks that they used to do with ease for themselves such as needing support from a carer to help get up and organised in the morning.

Many are paying for this assistance willingly from their own funds without giving any thought as to whether they may be entitled to some financial assistance when in fact they may be entitled to a benefit call Attendance Allowance.

Attendance Allowance is a non means tested benefit which pays you a weekly sum to help with personal care because you are aged 65 or over and are either physically or mentally disabled. It is paid at 2 different rates depending on the level of care that you need because of your disability.

You can get Attendance Allowance if the following apply:

- you have a physical disability (including sensory disability, eg blindness), a mental disability (including learning difficulties), or both
- your disability is severe enough for you to need help caring for yourself or someone to supervise you, for your own or someone else's safety

If you think you may be entitled to claim Attendance Allowance visit: <https://www.gov.uk/attendance-allowance/how-to-claim>

You can also get claim packs from the Attendance Allowance helpline 0345 605 6055 Monday to Friday, 8am to 6pm

Other news

The Independent Diabetes Trust has published a free booklet titled 'Type 2 Diabetes Management and Medication'. For a free copy visit their website at: <http://www.iddt.org/publications> or phone to: 01604 622837

The average person will walk around 115,000 miles in a life time, that's more than four times around the earth! The average person takes 8,000 to 10,000 steps a day, which adds up to about 115,000 miles over a lifetime.

A word to the wise....

I like to think I'm sophisticated when it comes to finance, computers, and banking. After all I spend my life advising others, so never thought I would be subject to internet scamming like some of my older clients. I was wrong and here's the sorry tale – a salutary lesson that I'll pass on to help others.

It was late on a Friday evening and I was reviewing the next day's activities and wondered when I'd have time to visit Sainsbury's, so I quickly Googled and, as I was delighted to see it opened at 7am, a flashed up advert appeared, seemingly as part of the Sainsbury's website. It was for a free beauty samples and, now seeing wrinkles appearing, I thought it would be a good idea to 'go for it'. Normally, I ignore such flashing pop-ups, being focused on the day's activities but I went for it. Was it because I was tired? Late at night? Was it the word 'FREE' in capital letters and bold? I'll never know, but when I clicked another little box arrived to say that I had to pay postage. Fair enough, I thought, so gave them my credit card details.

I forgot about the activity until a tiny parcel arrived with an eye wrinkle cream (it doesn't work) and some sort of serum, made in Israel, and a few weeks' later my credit card arrived with some postage, and a foreign transaction fee. Still I was not worried. My next credit card horrified me. Over £100 with foreign transaction fees from a company I did not recognize. I phoned the credit company who were sympathetic and explained they were aware of this scam – apparently the 'little box' I had opened had more to it than I had seen, and I had committed to a contract whereby I undertook to cancel within 14 days or have monthly supplies. They said they were aware it was a scam and they would undertake to keep watch and not let future payments go through. I should contact the company and tell them I was cancelling and I might get my money back. Needless to say, the company has not responded to emails.

It is now nearly three months and I am constantly checking my credit card statement online and have found two more entries, both deleted when I have contacted my credit card company, who, I have to say, have been very sympathetic and helpful. However, in despair, I have cut up my card and sent it back not knowing when the scamming will stop. Life is too short – and wrinkles are increasing with the worry of it!

So, if I can get caught, anyone can – so check all emails/pop up ads, and be wary of anything that is too good to be true – as I tell my clients!

Welcome (cont'd)

The European succession laws try to ensure that all member states have similar ways of dealing with estates with one important element. An EU resident can claim that their estate could be dealt with in accordance with the laws where they were 'habitually resident'.

Even this simple statement clashes with the United Kingdom's way of dealing with the question of where a person's estate should be taxed. We use a complex concept called 'domicile'. I won't go into the details but basically a person can choose a domicile, even if they don't 'habitually reside' in that country.

So, our government opted out of accepting these new succession laws although it is still possible to take advantage, of the 'habitual residency' rules, as the law states that Europe will accept a statement, even from a 'third state' that a person has their habitual residence in a particular country so that their estate be dealt with by the laws in that country. It is therefore possible to make a will in England and Wales, including such a specific statement, and this should allow any property – land or cash - to pass to your specified beneficiaries rather than under the forced heirship rules of the country in which that land or cash is held.

Jennifer

Office news

As you know from our last newsletter we have entered the Guildford in Bloom competition. Jennifer has been hard at work with her green fingers for our entry in the 'best container garden' section, and it has certainly cheered the place up. Don't forget to come and have a look if you are near the office. If you can't make it in person here's a shot of progress so far – as the results aren't in as this newsletter goes to press we will let you know the results in our next newsletter and on our website.



And finally – a date for your diary, please show your support if you can

When:
Where:
Time:
Why?

Tuesday 30 August
The Courtyard of Jennifer Margrave Solicitors LLP
From 11am until stocks run out!
We are hosting a cake sale in aid of Macmillan Cancer Support.

