



3

INTESTACY REFORMS
leaving a will to protect
your spouse

4

CORPORATE SERVICES
retention of title during
the credit crunch

5

RESIDENTIAL PROPERTY
HIPs one year on

THE CITATION

CLIFTON INGRAM: KEEPING YOU POSTED WITH NEWS OF THE LAW | DECEMBER 2008

DISPUTE RESOLUTION

THE BORROWER IS A SLAVE TO THE LENDER

The borrower is the slave to the lender. That proverb is more applicable now than ever since the lender might itself be in trouble.

An inevitable result of the reversal of the free flow of credit is that the patience of creditors will be curtailed, and the survivors will be those that operate in the black or are more deliberate in recovering their debts.

Credit control and debt management are now critical. Actually they always have been, but not like now. Their essential elements are: ensuring that your terms and conditions apply; prompt invoicing; keeping a tight control on your debtors; tight administration; keeping notes; pushing harder for payment than other creditors; being aware of their financial situation through credit reference agencies or their latest accounts.

If you need to enforce payment through the courts or by threatening insolvency proceedings we know the ropes and can guide you through the process at a cost that is in proportion to the debt.

If you sue then the first step is to obtain judgement from the credit then thought has to be given to the process of enforcement. Do you: send in the bailiff or sheriff; secure the debt by way of a charging order; obtain a third party debt order; obtain an attachment of earnings order; or just obtain information that will help with deciding which of the above is worth pursuing?

We can help you choose the best option.

GET IN TOUCH

For further information please contact Call Lesley Bacon, Dispute Resolution Team on 0118 912 0272 lesleybacon@cliftoningram.co.uk

MERRY CHRISTMAS

The run up to Christmas is always a busy time. However, it can be stressful for some and lonely for others. Christmas is also a time when we look beyond ourselves and spare a thought for those less fortunate.

For the past few years we have, instead of sending Christmas cards, made a donation to a charity. This year we have chosen Iain Rennie Hospice at Home - who offer specialist care and advice for patients with life threatening illnesses in their home - as the cause we will be supporting.

While on the subject of celebration and charity please see the back page for a round up of the charities we have supported throughout 2008.

From all of us here at Clifton Ingram we wish our clients, professional colleagues and friends a very Merry Christmas and a happy and prosperous New Year.

Bill Annan
Chairman



CLIFTONINGRAM LLP

INHERITANCE TAX: THE STING IN THE TAIL?

Following the introduction of the inheritance tax transferable nil rate band (the amount of the estate on which there is no Inheritance Tax to pay) much has been said about how this will simplify Inheritance Tax Planning for spouses. There are some cases however in which it might not.

Husband and wife wills often have survivorship clause, intended to prevent estates having to be administered twice if spouses die in quick succession (say 30 days) and, under the old rules, intended to save inheritance tax

Under the new rules, however, there can be a problem if one spouse owns assets less in value than the nil rate band. For example let us imagine a husband has assets worth £500,000 and his wife £100,000. He dies first, she 15 days later. They leave their estates to each other absolutely subject to a 30 day survivorship

clause so when he dies her estate receives nothing and his £500,000 goes to the children. After taking off his nil rate band there is £75,200 tax to pay. The wife's £100,000 goes to the children but is below the nil rate band so there is no tax to pay. She has not used all her allowance but it cannot be transferred to her husband as he has already died. If in this case there had been no survivorship clause his £500,000 would have passed to her and on her death to the children, plus her own £100,000. Her executors would have been able to claim the husband's unused nil rate band with the result that there would be no tax to pay as both estates would be below the combined value of the two nil rate bands. Result, £75,000 tax saved by NOT having a survivorship clause.

If you think you might be in this position you should consider reviewing your wills and we will be happy to advise further. Remember, there are many practical reasons for including survivorship clauses in wills



so changes should only be made if you are likely to be adversely affected by problems of this type.

GET IN TOUCH

For further information contact Peter McGeown or Stephanie Rose, partners in the Tax Planning, Wills and Probate Department on 0118 978 0099.

INTESTACY REFORMS

Married couples and civil partners are due to receive a greater share of the estate if one of them dies without leaving a Will (intestate). In the UK almost half of all people die without making a Will.

If you die and do not leave a Will, your money and possessions will be distributed in accordance with the intestacy rules laid down by law. If you leave no relatives the Crown is entitled to take everything.

As from 1 February 2009 new rules on intestacy come into force. If the deceased had children, their spouse or civil partner will receive the first £250,000 of their estate; this is double the current entitlement. If the deceased has no children but does leave close family such as parents, siblings or even nieces or nephews, their spouse or civil partner will receive the first £450,000, which is a £250,000 increase on the current entitlement. These amounts are known as the Statutory Legacy.

Other parts of the rules remain unchanged. For example, if the deceased has children, the surviving spouse or civil partner will still receive a life interest in half of the rest of the estate after payment of the Statutory Legacy. In plain terms they will have the use of the assets for their lifetime but will never

have ownership of them. The remainder of the estate is then divided up between the children when they reach the age of 18 years of age. If there are no children, the partner will receive one half of the remainder outright and the remaining half is then divided amongst the deceased's other relatives.

These new statutory legacies afford a surviving spouse or civil partner greater financial security and are being hailed by many as a better deal. However, some have said that the new rules could make people complacent in not making a Will.

Unfortunately, many people believe that if their spouse dies, they will automatically inherit everything, but this is a myth. It is not uncommon to hear of husbands and wives who have had to sell their homes and assets to pay off other relatives when their spouse has died, especially in situations where the house is held in the sole name of the deceased. In these circumstances the full value of the house will then become subject to the intestacy rules. In addition, there has been no change to the law concerning cohabitants or "common law" spouses. These persons still have no right of inheritance under the Intestacy Rules. Unmarried couples who own properties together are perhaps most at risk from the failure to make Wills.

These new provisions should alert people to the importance of making a Will. Writing your Will is an essential step in ensuring

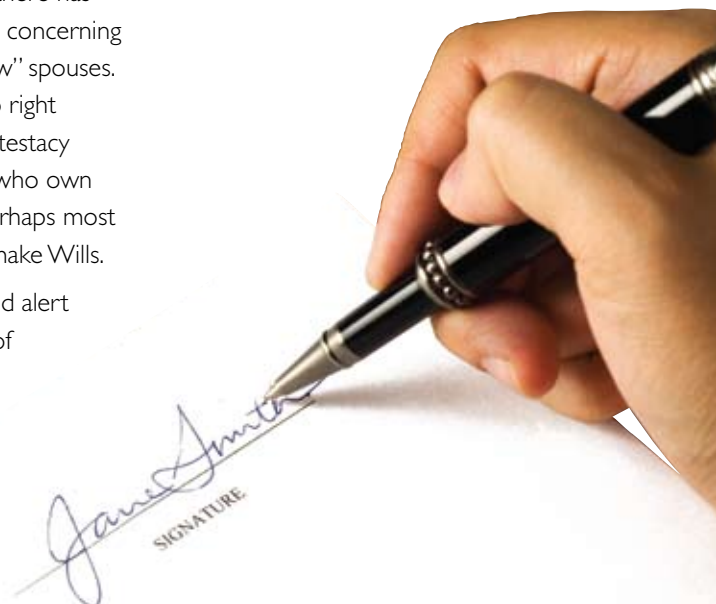
that upon your death your assets are distributed as you wish. Dying intestate means that your wishes may not be carried out and can also result in all manner of claims being made against your estate by various members of your family, making the entire grieving process even more painful and expensive as action is taken to sort out what really ought to have been put in place before.

In addition, leaving the distribution of your estate to the intestacy provisions may have avoidable inheritance tax implications for your beneficiaries. Making a Will is a straightforward, simple and an important way of protecting family and loved ones in the future.

As ever, you should seek appropriate advice to ensure that your wishes come to fruition.

GET IN TOUCH

For further information please contact the Tax Planning, Wills and Probate Department on 0118 978 0099



RETENTION OF TITLE: A USEFUL TOOL BUT NOT A MAGIC WAND!

Now that the economic focus has shifted from the credit crunch and the banking crisis to the problems in the real economy we are hearing more and more from clients requiring guidance on credit control matters and advice on the enforcement of Retention of Title clauses contained in their business terms of supply.

We expect to be providing more advice in this area as the recession starts to bite. Put simply, RoT involves postponing the passing of title in goods until full payment has been received by the seller. The goods remain as a security against default by the buyer and can therefore be repossessed. This right to preserve or retain title is enshrined in Section 19(1) of the Sale of Goods Act 1989 and since the leading case of *Romalpa* (1976) conditional contracts of sale (preserving title for the goods until certain conditions have been fulfilled) have been in frequent use.

In the *Romalpa* case the seller was able to claim against a receiver (and

crucially to rank above the bank and the other creditors) only because it was able to show the court that a special relationship of trust existed. It was therefore entitled to aluminium foil worth £50,000 and to £35,000 in a separate account which represented the proceeds of the sub-sales of the unused foil.

However, a note of caution must be sounded. No RoT clause can ever be considered an effective substitute for a robust credit control policy and such clauses can be very tricky to enforce. Such a clause must be properly drafted depending on the circumstances of the business (and even in some cases registered as a charge at Companies House). And, obviously, you don't even have to think about an RoT if you can secure payment up front!

This is a complicated area of the law and requires specialist advice. If you would like to discuss this or any other aspect of your trading arrangements please contact Tris Moore.

We also have a proven track record of enforcing RoT clauses against receivers and liquidators.

GET IN TOUCH

For further information please contact Tris Moore, Corporate Services Department on 0118 912 0279. trismoore@cliftoningram.co.uk



CHANGES ON THE PLANNING FRONT

From 1 October 2008 the rules relating to whether planning permission is needed to carry out work to your home were changed.

The General Permitted Development Order (GPDO) sets out certain types of "Permitted Development" for which it is not necessary to have planning permission and the changes affect the following types of building works: -

- Extensions and Outbuildings
- Paving front gardens and driveways
- Decking
- Loft conversions
- Conservatories
- Listed Buildings

But to make sure that you are aware as to whether the works you have in mind are exempt from planning control. It is always best to seek our advice or contact the Planning Department before embarking on a building project. Remember too that even if the GPDO applies the works may need building regulation consent and a separate enquiry of the Building Control Department at your Council should be made.

As always, if in doubt speak to us and we will be happy to help.

HIPS: ONE YEAR ON



It is now just over a year since the controversial Home Information Packs (HIPs) were introduced.

It was thought these packs, which cost sellers in the region of £350 and contain a copy of the title, searches and energy performance certificates, would speed up the buying and selling process.

Since their launch they have been heavily criticised and most of the parties and stakeholders in the property industry, including property lawyers, agree that the implementation of the pack has been expensive and futile.

However, HIPs are here to stay and what has become clear over the past year is that many of the packs produced by HIP providers include a personal local authority search instead of an official search. It is quite common to hear of inaccuracies contained in the personal searches or not revealing all relevant information. The property lawyer now increasingly has to carry out an official local authority search instead

of being able to rely upon the search contained in the HIP. This is therefore a duplication of effort and more costs for the buyer or seller.

The point to learn from this is that it is far better to have a HIP prepared by a legal professional, such as ourselves, who will put the pack together properly, including an official search. There are a number of unregulated HIP providers who provide a HIP of poor quality and a report issued in October 2008 from Birmingham Trading Standards found that five out of six packs produced as 'unsatisfactory'.

It seems clear that there is no intention by the Government to remove the requirement for HIPs and if you plan to sell your property you should contact us first of all so that you can ensure that you obtain the best advice and a complete pack to provide to your buyer.

GET IN TOUCH

For further information please contact Tina Crow, head of residential property at tinacrow@cliftoningram.co.uk or call 0118 912 0240

WE'RE DOING OUR BIT

Clifton Ingram has a proud tradition of supporting worthy causes and the local community and 2008 has been no exception.....

MAY BALL RAISES £10,000 for CHARITY

More than 170 guests from the local business community helped us to celebrate our inaugural May Ball and charity auction. £10,000 was raised for charity which Macmillan Cancer Support being the main recipient with The Cinema and Television Benevolent Fund and a local Wokingham charity, Building for the Future, also benefitting.

WOKINGHAM THEATRE

Our longstanding commitment to supporting the local community is demonstrated through our 10 year sponsorship of the Wokingham Theatre.

WILL AID

During November we offered to draw up basic Wills for a donation to Will Aid.



CHILDREN IN NEED 2008

Thomas the Tank Engine, Buzz Lightyear and characters from The Wizard of Oz, could all be spotted in the Clifton Ingram offices as the formal dress code was relaxed to allow members of staff to be their favourite children's character for the day. More than £600 was raised for Children in Need.

JOHN REDWOOD SCHOOLS DEBATING CUP

We are proud to sponsor the John Redwood Schools Debating Cup. The competition has been running for five years to give young people confidence and valuable public speaking skills.

THE CANTLEY PROMS

We were proud to sponsor this annual charity event in 2008.

Talented team

The Legal 500 is the largest and most in-depth survey of the UK legal market. Their team of researchers independently review the performance of more than 800 law firms and we have again been recognised in the following areas of this listing of top legal firms.

- Corporate and Commercial
- Commercial Litigation
- Debt recovery
- Insolvency and corporate recovery
- Employment
- Personal injury (Claimant)
- Agriculture and Estates
- Charities
- Family Law
- Person Tax, Trusts and Probate
- Commercial Property
- Property Litigation



We continue to strengthen our team with the welcome addition of a new solicitor in the Employment Law department. Alison Gair specialises in all aspects of

employment law including redundancies, wrongful and unfair dismissal claims, the employment aspects of mergers and acquisitions, employment status, employment in the construction industry and drafting contracts of employment and staff handbooks. Alison can be contacted on 0118 912 0257.

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WORKSHOPS: EMPLOYMENT LAW UPDATES

This workshops is designed to answer employers' specific or general employment law queries and provide an update on the latest employment legislation. **Date:** Thursday 17th May **Venue:** Clifton Ingram LLP, 22-24 Broad Street, Wokingham, RG40 1BA **Time:** 15.30 – 17.30 open forum for questions

Disclaimer

These articles are provided for general interest only, and are brief and generalised summaries. They may contain errors or be incorrect in the circumstances which apply to you and they do not attempt to cover all developments in the law. They must not be treated as legal advice, and you must always take specific advice before taking or refraining from taking action.