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Law Society wants to improve the way we buy and sell homes

The Law Society is looking at ways to improve the process of buying and selling homes for the benefit of consumers.

It plans to publish formal proposals by the end of this year but in the meantime it has been consulting with various individuals, firms and organisations involved in conveyancing.

The general consensus was that while no radical changes are needed, there are some improvements that could be made, particularly in the area of accreditation schemes.

The Law Society has often raised concerns that some professionals involved in conveyancing, such as estate agents, are not strictly regulated in the way that solicitors are.

This has led the Law Society to warn sellers that some estate agents could overcharge them for Home Information Packs (HIPs) which have to be provided when a house is put on the market. A recent investigation by Channel 4 found that some agents were commissioning HIPs from outside providers and then adding more than £100 to the price charged to the consumer.

A Law Society spokesman, Paul Marsh, urged consumers to approach their solicitor before buying a HIP because law firms are strictly regulated and are required to be fully open with clients about their fees.

He also advised sellers to consult their solicitor before filling out the Property Information Questionnaire (PIQs) which are now an obligatory part of HIPs. Mr Marsh said: "PIQs are supposed to provide information for potential buyers about the property, but if they are not completed correctly it could harm the relationship between buyer and seller.

"A solicitor will be able to assist in completing the questionnaire to ensure it is accurate.

"The professional integrity and legal skills which solicitors traditionally bring to the housing market are just as key now as they have always been and probably more important than ever."

Please contact Christopher Jackson and Ian Armstrong if you would like more information about HIPs or any aspect of buying and selling a property.

Call to improve inheritance rights for cohabiting couples

Cohabiting couples who have lived together for five years could be given the same rights as married couples to inherit their partner's estate if he or she had failed to make a Will.

The proposal has been put forward by the Law Commission as part of a major overhaul of the law relating to Wills and intestacy. The Commission points out that many cohabitants believe they already have the same rights as spouses but this is not the case.

As the law stands now, if a person dies intestate – that is, without having made a Will – then their cohabiting partner has no automatic right to inherit the estate. Instead, the estate will be divided using a complex process laid down by law. This is the case regardless of how long the couple had lived together and even if they had children together.

In some circumstances, the surviving partner may be able to go to court to challenge the distribution of the estate but it can be difficult and emotionally draining, especially for someone who is still grieving for the loss of their partner.

The Commission is therefore proposing that couples who have a child together or who have lived together for five years or more should have the same rights on intestacy as spouses.

It also proposes that childless couples who have lived together for more than two years but less than five should be entitled to half of the share of the estate that a surviving spouse would receive. However, the surviving partner would not receive anything under the intestacy rules if the deceased was still married or in a civil partnership at the time of death.

The Commission also proposes changes relating to married couples. It says: "Where the deceased is not survived by any children (or grandchildren or great-grandchildren), his or her spouse is entitled to everything in the estate up to a maximum of £450,000 but must share anything over that sum with any surviving parent or any surviving brother or sister of the deceased.

"We have proposed changes to the intestacy rules so that a surviving spouse would inherit the whole estate in such cases."

There are several other proposals and the Commission has launched a public consultation which runs until February. It is hoped that a draft Bill will be produced within two years.

If the proposals are adopted they will provide the biggest shake-up of intestacy rules for many years and will provide more protection for many people, particularly cohabiting couples.

However, the best way for couples to protect their interests, whether they are married or not, is simply to draw up a Will and keep it up to date. That removes all uncertainty and enables you to ensure that your estate is divided exactly according to your wishes.

Unfortunately, tens of thousands of people die each year without having made a Will which can lead to uncertainty and problems for families and loved ones.

Please contact Christopher Jackson if you would like more information about making a Will.

Covenant prevents extension to riverside house

A homeowner has been prevented from adding an extension to his property because it is subject to a restrictive covenant forbidding anything that might cause a nuisance.

The man had obtained planning permission for an extension to the house on an estate next to the River Thames. Some of his neighbours objected because they felt that, among other things, it would spoil their views of the river.

They pointed out that the property was subject to a covenant preventing anything that would create a nuisance or annoyance to other homeowners on the estate.

The homeowner submitted that the covenant was only intended to restrict activities at the house which might be construed as being a nuisance or annoyance. It was not designed to include the building of an extension.

However, the Court of Appeal has ruled against him. It held that the covenant was broad enough to mean that the building of an extension would be considered as an “annoyance” to neighbours.

Several properties are subject to covenants of some kind. It is important that homeowners know about them and understand the restrictions they impose before agreeing to buy a property.

Please contact Christopher Jackson or Ian Armstrong if you would like more information.

Judge should not have transferred children’s residence to their father

The Court of Appeal has ruled that a judge was wrong to transfer the residence of three children to their father even though the mother had refused to allow contact in the past.

The father had made an application for contact following the breakdown of the marriage. The mother made allegations about him relating to domestic violence and submitted that he should be barred from having contact.

The judge dismissed the allegations as unfounded and ordered that contact rights should be granted. The mother still refused so the father applied for a residence order.

Shortly before the trial, the mother relented and signed a statement admitting that she had been wrong to refuse contact and accepting that the court should grant a contact order. However, she also asked the court to confirm that the children should continue living with her.

The judge decided that he could not rely on the mother’s new assurances and ordered that residence should be transferred to the father. However, that ruling has now been overturned by the Court of Appeal.

It held that transferring residence from the primary carer in this way should only be done as a last resort. The court had to balance the risks of removing the children from their primary carer, their mother, against the possibility that she might refuse contact again in future.

The judge had got that risk balance wrong and the residence order he made was premature.

Please contact Patrick Troy if you would like more information about family law issues.

Woman awarded £35,000 compensation for road accident injuries

A woman driver who was involved in a head-on collision with a car travelling on the wrong side of the road has received more than £35,000 in compensation.

The woman was 61 at the time of the accident two years ago. She suffered two broken bones and a fractured joint in her foot. She was unable to bear weight for four months following the crash and experienced severe pain.

Her symptoms are expected to be permanent and she has been advised that she may need an operation to fuse two bones together in her foot if the pain becomes worse.

Such an operation would reduce her pain but could also reduce her mobility.

The other driver admitted liability.

The woman received total damages of £35,504 in an out-of-court settlement.

Anyone who suffers an injury as a result of someone else's negligence is entitled to claim compensation. Please contact Martin Crossley if you would like more information.