

Record Breakers

By Deborah Underhill, Private Client Team, Rickerbys LLP

In 2005 Percy and Florence Arrowsmith entered the Guinness World Records with an 80 year marriage and combined age of 205 years. When they married in 1925 the Queen was yet to be born, an unknown soldier named Adolf Hitler published Mein Kampf and the average male weekly wage was about £5. How times have changed!

These days many people seem content with allowing the law from 1925 to dictate who will

receive their estate when they die rather than making a Will containing their own wishes.

On 1 February 2009 the financial aspects of this law

will be updated. For example, in the case of a married couple (or civil partnership) where there are no children and neither person has a Will, the surviving spouse/civil partner will receive the first £450,000 from the deceased spouse/civil partner's estate. This is reduced to £250,000 if the couple have children. Prior to 1 February these amounts were £200,000 and £125,000 respectively. Despite these changes, the main principles i.e. who can benefit, will remain the same.

This can cause problems for:

- Co-habitees (no entitlement)
- Parents of disabled children (court order needed)
- Parents of children who are not responsible at 18 years (estate could be frittered away)
- Separated (but not divorced) couples (spouse/civil partner will benefit)
- Divorced couples with children (former spouse/civil partner will manage money)
- Married couples without children (parents/siblings of second spouse/

civil partner to die will benefit to the exclusion of the other spouse's/civil partner's family)

The above list is by no means exhaustive particularly with the complexity of relationships and arrangements over children which exist today far more than they did in 1925. There is an easy solution however – make a Will.

To help with what might seem like a daunting exercise, coupled with concerns over the likely costs involved in making a Will, Rickerbys have introduced a new service.

Even those with Wills in place need to undertake regular reviews to take account of changes in financial and family situations. In addition, recent Inheritance Tax changes, growing concerns over care fees funding and the more litigious attitude of today's society warrant good professional advice and an up-to-date Will.

For more information on Rickerbys' Wills Services contact Phillipa Bruce-Kerr or Deborah Underhill on:

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Home Information Packs 12 months on

A resounding success or abject failure? By Simon David, head of Residential Property, Rickerbys LLP

Since 14 December 2007 every home put on the market, no matter what size, has required a Home Information Pack or HIP as more commonly known.

The HIP itself contains various information such as a sale statement, local search, drainage search and evidence of ownership. The HIP also includes an Energy Performance Certificate that contains advice on how to cut Carbon Dioxide emissions and fuel bills.

As the government's own website quotes: "HIPs provide key information needed by buyers and sellers at the very start of the home-buying process, making transactions more efficient and less likely to fall through between offer and exchange. HIP documents give consumers a clear, up front picture of what they are buying and selling."

So how accurate is this?

There is currently no evidence to suggest that transactions have become more efficient and less likely to fall through

between offer and exchange. Most commentators agree that the reason for house sales to fall through is usually down to other factors such as employment problems, survey issues, problems elsewhere in the chain and mortgage availability etc.

If anything the conveyancing process has now become even more protracted than before – as properties are taking much longer to sell, the local search within the HIP quickly becomes out of date and, if that were not bad enough, many solicitors are not prepared to accept the local search within the HIP and are therefore commissioning their own search even if this is still in date.

So are there any discernible benefits 12 months on?

Certainly the cost of HIPs has come down

quite dramatically over the last 12 months with some providers offering them for as little as £199 plus VAT. However with a rule change due again in April 2009 it remains to be seen whether prices will increase. Apart from this it seems that little has changed – consumers are as much in the dark as they always have been when it comes to buying a property and the transaction itself seems to take even longer.

Little wonder perhaps that most involved in the industry are hoping for the end of the Home Information Pack in its current form.

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Insolvency and Divorce

By Elizabeth Bruce, Family Team, Rickerbys LLP

Until recently we have enjoyed a booming property market and readily available credit. This however is no longer the case. The Country has slipped into economic downturn. As such the number of people finding themselves insolvent (i.e. unable to pay their debts as they fall due) is set to increase.

As individual insolvency becomes more common place, many couples looking to separate are going to be faced with not only dealing with the breakup of their marriage but also with the insolvency of one or both parties to the marriage.

The effect that this will have on a couple divorcing then very much depends on the timing of the bankruptcy in relation to the divorce proceedings themselves. Often the main asset of the marriage is the matrimonial home. In the majority of divorce proceedings a couple would be looking to either achieve a sale of the property so that the equity can be divided, or a transfer of the property to one spouse with the other being compensated in some other way for their interest.

If, upon the parties either reaching an agreement or the Court deciding on

financial matters, a bankruptcy Petition has not yet been submitted to the Court, then an Order can be made by the Family Court dealing with the division of the matrimonial assets. Unless there is direct evidence of fraud or misrepresentation by one party at the time the Order is made then it is likely to stand and the non bankrupt spouse's settlement under the terms of the divorce proceedings will remain in place.

If the Bankruptcy Order is made before an Order is made in the Family Courts then the circumstances are very different. Anything owned by the bankrupt spouse will automatically vest in their Trustee in Bankruptcy. The Trustee will hold the assets and realise the value in the same in order to satisfy the bankrupt's creditors subject to any interest that the other spouse has in the property. The Family

Courts cannot then make an Order overriding the Bankruptcy Order.

In the case of the matrimonial home, there is an opportunity for the other spouse to buy out the Trustee in Bankruptcy's interest in the home if they can do so. If not, the property will be sold to realise the Trustee's interest in the same. Only in very exceptional circumstances will the other spouse be able to persuade the Trustee that a sale should not take place. Therefore, if a Bankruptcy Order is made before an Order resolving financial matters has been made in the Family Courts the non bankrupt spouse will end up with a smaller proportion of the assets than that which the matrimonial Court would have otherwise deemed fair in divorce proceedings.

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