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private client newsletter

A new shape of lawyer / Winter 2008

Gurdip Brring, with mfg partners Jonathan Tougher and Mercedes King-Jones of the family law division and Worcester partner Iain Morrison.

Respected Lawyer Joins mfg Matrimonial Team as Partner

Highly respected West Midlands family law and matrimonial specialist Gurdip Brring has joined mfg Solicitors as a partner based in its Worcester branch.

Ms Brring joins mfg from Hulme & Co where she had been a partner in charge of the matrimonial department for eight years.

She will be the sixth partner in the highly regarded family division at mfg headed by Jonathan Tougher.

Mr Tougher said: "mfg Solicitors consider Gurdip's decision to join us as a partner as highly significant at a time when the firm is experiencing a period of unprecedented growth in this area.

"Gurdip will strengthen the division considerably especially given her experience in family and matrimonial law where she has been a pivotal figure in a number of high profile cases."

Gurdip Brring studied law at Wolverhampton University before taking her finals at Chester Law College. She qualified as a solicitor in 1994.

Known for handling complex high quality private matrimonial work, she advises on all aspects of divorce and family matters with a niche expertise in high net value and complex matters involving family businesses, pensions and farming cases.

She also has considerable experience in relation to pre-marital agreements and the protection of property on co-habitation

Miss Brring is an advanced member of the Family Law Panel and Resolution which is an organisation committed to the resolution of family disputes in a constructive and non-confrontational way.

She is also a trained collaborative lawyer. This is a new form of alternative dispute resolution which involves couples working with their solicitors all together in the same room to reach an agreement without the need for expensive and stressful court battles.

Forty-one-year-old Gurdip's hobbies include interior design and property development.

INCLUDES:

- To Be or Not to Be: Joint Ownership of Property
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- Does Offshore Necessarily Mean Off-Limits?

To Be or Not to Be:
Joint Ownership of Property

For more information, please contact Peter Simner on **0845 55 55 321**

By Peter Simner

When you purchase property jointly, careful consideration should be given as to how you will each want to deal with your individual shares in the property.

Under English Law, you must hold your shares in the property in one of two ways: either as "Joint Tenants" or as "Tenants in Common". The word "tenants" in this context applies whether the property is freehold or leasehold and does not imply that you only have a lease or tenancy of the property.

Joint Tenants

In this case, if one of you were to die, that person's share would pass automatically to the other (or others) regardless of whether a will had been made. As Joint Tenants, you are deemed in law to hold the property in equal shares, even though you may not each have put in an equal contribution to the purchase price over and above any mortgage.

Tenants in Common

In this case, each of you has a specific share in the property which will not pass automatically to the other on death. It will pass under a will, if there is one, or under the rules in the Administration of Estates Act.

As Tenants in Common, you would hold the property in whatever shares you had agreed - usually this will be in the proportions in which you each contributed to the purchase price (disregarding the mortgage).

Points to consider

For a married couple with children (particularly where you are already selling an existing matrimonial home) it is probable that you would want to opt for the Joint Tenancy, unless there were Inheritance Tax considerations to be taken into account.

For an unmarried couple with no children, a Tenancy in Common may be more appropriate for two reasons. Firstly, if either of you were to die you might want your individual shares to go back to your own family. That would not happen, of course, with a Joint Tenancy, particularly if something happened to both of you at the same time.

Secondly, if your relationship broke up while you were still unmarried, the property would probably have to be sold or one party may wish to buy the other out.

On a sale, you would probably each want your proportion of the proceeds of sale to represent the proportion of your original contribution to the purchase price. If one of you was to buy the other out, no doubt you would want the "purchase price" of that share to reflect the contribution made to the original purchase price.

Unmarried couples should also consider entering into a "Co-habitation Agreement", which could deal with other related matters such as ownership of furniture or the proceeds of endowment policies.

If you want to preserve your individual shares in the property, you must opt for a Tenancy in Common. However, if you do so, you ought to make a will - there is no guarantee that the shares will go where you want them to if you do not make a will.

If either or both of you have children or dependants from a former marriage, you should certainly consider opting for Tenants in Common and make a will.

Can the situation be altered later?

Yes. A Joint Tenancy can be turned into a Tenancy in Common by one party serving on the other (or others) a "Notice of Severance".A Tenancy in Common can also be turned into a Joint Tenancy, on marriage for example, but this can only be done by Deed.

For advice on any of the points raised in this article, please don't hesitate to contact our conveyancing team.

Personal Injury Claims

For more information, please contact Chris Stanley on **0845 55 55 321**

By Chris Stanley

Anyone who has had an accident and suffered injury when the accident is not their fault or even only partially their fault may well have a claim for compensation. Such a claim must either be settled or have Court Proceedings issued (which incidentally is a rare occurrence despite press assertions to the contrary) within 3 years of the date of the accident or injury.

The best thing is to contact a solicitor as soon as is reasonable after the accident so that you can be provided with the right information early on and can be told about the dos and don'ts of making a claim and what kind of information needs to be obtained and kept.

In today's climate where we are repeatedly being told that we are a compensation culture generation (in fact fewer cases are now sued on than was the case 10 years ago) and where all sorts of people purport to be so-called experts it is, in fact, important to go direct to a solicitor and not via another agency or broker of any kind. In particular telephone numbers advertised on the television or on the radio and even many web sites on the internet are not in fact adverts for solicitors (although eventually in the process you will be put on to a solicitor) but are almost always Insurance Brokers trying to sell what is known as After the Event Insurance to cover Claimants against the possibility (a very remote possibility) that they might be responsible for the legal costs of the person against whom they are making a claim. The snag is that you will be forced to buy an insurance package of some kind, possibly with other add on controls such as who you must instruct and which Doctors can and cannot provide medical reports, when, in fact, much of that and in particular the insurance premium is unnecessary.

The insurance industry will tell you that there is now a Compensation Regulation Authority in existence who regulate all the people who accost you in the street or advertise on the television but, in reality, they are only scratching the surface at present and the claims farmers are still very much alive and much too well.

There is (and we would say this wouldn't we) no substitute for going direct to solicitors specialising in Personal Injury Claims.

Matrimonial Tax

For more information, please contact Steven Holden on **0845 55 55 321**

By Steven Holden

If you're visiting a matrimonial or family lawyer, the last thing on your mind is probably tax. However, I find that I am increasingly being consulted by colleagues in this area of law. Tax can add one more headache to an already uncomfortable process, but with proper advice and planning that pain can be eased considerably.

The tax status of spouses (or civil partners) is affected both on separation and divorce. Transfers between spouses are usually exempt for both Capital Gains Tax ('CGT') and Inheritance Tax ('IHT') purposes. However, this exemption ceases on separation for CGT and on divorce for IHT.

The main asset in most matrimonial disputes tends to be the family home, with one party or another moving out of it. Such arrangements usually continue until children have either left the home, or are no longer dependant upon their parents. Following which, the property is usually sold, or the party residing in the former marital home acquires the interest of the other party. If not carefully planned one of the parties can find themselves exposed to a not inconsiderable sum of CGT.

Without going into technical detail, whilst living in your home it is exempt for CGT purposes, however should you move out your liability to CGT becomes pro-rated. There are some concessions to this for couples going through divorce, but they are highly prescriptive, and it is all too easy to find yourself outside the

bounds of their protection and exposed to tax.

IHT can also be a consideration here, especially where the arrangement between the two parties results in one transferring their interest to the other at lower than market value. This would be treated as a gift by that party, and could adversely affect their IHT position should they not survive the following seven years.

This is an illustration of one of the more obvious areas where tax can impact on divorce arrangements, but hopefully it serves to reinforce the importance of tax as a variable in such cases.

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Does Offshore Necessarily Mean Off-Limits?

For more information, please contact Mercedes King-Jones on **0845 55 55 321**

By Mercedes King-Jones

The Offshore Trust has become an increasingly popular way of protecting family wealth in so called 'safe havens' overseas.

However, the divorce courts in this country are taking an increasingly robust attitude towards Offshore Trusts, and in recent cases have taken a very broad brush approach, looking at the reality of the Trust rather than concentrating on a strict legal interpretation.

In divorce proceedings, it is often alleged that an Offshore Trust is in fact a 'sham', an asset under the direct control of the Settlor (usually the husband and wealth creator) and a deliberate attempt to put assets beyond the reach of the wife and the divorce court.

In fact the courts are not impressed or intimidated by offshore investments and will not shy away from making intrusive orders against them. In some circumstances the Court can make an order directly against the trustees themselves but for practical reasons, this is unlikely unless the Court is confident that the trustees will actually co-operate with the terms of such an order.

Perhaps more commonly, the Court will simply include the Trust as a matrimonial asset in calculating the overall financial settlement and award one party (most commonly the wife) a more generous share of the available on-shore assets, e.g. the family home, pensions investments and savings, forcing the husband to then rely upon the Trust to provide him with income and/or capital to meet his needs.

However the approach of the Court will largely depend on how the Trust was created in the first place. Whichever side of the dispute you find yourself on, this is a complex area and independent legal advice is essential at the earliest possible stage. At mfg we have specialist lawyers in both our Family Division and our Trusts and Taxation Team who can advise you.

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