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A change for the better?...

A change of Prime Minister has failed to stop the quite unnecessary Home Information Packs and we shall all have to live with them from 1 August 2007.

My colleague Sylvia McCarthy outlines the process below. If you need one, we can produce it for you very

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rapidly using the latest technology.

What impact it will have on the housing market none of us can be sure but I would just like to share something the Chief Rabbi said recently: that everyone nowadays seems to know the value of a house but very few the value of a home. Perhaps we should all just ponder on that for a moment.

My congratulations to Maurice Alton Honeywell who has recently been awarded a Diploma in Notarial Practice from the University of Cambridge. He will shortly be fully qualified to act as a

Notary Public, witnessing and certifying legal documents for use in other legal jurisdictions worldwide.

My colleagues and I will be at the 123rd annual **Blakesley and District Agricultural Society Show** on Saturday 4 August. If you are going, we should be delighted if you called in to see us on our stand.



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Home Information Pack Update

At the time of going to print, the revised date on which sellers will be obliged to provide a Home Information Pack (HIP) is 1 August 2007.

As a result of numerous representations, the Regulations relating to HIP production have been amended, but these amendments are intended by the Government to be transitional until sufficient energy assessors have been trained and are available to meet demand. There are, therefore, likely to be further amendments to the Regulations during the course of the year.

“ The Regulations will **not** affect property that is already on the market, or which is put on the market before 1 August 2007 ”

The Regulations will not affect property that is already on the market, or which is put on the market before 1 August 2007. On or after this date, a complete HIP (including an energy performance certificate) **must** be supplied for the sale of a property with four or more bedrooms.

Concerns have been expressed whether it is feasible to provide a complete HIP package swiftly, and as a result of those

concerns, the Regulations have been amended so that until 31 December 2007 a Seller may market a property once a HIP has been commissioned. A seller must, however, be able to demonstrate that a **HIP has genuinely been commissioned**, and failure to comply with the Regulations will (as before) carry a fixed penalty of £200. Prospective Sellers should be aware that the penalty applies to each breach and is not a ‘one off’ payment.

In the short term, the life of an Energy Performance Certificate has been extended, and it may therefore be up to 12 months old at the date of marketing a property. This timescale will, however, be reviewed later this year.

There will be ongoing reviews of the Regulations and the HIP scheme generally, and further updates can be obtained by logging onto the Government Website:
www.homeinformationpacks.gov.uk



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With all my wordly goods I thee endow...

Inheritance Tax and Lifetime Gifts between Spouses

Husbands and wives, and now civil partners, naturally expect to provide for each other's material and financial needs, but what happens if they make large capital gifts between each other? Can this affect the Inheritance Tax position when one of them dies?

This was the issue in a recent case which attracted much attention in the press, and has caused considerable concern. As always, the decision in any particular case turns on its own facts, and it has to be said that the background to the case in question was

Phizackerleys did not have enough liquid assets to enable the nil rate band trusts to be set up without recourse to the matrimonial home.

Mrs Phizackerley died first. On her death, apart from the nil rate band trust, the entire estate passed outright to Dr Phizackerley, and so no Inheritance Tax was payable. The house passed to Dr Phizackerley, subject to a debt from him to the trustees of Mrs Phizackerley's nil rate band trust fund, for the value of the nil rate band at the time of her death.

A few years later Dr Phizackerley died, and a claim was made that in

property had been derived from Dr Phizackerley's earnings, and that the house was not bought until he retired. In most cases, where the house is bought earlier in life and both spouses contribute to the mortgage and capital repayments through their salaries, this problem will not arise. It will also not arise if a spouse inherits capital which is then used for the benefit of the family finances. No-one is yet suggesting that in the majority of cases it will be necessary to undertake a detailed investigation of the whole history of the family finances when a spouse dies.



“Husbands and wives, and now civil partners, naturally expect to provide for each other's material and financial needs, but what happens if they make large capital gifts between each other? Can this affect the **Inheritance Tax** position when one of them dies?”

far from usual.

Dr Patrick Phizackerley was a distinguished biochemist and a Fellow of Balliol College, Oxford. The College provided him with accommodation throughout his tenure. Mrs Phizackerley did not work during the long marriage, although doubtless she would have supported her husband in his work, and undertaken all the normal social duties that a Fellow's wife would be expected to do in an Oxford college.

When Dr Phizackerley retired, he bought a modest house in North Oxford from his own money, and this was conveyed into the joint ownership of himself and his wife. A few years later, when house prices were rising rapidly, the ownership was re-established as “tenancy in common” and the Phizackerleys made mutual wills, creating “nil rate band discretionary trusts” to try to take advantage of the two nil rate bands available on each death. Like so many people, the

calculating his estate for Inheritance Tax, the value of the debt should be deducted. The Revenue disallowed this, on the basis that the debt had arisen from property “derived from” Dr Phizackerley himself. This decision was upheld at a hearing before the Special Commissioners.

The legal position is set out in section 103 of the Finance Act 1986. Whilst the language of the section is not a model of clarity, the principle is clear: for Inheritance Tax, you cannot take

However, it will be necessary to ask a few more questions about whether there have ever been significant transfers of capital between the spouses, and how and when the family home was acquired and paid for.

Where a problem is identified, it may be possible to reduce the risk of losing the Inheritance Tax nil rate band on the first death by drafting the wills so as to give the surviving spouse a life interest rather than an absolute gift of the residue of the estate. However, this

“for **Inheritance Tax**, you cannot take advantage of a debt which has been created out of **an asset you have yourself provided**, whenever that might have been done”

advantage of a debt which has been created out of an asset you have yourself provided, whenever that might have been done.

The Phizackerleys' situation was unusual, in that all the matrimonial

has yet to be tested before the Commissioners or the Courts, so it is impossible to guarantee the outcome.

All Inheritance Tax planning concerning the family home is, to some extent, artificial. It would not be too

difficult for the Government to prevent the use of the present tax planning devices in a future Finance Bill, and if there is too large a take-up of such schemes, and the public revenue is being affected, it is not unreasonable to assume that action will be taken. Further, any complex tax planning schemes are at risk of attack in the Courts. There have always been anti-avoidance provisions in the Inheritance Tax Act which at any time could be held to strike these schemes down.

“The **basic structure** of Inheritance Tax has always been to provide full exemption for transfers to a spouse on the first death, and then a **full charge on the death of the survivor.**”

I therefore counsel a note of great caution. The basic structure of Inheritance Tax has always been to provide full exemption for transfers to a spouse on the first death, and then a full charge on the death of the survivor. That means, effectively, one nil rate band between married couples or civil partners. It is an unpalatable reality.



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Enduring Powers of Attorney

The law on mental capacity is scheduled to change on 1 October 2007 following the Government's proposals in relation to Enduring Powers of Attorney (EPA) which will bring about numerous changes to the existing provisions under the Mental Capacity Act 2005 ("MCA").

Under the current legal provisions you (the donor) may appoint another person (the Attorney) to manage your affairs in the prescribed form of an EPA. An EPA differs from a general power of attorney in that it remains effective once the donor becomes mentally incapable subject to the Attorney registering the EPA with the Court of Protection. The preparation of an EPA has been fairly straightforward and at a reasonable cost so far as professional fees are concerned.

From 1 October 2007 one of the most significant changes to the MCA is that EPAs are to be replaced by **Lasting Powers of Attorney (LPA)**. A LPA will differ from an EPA in various ways. LPAs may be made in respect of finances and property and/or health and welfare decisions. Once the LPA has been made it will not be effective until it has been registered and therefore whereas an EPA had immediate effect there may be a period of time where no one will have authority to deal with the donor's affairs whilst registration of the LPA takes place. Once registered the LPA will be valid and will bear the Court Stamp and thus is expected to reduce the potential for abuse of such documentation. Under the new provisions Attorneys will be required to consult the donor on **every** decision they make on

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behalf of the donor, whenever it is possible to do so.

LPAs are likely to prove much more cumbersome to prepare and therefore more expensive for the donor. In addition to professional fees there will also be the registration fee payable to the Court (the figure for this has not yet been announced).

Our advice to clients who wish to grant a power of attorney to deal with their financial (and property) matters is to put this in place prior to 1 October 2007. It is the case that all existing EPAs and those created prior to 1 October 2007 will not be affected by the forthcoming changes introduced by the MCA. Please contact us if you require any further advice or would like to grant a power of attorney.



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“Our advice to clients who wish to grant a **power of attorney** to deal with their financial (and property) matters is to put this in place prior to 1 October 2007. It is the case that all existing EPAs and those created prior to 1 October 2007 will not be affected by the **forthcoming changes** introduced by the MCA.”

What is Chancel Repair Liability?

How you can be legally liable for costly repairs to your local church...

Chancel repair liability is a very modern problem based on ecclesiastical law dating back to before 1189. In the region of 5,200 pre-Reformation churches in England and Wales have the potential to gain from this liability which falls under the Chancel Repairs Act 1932.

show whether actual liability on a particular property exists, and it is therefore very difficult and time consuming to establish whether such a liability will affect a property.

There are organisations that will carry out a chancel liability check search for a fee and if it is discovered a liability could in fact exist then there is indemnity insurance



“At present there is **no definitive record or archive** to show whether actual liability on a particular property exists, and it is therefore **very difficult** and time consuming to establish whether such a liability will affect a property”

Historically the Rector was responsible for repairing the Chancel, whilst the parishioners maintained the nave (the larger part of the church building, where the congregation sits). The Rector generated income to help repair the chancel from property which had been donated to the church for that specific purpose. This land was referred to as rectorial property. For various reasons throughout history (not least Henry VIII and his turbulent love life) rectorial property was dispersed and non clergy purchased the land and with that land came the **liability** to repair the Chancel.

One such purchaser of rectorial property was the Wallbank family who bought Glebe Farm. A field forming part of the farm had a liability attached to it requiring a contribution to repair the Chancel of the local church. The local Parochial Church Council quite legitimately requested a contribution to the cost of repairing the chancel from Mr and Mrs Wallbank who refused, believing they were not under any such obligation. The Parochial Church Council took the Wallbanks to court and finally in 2003 the House

that can be taken out. The amount of premium payable depends on the value of cover required, the size, value and nature of the property and taking into account whether the property is for commercial or residential use.

To assume there is no liability because your property is not near a parish church or situated within a town or city is a dangerous assumption; England and Wales has had extensive development since 1189!

As a matter of policy Arnold Thomson carries out a chancel repair search to identify potential liability when undertaking a transaction to purchase property and has done so for some time. If the search reveals a liability then indemnity insurance can be taken out to cover the liability at whatever amount is required. Many mortgage providers now insist this check is carried out and if required indemnity insurance put in place.

Obviously a search can be done and an indemnity policy taken out at any time not just when purchasing a new property. If you would like advice on Chancel Repair

“As a matter of policy **Arnold Thomson** carries out a chancel repair search to identify potential liability when undertaking a transaction to purchase property and has done so for some time.”

of Lords ruled that the Wallbanks were liable for the chancel repairs and **ordered them to pay more than £300,000.**

Unfortunately this is not an isolated case, and because of a future change in the law that may have the ability to prevent the church from enforcing their right to enforce chancel repair liability, Parochial Church Councils up and down England and Wales are **actively seeking** to identify properties liable to chancel repair and to register that liability at the Land Registry.

At present there is no definitive record or archive to

Liability then please contact us here at Arnold Thomson and we will be more than happy to answer any questions you may have. We are aware it is another expense which many people might consider unnecessary, but it is likely that Mr and Mrs Wallbank regret not having had the opportunity of having insurance in place when the church came knocking at their door!

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