

# HELPING A CHILD ONTO THE PROPERTY LADDER



**W**ITH THE CREDIT crunch upon us it is even harder for first time buyers to raise enough cash and to find a suitable mortgage to enable them to buy their first property. First time buyers cannot obtain 100% mortgages anymore and are having to find a substantial amount for a deposit before they can contemplate purchasing a property. Some lenders charge a higher interest rate if the deposit is less than 25% of the purchase price. More and more parents are offering to help their children by contributing towards the purchase price. A recent survey carried out by National Savings and Investments indicated that only 6% of those parents surveyed expected their children to be self-sufficient at 18.

However, it is very important for parents to make sure their contribution is protected.

The parents and child should consider the following:-

- ⌘ Is the money a loan or a gift?
- ⌘ If the child is purchasing the property with another, what happens if they part company?
- ⌘ If the child dies has he/she made a Will providing that the parents are beneficiaries?
- ⌘ If both parents die, is the money a loan to be paid back to their estate?

⌘ Are there any tax implications such as inheritance tax, capital gains tax, stamp duty?

⌘ What happens if the child or parents are made bankrupt?

The contribution can be protected in various ways:-

#### Loan agreement

A low cost loan from "The Bank of Mum and Dad" is becoming more and more popular for obvious reasons but it is advisable to make sure there are specific ground rules in place. For instance, what interest, if any, will be paid? When will the money be paid back? Who is responsible for paying it back and how will this be done?

#### Declaration of trust, trust deed or co-ownership agreement

These documents will set out, among other things, what percentage each party paid into the property and what shares each party will obtain on the sale of the property, how the parties hold the property and anything else relevant to the individual's situation.

#### Wills

The child can make the parents beneficiaries in their Will ensuring that, on the death of the child, the parents are entitled to a share in the estate.

Having an appropriate document drawn up and having all parties sign the document will help to avoid family arguments and fall outs in the future.

If you have already loaned money to a family member it is not too late to draw up the necessary document to protect your money. The sooner you obtain advice and put in place the relevant document for your situation the sooner your money will be protected.



Linda Mulrooney is a qualified paralegal in residential conveyancing and is part of the property team at Barker Gotelee. If you would like further advice on the above or any other residential conveyancing issues please contact Linda on 01473 617336 or by e-mail at [linda.mulrooney@barkergotelee.co.uk](mailto:linda.mulrooney@barkergotelee.co.uk)

# WHO IS LOOKING AFTER OUR ELDERLY?

**E**AST ANGLIA is said to have the highest proportion of elderly farmers still involved with the farming business. Is this surprising when fuel costs and the costs of other basic needs are rising so quickly? Perhaps the need to continue working well after retirement age comes from the fear of nursing costs in the future.

Figures out this Autumn show that for the first time, the number of people aged 65 and over in the UK is greater than the number of people below the age of 20. Life expectancy has increased to its highest ever level, but with this brings an increasing probability of some degree of poor health.

Although in rural areas more people are now staying in their own homes, or moving in with family, the likelihood of having to move into a care home is increasing rapidly.

Funding is often considered to be the most important factor when moving into a care home. It is crucial to consider the sources of funding available, either from the Local Authority or from the NHS. However, what is often overlooked is the security of a person after moving into the care home.

If you were moving into rented accommodation, you would expect to sign a lease detailing your rights. Accommodation in a care home is not governed by Landlord and Tenant legislation, but there are a number of rules about the Care Home Contract which people are often unaware of.

Firstly, anyone who is self-funding should have a copy of the contract prior to moving into their chosen home. If you are receiving Local Authority funding, the contract will be between the Local Authority and the Care Home, but you should still receive a written statement of terms and conditions from the Home.

Secondly, the terms of the contract and/or standard conditions need to be clear and easy to understand, particularly with reference to costs.

The main things that you should look at in a care home contract are:

- ✂ Who has drawn it up?
- ✂ Who is responsible for fees?
- ✂ What happens if a person who is self-funding falls below the capital threshold and becomes entitled to Local Authority Funding?
- ✂ What services can a person expect in return for those fees?
- ✂ What happens if the person dies?
- ✂ When can the costs be reviewed?
- ✂ By how much are the costs likely to increase?
- ✂ What happens if family members pay top-up fees?

The rising number of complaints being made to the Office of Fair Trading about unfair contract terms in care home contracts suggests that many contracts are not providing adequate security.



Caroline Billings  
Solicitor with Barker Gotelee

If you would like advice regarding care home contracts, or other issues concerning the elderly such as Powers of Attorney, Care Home funding and Court of Protection matters please contact Caroline Billings on 01473 617321 or e-mail

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## Coping with divorce during the credit crunch

THE CURRENT uncertainty and changing economic climate is already having an adverse effect on divorcing couples.

With an estimated wealth of £300 million, couples such as Mr and Mrs Ritchie would have been able to endure depreciating assets and fluctuating valuations if they had not come to an amicable settlement. It is the common man with a more modest wealth that is set to suffer.

Often the largest asset in a marriage is the matrimonial home, but with property prices continuing to slide and lenders becoming increasingly unwilling to lend, how do couples come to a considered and practical agreement?

Take professional advice early. It may be that your solicitor advises you to do nothing at the current time, but at least you will know where you stand. If you do not seek family law advice and make arrangements such as transferring or re-mortgaging the property in contemplation of a divorce, this may not be in your best interests and could be difficult to unravel.

Where possible you will need to keep your legal costs to a minimum, therefore the more communication you have with your spouse, once you have taken advice, the better. This in turn should help you to keep your matter away from the courts and come to an agreement by consent.

Katie Beaven is a Family and Property lawyer specialising in relationship breakdown. Katie is a member of Resolution, an organisation that promotes dealing with family issues in a conciliatory and amicable fashion.



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# Tax Saving Opportunities



**S**o where is the good news amongst the gloomy financial reports that surround us? Here are some opportunities arising from the collapse in property and investment prices.

Inheritance tax (IHT) – are you thinking about giving something away to save IHT when you die? If so, the value of that asset remains in your estate for IHT purposes for seven years from the date of the gift. Any later increase in the value of that asset is, however, outside your estate for IHT purposes.

*For example, on 1 January 2009 Mr Smith gives away some shares valued then at £20,000. If he dies after 1 January 2016, the value of the shares is not included in his estate for calculating IHT. If, say, he dies on 1 January 2012, when the shares have increased in value to £30,000, then only £20,000 is included in his estate for IHT, being the value of the shares when he gave them away.*

*The £10,000 profit is not included in Mr Smith's estate for IHT purposes and he has saved £4,000 tax.*

Capital gains tax (CGT) – if you give something away, it triggers a charge to CGT as though you had sold it. CGT is a tax payable by you on the difference between the value at the time of the gift and the value when you first acquired the asset. CGT effectively discourages people from making certain gifts because of the tax they will have to pay.

*If you want to give away some shares, land or a property, but are concerned about the amount of CGT you will have to pay, then you might want to review this now. You should find out the current value of the shares/land/property as it may be that the CGT you would have to pay has become affordable to you.*

Have you sold shares, land or property which you have inherited from someone who has died in the last two years? Was inheritance tax payable in that person's estate? If so and the sale value was at least 40% less than the value declared for inheritance tax purposes, then you can actually increase your inheritance and give to charity.

Finally, making a Will is just as essential as ever. Did you know that you can include provisions in your Will to protect someone's inheritance in case they become bankrupt? You can make sure their inheritance is safe until the bankruptcy proceedings are over.

If you would like further advice on any of these issues, or estate planning generally, please contact Nick Palmer on 01473 617307 or by e-mail at [nick.palmer@barkergotelee.co.uk](mailto:nick.palmer@barkergotelee.co.uk).

## The importance of professional financial advice

At Barker Gotelee, we strongly believe that clients should review their financial affairs at least annually with a professional financial advisor.

The current financial turmoil has highlighted the benefits of this, which will be different for each individual.

Specialist consideration should be given to the following areas:

- ✂ Short, medium and long term goals
- ✂ What do you really want to achieve from your savings?
- ✂ Are your eggs all in one basket?
- ✂ Increased awareness of factors outside your control
- ✂ Are your assets tax efficient?
- ✂ Is your family protected?
- ✂ Greater risk management; and
- ✂ (last but not least!) Professional advice from a qualified expert.

If you wish, we can suggest the names of some professional financial advisors who will be able to help you. Please contact us on 01473 611211 or by e-mail at [bg@barkergotelee.co.uk](mailto:bg@barkergotelee.co.uk).

### ATTENTION ALL CHARITY TRUSTEES

We are conscious that charities may be suffering from the credit crunch just as much as businesses run for profit. Charities should not ignore legal issues as this may have dire consequences later on.

We wish therefore to highlight a service we offer to any existing client, who is also a trustee of a Charity.

We will provide a free initial consultation on any legal issue. For example: if you want to alter your Charity's governing

document; if you are concerned about whether a certain action might be a breach of the trustees' duties; or if you require employment law advice, please contact us and we will be pleased to advise on the law and practical solutions.



Please contact us on 01473 611211 or by e-mail at [bg@barkergotelee.co.uk](mailto:bg@barkergotelee.co.uk)

# ALCOHOL AND THE MOTORIST

Most people have little contact with the Courts throughout their lifetime but if they do come to the attention of the police it is invariably for speeding, careless driving or.....excess alcohol (drink/drive). Whilst drink is a factor in many fatal accidents involving young people, a very significant number of motorists prosecuted for excess alcohol are in fact middle-aged.

It is probably only a matter of time before random breath tests are introduced in the UK. Currently an officer needs grounds to believe a breath test is necessary, although these may easily be made out where the smell of liquor is detected or there has been an accident. The law relating to drink/driving offences is complex and there is much case-law through legal challenges because of the importance of retaining the right to drive.

It is an offence to refuse to provide to the police specimens of breath at the roadside, and similarly at the police station if breath, blood or urine is requested. It is an offence not only to be driving a vehicle "over the limit" but also to be attempting to drive or simply being in charge of a vehicle i.e. in control of it when the engine is not even running. The legal breath level limit is 35 or a blood level of 80. If the breath alcohol recorded at the police station is under 50 then you are entitled to provide a blood sample for analysis. Some motorists decline this, which is unwise because you might avoid prosecution if the sample given for analysis is below the prosecution threshold.

In most cases where drivers are prosecuted for drink drive offences there is a mandatory minimum driving disqualification period of 12 months. Except in the most exceptional cases the Court has no discretion to waive this and only then if the circumstances of the offence itself are peculiar. The Court cannot allow a person to retain their driving licence for personal reasons e.g. because they might lose their job.

There are some do's and don'ts:

1. If you do not drink any alcohol then you should not ever fail a breath test.
2. If you are stopped by the police and asked to provide a breath test full co-operation is best; otherwise a driver's poor conduct can be interpreted as the result of drink.
3. Never refuse a breath test either at the roadside or the police station – this is an offence, whether you are actually over the limit or not.
4. It is best not to engage in legal arguments with police officers at the roadside or at the station without correct legal know-how – however, you should also always give the most accurate information to the police when they ask you about your alcohol consumption.



5. If you consume alcohol after you have driven, but before you come to the attention of the police, it is vital you know how much you have drunk, the type of drink and its strength. If you were fit to drive before you had something to drink then a back calculation can be carried out – however, you must make it clear to the police that you have had something to drink after the driving as you may be prosecuted and will need to show that you have pointed out the important facts to the police.
6. If you are prosecuted for an offence and have to plead guilty there are options to reduce a disqualification period by up to a quarter by agreeing to attend a drink awareness course run by the Probation Service or other bodies. This is a way of reducing the disqualification period but you must agree to do this when you appear in Court.
7. Please remember that the more you are "over the limit" the longer the disqualification period and if the readings are particularly high then you can be ordered to carry out unpaid work for the community, be tagged or even imprisoned.



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**"This publication is intended to give general guidance only and is not intended to provide legal advice. It is not exhaustive and you should take legal advice on any specific circumstances that affect you."**