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Family Law

# Family Law News & Views

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“sound advice  
and expert  
representation”

“friendly and  
caring”

“practical and  
clear advice”

“always on hand  
to deal with any  
queries”

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## Child Arrangement Orders and more

New laws will come into effect on 22 April in the Children and Families Act 2014.

A number of changes have been made to the laws involving applications to Court relating to children and the Children Act 1989 has been amended.

### Mediation

The Government is still trying to encourage people to attend mediation prior to applying to Court. This is for applications involving children and dealing with financial disputes as part of a divorce. Couples do not have to attend mediation prior to divorce itself.

The position has not changed in that an initial session of mediation is compulsory, but there are still circumstances when this is not required. Our

recommendation has not changed in that it is essential to seek legal advice early and certainly prior to making any application to the Court.

### Child Arrangement Orders

Contact Orders and Residence Orders (where children live) are to be replaced by a Child Arrangement Order, which deals with which parent a child lives with and arrangements for contact with the other parent or any other person.

### Shared Parenting

The Children Act 1989 has been amended to include a presumption of shared parenting.

What does this mean?

When the Court is deciding upon matters relating to the

involvement of parents in the life of a child, it is presumed (unless the Court is persuaded otherwise) that the involvement of both parents in the life a child will further the child's welfare. The Act goes on to say that 'involvement' means 'involvement of some kind, either direct or indirect, but not any particular division of a child's time'.

The Government is trying to 'encourage separated parents to adopt less rigid and confrontational positions with regard to arrangements for their children'.

Whether this will be the case, or whether it leads to confusion and more confrontation remains to be seen.

## Capital Gains Tax Changes

If you own and live in your home and the value increases, Capital Gains Tax (CGT) is not payable on the gain when you sell it. This is because your 'main residence' is exempt from CGT upon sale.

However, if you move out of the family home and you retain an interest, should the value increase, you may have a CGT liability on the gain when the

property is sold.

Until 5 April 2014, there was a period of 3 years during which time no CGT would be due on a gain to give you time to move on and sell the family home. This was the case even if you were to buy a new property.

Alternatively, couples divorcing or dissolving Civil Partnerships (not unmarried couples) could

elect to continue to claim main residence relief on the family home provided the relief was not claimed on the new property.

As of 6 April 2014, the 3 year rule has halved to 18 months. Therefore, it is advisable for those still retaining an interest in a family home, but not living there to seek advice from a tax expert.

# Replacement Attorneys

A recent case has confirmed that you cannot appoint replacement attorneys to replace other replacement attorneys in a Lasting Power of Attorney (LPA).

When you make a LPA, you choose people you trust to deal with matters on your behalf when you lose the capacity to do so yourself.

To provide for the future and the possibility that your attorneys may die before you or be otherwise unable to act,

it is advisable to nominate a reserve or reserves to stand in as replacement attorneys.

In the case of *Court of Protection in Office of the Public Guardian v Boff and another* (2013) MHLO 88, Dr Boff made a LPA for property and financial affairs and appointed her husband as sole attorney. She appointed as replacement attorneys, her two sons and her niece. However, she stated that she only wished one attorney to act at a time and appointed

the replacement attorneys to act in succession.

The Office of the Public Guardian (OPG) refused to register Dr Boff's LPA and the OPG applied to the Court of Protection to sever Dr Boff's instructions from the LPA.

Dr Boff made an objection. Although the legislation (the Mental Capacity Act 2005) is ambiguous, the Judge confirmed that successive attorneys cannot be appointed.

*Divorce*

*Financial Settlements*

*Child Contact*

*Wills*

*Advance Decisions*

*Advance Statements*

*Lasting Powers of Attorney*

## Pay the mortgage or else!

Mr and Mrs Pocock were divorced in 2011 and a Consent Order was made recording their settlement.

The Consent Order included an agreement that Mr Pocock would redeem the mortgage on the family home by a given date and pay the mortgage in the meantime, including interest and capital repayments.

Mr Pocock failed to redeem the mortgage and only made interest payments. Also, on five occasions, payment was not made at all.

This led to Mrs Pocock repeatedly applying to the Court. Each time, Mr Pocock cleared the arrears just before the hearing.

Mr Pocock requested that the mortgage be changed to a

repayment mortgage. The Judge agreed to this. However, the Judge made an Order that Mr Pocock be sent to prison for 14 days. The sentence was suspended for 6 months and only applied if he did not pay the mortgage. Mrs Pocock could also take the matter back to Court after this time if Mr Pocock did not continue to pay.

## Court fees

As reported in our March newsletter, there was speculation and also a recommendation from the Ministry of Justice that Court fees for divorce were to increase to £750.

This did not happen and the fee for issuing a Divorce Petition remains at £410.

Other fees also remain unchanged.

The fee for applying for child contact, residence or for dealing with a specific issue remains at £215.

The fee to issue proceedings to deal with financial matters remains at £255.

However, there were some changes made which apply from 22 April 2014.

Importantly, for those in abusive relationships, the fee for domestic violence injunction applications (currently £75) will be abolished.



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## What we offer you

- ◇ FREE initial 30 minute, no obligation meetings
- ◇ FREE home visits within 15 miles of Newmarket
- ◇ Evening and weekend appointments
- ◇ Skype or telephone appointments
- ◇ Fixed fees where possible
- ◇ No VAT on our fees for a limited period
- ◇ Flexible payment options
- ◇ Regular updates on your case and our costs
- ◇ Advice in plain English—no legal jargon
- ◇ Professional advice from a qualified and experienced Solicitor

Julie McDonald Family Law is authorised and regulated by the Solicitors Regulation Authority (No. 607193)

# Dates for your diary

**FREE Legal Clinic at  
Newmarket Day Centre  
Tuesday 6 May  
10.30am to 11.30am**

On the first Tuesday of every month Julie McDonald hosts free Legal Clinics at the Newmarket Day Centre.

If you have a legal question about Family Law, Wills or Lasting Powers of Attorney, you are welcome to drop in to meet Julie and ask your question. Topics include:

- Making a Will
- Making a Lasting Power of Attorney
- Relationship problems including divorce and separation
- Problems seeing grandchildren

## St Nicholas Hospice



## Newmarket Day Centre



## St Nicholas Hospice Care

**Wills Weeks 2014  
2 to 6 June 2014**

We are delighted to be taking part in Wills Weeks 2014.

If you need to make a new Will or review an existing one, please contact us to make an appointment.

Our services are provided free (for a basic Will) in return for a donation from you to the Hospice.

The work done at the Hospice is invaluable to the local community and every penny raised or donated is put to use to help those in need of care.

Contact us today to make an appointment.