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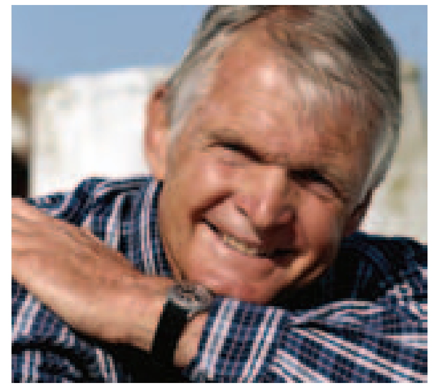

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Advice to buyers of 'retirement' homes

Buying a home at any time is a major undertaking. For those buying property for the over 55's (whether to occupy or let) there are many issues to be considered and lots of pitfalls if you don't take expert advice. For this reason William Leech 55+ and Dickinson Dees* have joined together to provide a new service for buyers of William Leech 55+ properties.

Once you reserve your new home you will be entitled to have two meetings with Dickinson Dees, paid for by William Leech 55+. The first short meeting will be an assessment whereby the lawyer can ascertain areas of advice of specific relevance to your personal circumstances. There will then be a follow up meeting to discuss four areas of particular interest in more detail. Then if you wish Dickinson Dees to prepare any documents for you, for example, Wills, Trusts or Declarations of Trust you can instruct them to do that work for you for an agreed fee, subsidised by a contribution of £150 in value from William Leech 55+.

The areas of advice that are covered by this service are:

- Inheritance tax;
- The new pre-owned assets income tax charge;
- Issues to consider if you are buying a William Leech 55+ home as an investment;
- Issues to consider if you are buying a William Leech 55+ home with a relative or friend, or for a relative or friend, to live in;
- Wills;
- Enduring Powers of Attorney;
- Living Wills;
- Trusts;
- Residential Care Home issues;
- Buying a property overseas.

*Dickinson Dees is the North of England's leading law firm with a national reputation for the quality of their work. They are rated by the Legal 500 as the leading private client practice in the North of England.

Inheritance Tax

Inheritance Tax is effectively a tax on gifts made during your lifetime or on your death. The rules are complex and you need to take specialist advice because:

- A sum of money, commonly referred to as the nil rate band, is free from inheritance tax while your remaining assets are subject to inheritance tax at a flat rate of 40%. The nil rate for the 2005/2006 tax year is £275,000 however exemptions and reliefs may be available.
- Some gifts are completely exempt from inheritance tax, for example, gifts to charities and between husband and wife (provided that both the husband and the wife are UK domiciled). Many small gifts are also exempt.
- If you make a lifetime gift and retain any kind of benefit from what you have given away you are said to have made a "gift with reservation". Assuming that you continue to enjoy this benefit from the gift until you die then on your death you will be treated as if you still owned the gift and it will be liable for inheritance tax.
- Sometimes a liability to pay inheritance tax will arise when a lifetime gift is made and no benefit is retained, although in the majority of cases such gifts will only be liable to inheritance tax if the gift is made within seven years of your death.
- In addition to planning by lifetime gifts substantial inheritance tax can be saved by including certain provisions in your Will. Moreover, even after death it may be possible to change the terms of your Will to save inheritance tax so it is imperative that you seek sound advice early.

The new pre-owned assets income tax charge

The 2004 Finance Act introduced an entirely new tax. From 6 April 2005 if you are a UK resident you will be charged income tax annually in respect of benefits which are enjoyed or could be enjoyed from property owned by others. Broadly speaking, this relates to property that you previously owned or the acquisition of which you have financed.

So, for example, if you sell your home for £200,000 and you you give that money to your children who then buy you a new home to live in with a view, perhaps, to protecting the money from the payment of inheritance tax you may be in for a nasty surprise. The rules are complex, but in effect you will have to pay income tax on an amount which very broadly speaking is taken to equal the rent you would expect to pay in your new home. Applying the various rules, and assuming a notional 5% return, the chargeable amount in respect of a property worth £200,000 would be roughly £10,000 and you would have to pay income tax on that amount every year! One way to avoid this would be to pay a full market rent to your children, which may also assist with inheritance tax planning.

If you sell part of your home to release money for a major purchase it is called Equity Release. For commercial suppliers of Equity Release Schemes the pre-owned assets rules will not apply, but unfortunately this is not the case if you sell an interest in your home to a member of your own family, even if it is for full market value. Again the rules are complex and specialist advice is essential.

If you are buying a William Leech 55+ home as an investment

If you are buying a William Leech 55+ home as an investment property and are planning to let it to a tenant who is over 55, then you will need advice on the best form of lease to protect your interests and those of your tenant. You will also need to consider carefully any income tax and capital gains tax implications.

If you are buying a William Leech 55+ home with a relative or friend, or for a relative or friend, to live in

If you are buying a William Leech 55+ home together with a relative or friend and only one of you will occupy the property, or if you are buying it on your own for a relative or friend who is over the age of 55 to live in, then you will need to consider completing a document commonly called a Declaration of Trust which records the shares in which you own the property, who will be responsible for any repairs and improvements etc. and what is to happen if the property is sold. You will also need to consider any inheritance tax and capital gains tax implications.

Wills

Everyone over 18 should make a Will, whatever their circumstances. If you die without making a Will the intestacy rules determine who will look after your estate when you die and who the beneficiaries will be. The result may not be what you want. If you have already made a Will it may need to be brought up to date. For example, you should review your Will if you have married or divorced, if your financial circumstances have changed, for example when you move home, if the financial circumstances of a beneficiary named in your Will change or when you make significant lifetime gifts to beneficiaries named in your Will. You may even need more than one Will if you own assets overseas.

Not all assets will be covered by your Will. For example, many jointly owned assets pass automatically to the surviving joint owner and many pension benefits pass to beneficiaries at the discretion of the pension scheme trustees. It is important to understand what assets will pass under your Will and those which will not. As family life is becoming increasingly complex, with second and subsequent marriages and people living together without marrying, it is vital that your Will is drafted by a specialist. A badly drafted Will can lead to challenges by beneficiaries or potential beneficiaries which can be costly to resolve. A well drafted Will can maximise your assets for the benefit of your chosen beneficiaries. It can lead to substantial savings in terms of inheritance tax and may protect assets that would otherwise be taken by the Local Authority to pay for residential care home fees.

Enduring Powers of Attorney

For some it is important to consider completing an Enduring Power of Attorney appointing one or more persons to look after any financial affairs in case you are ultimately unable to do so due to incapacity (whether physical or mental). It is a common misconception that your family are automatically able to look after your financial affairs on you behalf if you lose your mental capacity, for example, as a result of an accident.

Living Wills or Advance Directives

There may come a time in the future when you are no longer capable of telling a doctor what kind of treatments you are prepared to receive and those you are not. A Living Will or Advance Directive is a statement by which you can express your preferences about the medical treatment you will receive if you subsequently become incapable of making and communicating a decision. You can also include a proxy directive by which you appoint someone else (probably a close relative or friend) to make and communicate the treatment decisions on your behalf.

Trusts

Trusts have many uses, but are generally used as a means of protecting wealth. Two particular areas where trusts may be of a benefit are:

- If you want to make a gift, say to your children or grandchildren, to reduce the amount of inheritance tax payable when you die, but you wish to retain some control of the assets given whilst not receiving a financial benefit from them. It is crucial in these circumstances that you do not receive any financial benefit from the assets given, otherwise you will be deemed to own those assets for inheritance tax purposes.
- If you have life or pension policies which pay death benefits which would be paid to your estate in the event of your death then those death benefits will be potentially liable to the payment of inheritance tax. By putting the death benefits into trust this potential tax charge can be avoided.

Residential Care Home issues

Questions commonly asked are:

- What are the options for funding long term care should I need it?
- What public funding is there?
- Could I give away my assets to my children so as to put them beyond the reach of the State in the event of residential care becoming necessary?

The answers to these questions are not straight forward, but note the following:

- NHS funding, irrespective of means, is available for those whose "primary need" is for health care.
- Where a person has a mixed need i.e. they need both nursing and other care then the NHS will pay a contribution towards the care home fees depending upon the extent of the nursing care required.
- Local Authority funding is available for those with capital below £20,000 subject to means-tested contributions. Local Authority funding is available for some people whose capital exceeds £20,000, but which is disregarded under the Local Authority charging regulations.
- Various State Benefits may be available such as Income Support, Pension Credit and Attendance Allowance.
- If it can be demonstrated that you have given away assets deliberately to avoid paying for residential care home fees then you may nonetheless be deemed to own those assets given away and there is no fixed period of time for assessing whether you have given away those assets for that purpose. Clearly, however, the shorter the time between the giving away of the assets and the going into care the more likely it is that the gift will be challenged.
- If you are considering gifting assets to protect them from the payment of care home fees it is vital that you look to protect your own position. What would happen, for example, if you were to give your home to a child and he or she dies before you, or becomes involved in divorce or bankruptcy proceedings, or simply becomes estranged from you? What would happen if you wanted to go into a particular home, but you could no longer afford to do so because you have deprived yourself of your main asset?

Buying a property overseas

Many people dream about owning a second home abroad, but the dream can easily turn into a nightmare unless expert advice is sought. Most people will appoint a lawyer to deal with the legal requirements of purchasing the property, but they may not give proper consideration to the following:

- What are the applicable foreign succession rules (i.e. rules dictating who can inherit the property following the owners death?) Are there are any steps which can be taken to alleviate them?
- Will inheritance tax and/or any foreign taxes be payable when the property owner dies? Whilst owning a property abroad is often a worthwhile and rewarding experience, it is important to seek specialist advice to ensure that succession issues are clearly understood and addressed, UK and foreign Wills are put in place (if appropriate), the property is acquired through an appropriate structure and any potential tax costs are minimised.

The Final Word

The law is complex and the advice you require will depend on your personal circumstances. Advice given by Dickinson Dees will always be tailored towards individual needs. These notes, which are based on legislation as at 6 April 2005, are issued for general guidance only and illustrate the myriad issues which need careful consideration and specialist advice. Neither William Leech 55+ nor Dickinson Dees can accept any responsibility for actions taken on the basis of these notes alone.

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