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### **EPC grading may force sales of properties!**



[Stephanie Dennis](#)  
Senior Solicitor

From the 1 April 2020, all domestic property within an estate or trust with an EPC rating below "E". cannot continue to be let

On 1 April 2018, the Minimum Energy Efficiency Regulations (MEES) implemented the rule that all new tenancy agreements must be granted on a rating of grade E and above. From the 1 April 2020 for residential buildings and 1 April 2023 for commercial buildings, you cannot continue to let the building (even on an existing tenancy) with lower than a grade "E" rating.

This means from 1 April 2020, if a tenant vacates a domestic property, the property will need to be brought up to "E" standard to be let out again or alternatively it may need to be sold.

There are exemptions to compliance with the MEES regulations in relation to listed properties, holiday lets and other temporary properties. However, these exemptions are limited in time and would need to be renewed in due course.

If you would like advice on complying with the MEES regulation, please contact Stephanie Dennis on 01604 463372 or [click here](#) to email Stephanie.

## Be careful whom you trust with your assets - make an LPA



[Alexandra Svennevik](#)  
Trainee Solicitor

A charity worker, Julie Sayles, was ordered to pay back more than £300,000 which she had swindled from Edith Negus, a vulnerable 102 year old woman.

Sayles worked for a charity providing social activities for the elderly, including Ms Negus. She persuaded Ms Negus to create a joint bank account, where Ms Negus deposited over £287,688. Sayles further convinced Ms Negus to include her in her Will in a bid to take the rest of her assets after her death in October 2014.

The total amount of her criminal activity was £315,000. Sayles was forced by the court to repay the stolen amount to Mrs Negus' estate; however, this case highlights the importance of having an LPA in place early in favour of someone trustworthy.

A Lasting Power of Attorney (LPA) allows an individual to protect their property and financial affairs (PFA) to ensure there is someone trustworthy who can step in to help if they lose capacity. You can also create an LPA to grant a trustworthy family member the power over your health and welfare (HW) decisions - although this can only be used after capacity has been lost whereas the financial one can be used if the individual simply wants a little extra help e.g if they are housebound.

If you would like advice on creating an LPA, please click here for our LPA guidance note or contact Alexandra Svennevik on 01604 463342 or by email [here](#).

## Tax mitigation through gifting under an LPA may be in the donor's best interest



[Hauke Harrack](#)  
Solicitor

The donor, now aged 72, suffers from dementia and needs full time care. She lives in a care home which is privately paid for and is agreed by all parties to lack capacity to make decisions about making gifts.

The donor's son was appointed her sole attorney for her Property and Financial Affairs (PFA) under a Lasting Power of Attorney (LPA). As the donor's attorney, he sought the authority of the Court to make various gifts from his mother's estate including legacies to nine named charities, creation of a discretionary trust settlement in favour of the donor's grandson and a gift to himself.

The purpose of such gifting is to achieve - as long as the donor lives at least a further 3 to 7 years - reduction of inheritance tax on her death. The parties had reached an agreement between them and sought a Court order to this effect. It was shown that acceptance of this agreement could reduce the donor's inheritance tax liability by several million pounds.

The court highlighted that where a person lacks capacity, the key consideration was whether that decision was in the best interest of the donor. The court stated that tax mitigation is not sufficient to prove that the proposed agreement is in the donor's best interest. Nor is the fact that the proposed gifts are affordable by the donor's estate of over £18 million. This is in line with several previous cases.

However, having considered all relevant factors, the court held that this proposed agreement was acceptable. The court gave significant weight to the fact that gifting was to be made to recipients the donor had previously mentioned in her Will; that she had considered tax efficiency when making

previous lifetime gifts; that the proposed gifts were affordable and that the agreement was accepted by all parties involved.

If you are an attorney, please view our guidance notes on [Property & Financial Affairs LPAs](#) or [Health & Welfare LPAs](#).

If you like advice on acting as an attorney, please contact Hauke Harrack on 01604 463131 or [click here](#) to email Hauke.

### **DOTAS reporting of discount gift and loan trust**



[Eric Wardle](#)  
Chartered Accountant

The Disclosure of Tax Avoidance Schemes (DOTAS) regulations introduced in April 2018 creates uncertainty on whether the use of discounted gift and loan trusts should be notified to HMRC.

Discount gift trusts (DGT or DGP) are trust-based inheritance tax planning arrangements using savings. DGT are made by a series of single premium investments, which involves the creation of a bare or discretionary trust, by way of gift, with certain rights being retained by the donor. Provided the settlor/donor is in reasonable health, a calculation is made as to the likely total amount of income that will be paid back to them by the trustees (known as the discount retained by the settlor). The remainder will be treated as a lifetime chargeable transfer in the case of a discretionary trust, or a potentially exempt transfer for a bare trust. DGTs do not trigger the reservation of benefit provisions, and the effect of the arrangement means there is an immediate IHT reduction upon creation of a discounted gift trust, without needing to survive the usual 7 years.

If you would like advice on the need to report IHT tax planning, please contact Eric Wardle on 01604 463110 or [click here](#) to email Eric.

### **Records of assets in Partnerships are Crucial**



[Catherine Ball](#)  
Partner

In a recent farming dispute case, the court held that a £1.65m farm and bungalow were to be included in the deceased's estate, despite the fact that the deceased farmer was alleged to have transferred the farm and bungalow under a partnership agreement.

The farmer's son Gregory claimed that his father transferred the buildings into the family partnership business which was now dissolved - in which case it would all belong to Gregory. The defendants in this case, the deceased's other son Malcolm and his wife, had lived in the bungalow for decades and had invested significantly in the bungalow's renovation. The defendants argued that the farm and bungalow belonged to the deceased's Widow, Jean, because the farmer's Will specified the farm and bungalow as a gift to Jean and there was no proof of a previous transfer. Further, the defendants argued that they had a proprietary interest in the bungalow because of the renovations.

The court held in favour of the defendants holding that the farm and bungalow indeed passed to the farmer's widow Jean, (and that the defendants had a proprietary estoppel claim against the bungalow). A significant factor for the court was the fact that the partnership's account did not clearly refer to the farm and bungalow as part of the partnership assets, as there was inadequate paperwork.

If you would like advice on the impact of a partnership agreement on Wills, please contact Catherine Ball on 01604 463337 or [click here](#) to email Catherine.

### **Avoid intestacy, make a Will!**



[Ciara Wanstall](#)  
Solicitor

The High Court has rejected a claim by Mrs Bhusate, that she is the sole beneficial owner of a London house occupied with the deceased until his death in 1990.

The deceased died without a Will (intestate) in 1990 and his children argued that his current wife was not entitled to claim sole beneficial ownership of his London house, which was still registered in his sole name. The deceased's children claimed Mrs Bhusate was only entitled to her statutory legacy under intestacy, which was much less valuable. And would mean her leaving the matrimonial home.

The Court rejected Mrs Bhusate's claim because the intestacy rules did not allow a claim to the house. However, the Court agreed to use their power to extend the usual time limit for bringing a claim under the Inheritance (Provision for Family and Dependents) Act, so there is still a chance for the widow - and a lot more expensive litigation to follow.

If you would like to make a Will, please contact Ciara Wanstall on 01604 463101 or [click here](#) to email Ciara.



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