

## Energy certificates follow hot on the heels of HIPs

Energy performance certificates have been introduced by the government under the legislation for Home Information Packs.

Home Information Packs are now required for all properties unless they have been on the market prior to 1st August 2007 (four or more bedrooms) 10th September (three-bedroom properties) and 14th December (the remainder). There are a few exceptions relating to private sales and portfolio properties but in the main this new legislation affects most property sales.

A HIP contains an index, sales statement, evidence of title, local and drainage searches and an energy performance certificate. Additional documents are required for leasehold properties.



**The Energy Performance Certificate, like a Home Information Pack, is now a necessity when selling a house. Jackie Prior explains.**

At the moment a HIP only needs to be commissioned before a property can be marketed. However, the government plans to change this from 1st June, 2008 by stating that all of the required documents need to be available in the HIP before a property can be put on the market.

The energy performance certificate provides an energy rating for the property based on a scale from A to G. The certificate is produced by a qualified domestic energy assessor and shows how energy efficient a property is and the impact a property has on the environment. The certificate also includes recommendations on ways to improve a property's energy efficiency to save the impact on the environment and reduce bills.

EU regulations require all properties to be constructed, sold or rented to have an energy performance certificate by 2009.

The measures are still being phased in for newly constructed properties and rental properties as follows:

- 6th April 2008 - the construction of new dwellings and rentals of buildings other than dwellings with a floor area over 1000 sq metres;
- 1st July 2008 - rental properties or buildings other than dwellings with a floor area over 2500 sq metres;
- 1st October 2008 - rental of all remaining dwellings.

In real terms, this means that energy performance certificates will now be phased in for rental properties from the dates mentioned above.

A domestic energy assessor will prepare the EPC at the landlord's expense and that certificate will then need to be supplied to a tenant before he or she enters into a rental agreement. This does not apply to existing tenancies.

The legislation suggests that an energy performance certificate for the rental sector has a life of 10 years so that if a valid EPC exists when a tenancy changes, no new certificate is required. This is true for social sector landlords as well.

If any works are carried out to the property that will improve its energy performance, then a new energy performance certificate can be obtained at the landlord's cost although the tenants are entitled to view any previous certificates.

The benefit to the landlord is that this energy rating can help rent out a property. The benefit to the tenant is that he can see how energy efficient the property is and the likely running costs.

Wright Hassall can provide full and comprehensive Home Information Packs at competitive rates using the latest technology. We can also advise on the commissioning of EPCs. For more information contact Jackie Prior on 01926 880739.

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Bernadette Halton, from Macmillan Cancer Support, receives the Wright Hassall donation from Rebecca Mushing (pictured right).

### Cheque out WH fund raising success

Wright Hassall presented a cheque for more than £6,400 to Macmillan Cancer Support recently. The monies were raised at a number of events organised by staff during the course of 2007.

Zoë's Place Midlands, which provides 24-hour care for babies with multiple special needs, is Wright Hassall's chosen charity for 2008. For more information on Zoë's Place visit [www.zoesplacemidlands.org.uk](http://www.zoesplacemidlands.org.uk).

# Inheritance tax update

In his pre-budget report last autumn, the chancellor announced major changes to the Inheritance Tax rules affecting the Nil Rate Band (the 'NRB') which is £312,000 for the tax year 2008/2009.

The new Inheritance Tax rules will only affect married couples and civil partners and not those who are cohabiting. For the purposes of this article 'spouse' refers to husband and wife and also civil partners.

## The new rules – transferable NRB

When the first spouse dies without making full use of their NRB the unused percentage can be transferred to the second spouse when they die provided that the death of the second spouse occurred on or after 9 October 2007. If the death of the second spouse occurred prior to this date then you cannot claim the unused NRB.

Such a claim can be made by the executors of the second spouse and must be made no later than 24 months after the death of the second spouse.

The transferable NRB will be available to all second spouses no matter when the first spouse died and will be calculated by reference to the NRB in force



If you have incorporated a Nil Rate Band Discretionary Trust into your will purely for tax planning purposes, you may wish to consider the following options:

- make a new will excluding any NRB Discretionary Trust;
- make a codicil to remove the NRB Discretionary Trust provisions;
- wait until the first spouse dies. If the trustees then conclude that there is no benefit in keeping the Trust in place, then the Trust can be wound up in favour of the surviving spouse. This can be done after the first three months from the death and within two years from death of the first spouse. This will ensure the first spouse's NRB will be transferred to the surviving spouse and therefore the 100% will be available on the death of the second spouse.

There may still be very good non-tax reasons for including a discretionary trust in your will, for example:

- to make provision for children from a previous relationship or for other family members;
- where there are disabled beneficiaries or beneficiaries in receipt of means tested benefits;
- to protect assets in the event of the bankruptcy or divorce of any of your beneficiaries;
- where the assets are considerable, to ensure a slow release of monies;
- to minimise any future inheritance tax liability in your own children's estates;
- to ring fence the NRB in order to preserve the estate for the benefit of your children (e.g. if the surviving spouse needs long term nursing care or to protect against the risk of the surviving spouse becoming insolvent or remarrying or entering into a new civil partnership).

The full version of this article can be found on our website at [www.wrightthassall.co.uk](http://www.wrightthassall.co.uk).

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## Lisa-Marie joins a growing family

Lisa-Marie Darby has become the fourth solicitor to join Wright Hassall's specialist family law team in 12 months

The University of Leicester graduate has joined recent recruits Gillian Jackson, Tessa Barton and Katy Lane.

Peter Lowe, head of Wright Hassall's family department, (pictured below) said: "We have built a strong team over the last 12 months, and Lisa-



Marie is the final piece in our jigsaw. She adds both enthusiasm and experience to the department.

"I feel confident that with a team of six specialists, we have gathered the quality expertise to become the premier Midlands family law team."

## Let it be . . .

It is hoped that the final decision in the case of Sir Paul McCartney and Heather Mills will draw an end to the bitter divorce wrangle that has occupied so much media's interest.

Mr Justice Bennett took the unusual decision to publish details of the judgement in full. It is a fascinating read and confirms, once again, the Court's disapproval of using the media with the intention of increasing a settlement claim.

If only Sir Paul had heeded the advice on page three when all his troubles seemed so far away.



**Update your will on a regular basis. That is Michael Wall's advice following the latest changes to Inheritance Tax. Here he explains why.**

at the death of the second spouse.

### Example 1

Using an example of a married couple - if the NRB is £350,000 at the date of the death of the second spouse, then the executors can claim the unused percentage of the NRB from the first spouse (presuming 100% is available). If successful the estate of the second spouse will have a NRB of £700,000 which can be passed to the children before incurring any liability to Inheritance Tax.

If any of the NRB has been used by the first spouse the remaining percentage of the unused NRB can still be transferred to the second spouse.

### What does all this mean in relation to NRB

#### Discretionary Trust Wills?

The changes in the rules generally do not require any action to be taken. As a matter of general good practice, we recommend that your will is regularly reviewed and updated, especially if there has been a change in family circumstance or the will has not been reviewed for many years.

## Consumer Protection Act to the rescue

We've all bought things that don't work but, beyond irritation and a return trip to the shop, the situation is generally resolved. What happens, however, if you buy a defective product that causes injury to you or damages your property?

Ordinarily, if a claim arising from an injury is to be successful it is necessary to show that someone was at fault but the position where an injury arises from a defective product is very different.

The Consumer Protection Act 1987 provides that where an injury, or damage to property, is caused either wholly or partly by a defect in a product then various specified businesses are liable for that damage. The Act stipulates that there is a defect in a product if the safety of that product is not such as persons are generally entitled to expect.

The Act, as a first step, imposes liability upon three types of business:

- the producer of the product;



**Defective products can cause serious injuries but it can be difficult to prove who is at fault. Thankfully we have the Consumer Protection Act 1987 as Adam Brain explains.**

- anyone who has put his name to the product such that he holds himself out as being the producer of the product ;
- anyone who has imported the product into the EU in the course of a business.

Difficulties can arise if the producer or importer of the product is unknown. But the Act goes on to provide that if the supplier of the product, such as a retailer, is asked to identify the producer or importer and fails to do so then the suppliers themselves become liable for the injury.

Although the Act allows an injured person to pursue a claim, without having to prove fault for the injury, there are several defences available to

the producer. For example, if the producer is able to show that the state of scientific or technical knowledge at the time the product was manufactured was such that other manufacturers of that type of product would not have discovered the defect, then that will provide a defence.

If you are unfortunate enough to be injured by a defective product it is essential that you retain the product and do not return it to the supplier or manufacturer. The defective product is vital evidence for your claim and it may be necessary for the product to be examined by an independent engineer to determine precisely what has gone wrong. If you return the product to the supplier or manufacturer you may then not be able to obtain that vital evidence.

We have dealt with claims arising from defective products as diverse as frozen fish, a bottle of sparkling wine and a deckchair so if you have sustained an injury as a result of any type of defective product please contact Adam Brain on 01926 880721 for advice.

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## Pre-nup agreements – don't get married without one

Unlike the United States and most of Europe, pre-nuptial or pre-marital agreements have never been legally binding in this country. As such, many couples may not have considered them a worthwhile investment before marrying, choosing instead to apply to the court for a decision to be made in respect of their finances once the marriage has broken down.

It was hoped recently that a divorce battle between two multi-millionaires, Mr and Mrs Crossley, would clarify the validity of such agreements, thereby going some way to reducing the risk of leaving matters in the hands of the court. Although the Crossley case has now been settled out of court, it has left legal professionals feeling far more confident that such agreements will be upheld if they are entered into correctly.

Stuart Crossley, a 62-year-old property tycoon worth an estimated £45 million, and his wife, Susan, signed a detailed pre-marital agreement just weeks before their wedding in January 2006. In this document they each agreed not to seek a share of the other's assets should the marriage fail.

Mrs Crossley, who is herself worth £18m following three previous divorces, separated from



**A recent case shows that the law is beginning to take pre-nuptial agreements more seriously. Peter Lowe discusses the benefits of signing one.**

her husband 14 months later and thereafter issued financial proceedings. The reason she gave for doing so was that she had suspicions that her husband had failed to disclose the full extent of his wealth when the agreement was negotiated. Mrs Crossley stated that her husband may well have been hiding "tens of millions" of pounds in offshore accounts in places such as Andorra and Monaco and therefore her position was that the pre-marital agreement they had entered into was invalid.

Unfortunately for Mrs Crossley, at a hearing in December 2007 at the Court of Appeal, Lord Justice Thorpe, the deputy head of Family Justice, confirmed the persuasive nature of the pre-marital agreement and stated that it should be considered a "factor of

magnetic importance" rather than simply a peripheral aspect of the case. He then went on to set a further hearing date in February 2008 with a streamlined time estimate of only one day, which Mrs Crossley's solicitors advised her was a strong indication that the claim would probably be thrown out.

The parties have now reached a final settlement following Mrs Crossley's decision to withdraw her claims on the eve of the hearing. It is assumed that this is because she finally had to accept that she was unlikely to be successful due to the terms of the pre-marital agreement.

Whilst we still, therefore, have no definitive answer to the pre-nup question, it appears likely that judges, who are keen to cut the time and expense of divorce proceedings, are increasingly going to hold couples to what they agreed before they married. Although such agreements seem unromantic and may be hard to broach with a loved one before the 'big day', it is certainly the more pragmatic approach to take which will hopefully mean that, in the event of the marriage failing, the parties will save time, money and heartache.

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# Gifts with strings attached

The price of houses in the UK means that first-time buyers often have to look to parents or other family members for a helping hand in funding the deposit or part of the equity. How to structure these parental contributions has always been a dilemma. On the one hand, parents are often willing to make gifts of capital to their children. This is often seen as sensible inheritance tax planning for the parents as, provided they survive the gift by seven years, the gift will not be treated as part of their estate for inheritance tax purposes.

On the other hand, parents have sometimes been reluctant to make outright gifts to their children as they fear that if their children's relationship subsequently breaks up, the original capital gifted will be shared with the child's divorcing spouse. Furthermore, if the child is self-employed, there is a risk that if their business fails any capital contribution will be lost and taken to satisfy other creditors.



**John Rouse explains the advantages of setting up a discretionary trust for parents who want to help their children get a foot on the housing ladder.**

In these circumstances the capital contribution has often been made by way of a loan, promissory note or even a second charge on a property. The downside of this structure being that the parent will still be treated as owning the capital which will form part of their estate and therefore may be subject to inheritance tax on their death. In addition, if the parent were to enter into nursing care, the value of the loan will form part of their estate and be treated as capital available to pay for ongoing nursing care. Potentially, this could be very worrying for the children as they could find themselves in a position where they have to re-mortgage or sell the property to free capital to fund their parent's nursing care. Alternatively they could face the unpleasant prospect of having a second mortgage with the local authority social services department.

So what can be done to prevent the contribution forming part of the estate for inheritance tax purposes, or as capital available to

fund nursing care fees whilst trying to protect the money from any subsequent divorce or business failure by their child?

The answer is to make the contribution via a discretionary trust arrangement. The parent can set up a discretionary trust in favour of their children and grandchildren. The parents themselves can act as trustees and effectively control where any monies are spent or used. Provided the parent is not a beneficiary of the trust, once seven years have elapsed from the contribution to the trust, the capital no longer forms part of their estate for inheritance tax purposes. In addition, provided the parents are in reasonably good health when making the contribution and a reasonable period of time elapses before the parent enters into nursing care, any local authority would find it difficult to claim the fund as "capital available" to fund any ongoing care fees.

Once the funds have been introduced into the trust, the parents, as trustees, can loan the trust fund to their child in the purchase of their new property. However, the loan to the child is repayable back to the trust. As a result, if the child subsequently becomes divorced repayment back to the trust will reduce the equity in the house and potentially protect it from the subsequent divorce settlement. If the child's business was to fail and insolvency proceedings follow, the discretionary trust would be a creditor and take its place with other creditors. If the loan by the trust is secured by way of a legal charge, this would give priority over any unsecured creditors on any bankruptcy proceedings.

As can be seen, provided the parent survives by seven years, the contribution to the trust is treated in a similar way to a gift whilst the loan by the trust to the child carries the benefits of a loan with a view to marital breakdown and insolvency.

Depending on how the loan is structured, the administration of the trust need not be complicated and expensive. Care should be taken to draft the trust in the correct manner and to select the correct trustees and beneficiaries. If this is done then it is possible to get the best of both worlds!

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## Something for everyone at Kenilworth Show

Dancing Diggers, Cyril the Squirrel and his racing terriers, sheep dog demonstrations and livestock competitions will be among the attractions at this summer's Kenilworth Show.

The family day out, sponsored by Wright Hassall, takes place on Sunday, June 1 with gates opening from 9.00am.

There will also be a food marquee, children's attractions and plenty of opportunities to shop. Tickets bought in advance are £6 for adults and £2 for children. On the day the cost will be £8 and £3. For more details visit [www.kenilworthshow.org](http://www.kenilworthshow.org).

## Forthcoming events

Thursday, 22 May

Seminar

Inheritance Tax Planning (full details enclosed)

Sunday, 1 June

Kenilworth Show – see above

Thursday, 12 June

Seminar: – 'From Cradle to Grave'. Wright Hassall's private client department discusses a range of legal issues pertinent to you and your family.

For further information email [caroline.venuto@wrighthassall.co.uk](mailto:caroline.venuto@wrighthassall.co.uk).

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