ONLINE WILL REGISTER

Adams Harrison has recently become a Founder Member of the UK's online register of Wills – **www.certainty.co.uk**.

Why Register?

In a recent survey, 67% of people in the UK did not know where to find their parents' Will.

Although we keep a database of all the Wills we hold, we know sometimes clients change their Wills without us knowing. Changing circumstances, moving to another area or simply the passage of time can sometimes make it difficult to identify an individual's last Will. The Register ensures that solicitors across the country can log the existence of Wills in a central place. This should ensure that your Will or any updated version of it is not overlooked.

What does the register do?

- The register records that we are holding your Will; no one there sees it, and we keep it here.
- Following your death, the Register gives us details about anyone who asks about your Will.
- We answer the query if it is legitimate, but if not we ignore it, thus protecting your privacy.

Sadly, none of us are immortal and we cannot take our possessions with us. Regularly reviewing your Will and having it registered is one of the most important things you can do for your loved ones.

MELANIE PRATLETT – Partner

IT'S JUST NOT FAIR!

If you think you have been "stitched up" by a contract that seems unfair you may have a remedy under the Unfair Terms in Consumer Contracts Regulations 1999.

Foxtons are a large firm of estate agents in London. They have standard contract terms which included a condition that if they introduced a buyer who made no offer but later came through another estate agent and offered to buy the same property then, if the sale went through the poor seller had to pay Foxtons as well as the other agents. Unfair said the Court of Appeal. Not surprising you may think when Foxtons were after a cool £20,000 commission. The Court not only ruled that Foxtons must remove the term from their standard contract but also that they could not enforce it against sellers who had already signed contracts with the firm.

TOM HARRISON – Senior Partner

TO THE HOUSE OF LORDS FOR WANT OF A WILL

You may recall my article in our Spring 2008 Newsletter in which I reported on the case of Thorner –v– Major (2008) David Thorner successfully claimed the right to inherit his uncle's farm even though the uncle had not left it to him in a Will. Well, since then the case has gone to the Court of Appeal where Mr. Thorner lost and more recently to the House of Lords where he won. So all's well that ends well, but not before no fewer than nine Judges had applied their minds to the thorny issue of proprietary estoppel (one High Court Judge, three Court of Appeal Judges and five in the House of Lords).

It would have been much simpler if Mr. Thorner's uncle had made a Will.

MELANIE PRATLETT – Partner

A NEW FACE AT HAVERHILL

Following the retirement of Roy Withers in February Solicitor Frances Walker has joined our Family Law team in Haverhill.

Frances qualified as a Solicitor in 2005 having obtained an LLB Law (Hons) degree from Nottingham Trent University. Prior to joining Adams Harrison she practised in Hinckley and Leicester and comes with a wealth of experience in divorce and other family related issues.

Frances Walker – Family Law Solicitor

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CSA CHANGES – LONG OVERDUE?

On 27 October 2008 the law on child maintenance changed. More reforms have also come into force recently, designed to make maintenance recovery easier.

In the past, parents have had to use the CSA (Child Support Agency) where the parent with care was in receipt of benefits. The changes mean that such parents are no longer compelled to do so. Instead parents can elect whether the CSA deal with their case, or whether they choose to make their own private arrangements for maintenance.

The CSA will continue to deal with existing cases. New cases however, will see the effect of the changes under the new legislation. Parents will be able to opt whether or not to involve the CSA in their case.

Previously, where a parent was in receipt of benefits, the maintenance that the CSA recovered was paid to the benefits agency. The parent would then receive their benefits, plus a maintenance payment of up to £10 per week reflecting the maintenance that had been recovered by the CSA. Under the new legislation, maintenance recovered by the CSA will be paid directly to the parent. The parent will then have to declare this to the Benefits Agency. The parent will however be permitted to retain up to £20 per week in maintenance, without his/her benefits – being affected.

The onus will now be on the parent to inform the Benefits Agency of the maintenance received. The CSA will not do this. Failure of a parent to inform the Benefits Agency could amount to Benefits fraud and result in legal action being taken against the parent.

In April 2009, further reforms are designed to recover maintenance from non-resident-parents (NRPs) These reforms will make it easier for money to be taken direct from a NRP's bank account or for bailiffs to be sent in. The move seems to be aimed at forming an Agency more like the CSA in Australia, which is able to target income from rental properties and withhold wages. The Australian CSA system is said to have an 80% satisfaction rate amongst users.

In April 2010, a full-benefits-disregard will come into force. This means that maintenance received will not be taken into account when calculating what a parent may be entitled to in out-of-work benefits or Housing and Council Tax benefits.

The CSA were taken over by the Child Maintenance and Enforcement Commission (CMEC) in November 2008. It is hoped that the changes brought in will help to turn around the maintenance system, which previously, was notoriously unsuccessful.

The changes are designed to provide a better deal for the poorest single parents and are part of Gordon Brown's commitment to eliminate child poverty by 2020. Whether or not these changes will prove successful, remains to be seen.

FRANCES WALKER – Solicitor

A BABY FOR JENNIFER

Partner, Jenny Carpenter presented her husband, Graeme, with their first child on 17th April, a bonny bouncing girl named Emilia Jane at the Rosie Maternity Hospital weighing in at 8 lbs 14 oz and 9 days late!

SITTING PRETTY

It has been a struggle, you have finally paid off your mortgage but did you realise that if you bought the property some time ago that it may not be registered at the Land Registry?.

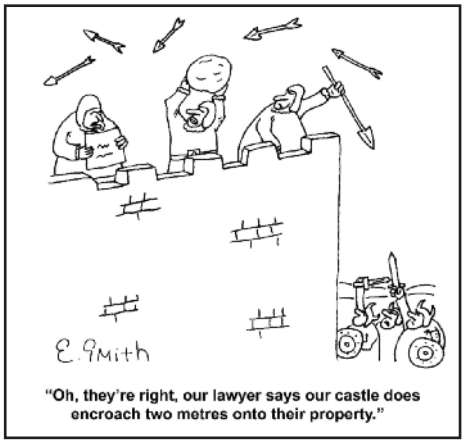
The Land Registry is a government agency which is responsible for developing and maintaining the register of title in England and Wales for both freehold and leasehold land. At Adams Harrison we are encouraging land owners to take advantage of the benefits associated with registering your land.

Dealing with registered land makes property transactions faster and cheaper. All title information is kept on the Land Registry's database and can be viewed online and printed off there and then – the powers of modern technology never cease to amaze me!. As lovely as the old title deeds are, with that musky smell, red seals and italic writing, registered land makes it easier to show who owns what land. The Land Registry provides a plan of the general area of land that has been registered, and as it is also guaranteed by the state it protects you against someone else making a claim to your land!.

The Land Registry does charge a fee but voluntary registrations qualify for a 25% discount.

You have worked all these years to own your land, surely it is worth doing for peace of mind alone.

JULIA HUTCHINGS – Solicitor



"Oh, they're right, our lawyer says our castle does encroach two metres onto their property."

JANE AUSTEN REVISITED

'It is a truth universally acknowledged, that a single man in possession of a good fortune, must be in want of a wife'

So thinks Mrs Bennett – (the mother of 5 unmarried daughters) in the Georgian world of Jane Austen's Pride & Prejudice.

Jane Austen's ironic comment has special poignancy for 21st century Britain. Divorce rates are high. Pre-marital agreements (allowing parties prior to marriage to decide how to distribute finances on divorce) are NOT automatically enforceable in the UK. The UK divorce jurisdiction – is discretionary – the court ultimately has authority to divide a couple's assets in a way that is fair and reasonable. Guidelines are followed but the band of reasonableness is wide! These factors may cause wealthy 21st century bachelors (and bachelorettes) to think twice before tying the knot!

The latest unhappy reported divorcee is Mr Myerson. In March 2008, he and Mrs Myerson, with the help of their able lawyers, reached agreement as to how their £25.8 million of assets were to be divided. Mrs Myerson was to get a lump sum of £11 million (43% share of the overall assets). The agreement was approved by the court and made into an order. Mrs Myerson was to receive her share of the assets by a series of lump sum payments from Mr Myerson.

In autumn 2008, the majority of Mr Myerson's wealth (shareholdings in various businesses run by him) plummeted from £2.99 per share (March 2008) to 27.5p per share. Mrs Myerson's £11 million now equated to 105.2% of the family's wealth.

Mr Myerson went back to court and argued that the credit crunch made the original order unfair and unworkable and needed to be changed.

The Court of Appeal…disagreed!

They followed a previous similar case (Cornick in 1994) where Mrs Justice Hale said this sort of variation in shares was 'natural albeit dramatic'. In Mr Myerson's case the court added that this Financial Order was not imposed but entered into willingly by him. He, a businessman, speculated when compromising Mrs Myerson's claims by agreeing to the order… 'but that's what a businessman does – the court will not relieve him of the consequences of his speculation by rewriting the bargain at his behest!'

Does this seem unfair? Well, look at it another way, what if Mr Myerson's wealth had tripled from March – October 2008 – should Mrs Myerson have then be entitled to increase the agreed payments to her?

Mr Myerson's case and the earlier quoted case of Cornick look back to the even earlier case of Barder v Caliori decided in the early 80's. That case coined the expression 'a Barder event' which enables a court to overturn a previous order. A 'Barder event' is 'a new event which invalidates the basis or fundamental assumption on which the original order was made and in a relatively short space of time.'

That case was tragic – the Wife committed suicide shortly after the court ordered the former matrimonial home to be sold and proceeds divided. The Husband, in the Barder case, successfully got the original order overturned and was able to remain living in the former matrimonial home.

What about Mr Myerson? Can a financial change ever be considered a 'Barder event'? Although Mr Myerson lost this round, it seems likely that he will now appeal to the House of Lords. Given the current volatility of the financial markets, this will be an important decision to look out for.

SHOSHANA GOLDHILL – Partner

RIGHTS OVER LAND

There are various different types of rights over land and different ways that these rights can be created. We frequently come across disputes between landowners who have failed to either understand or protect their rights.

An easement is a legal right to do something on or over another's land. Examples of easements are rights of way, either pedestrian or vehicular, a right to move services over or under land such as water pipes, electricity or gas supplies, and a right to come onto land to draw water from a well (not so common these days). An easement cannot exist on its own, it must be for the benefit of land and be known as the "dominant" land. The benefit of an easement will run with the dominant land and the burden will run with the "servient" land. They must each be in different ownership.

Other examples of easements are rights of light and air, right of support or the right to do something that might otherwise be a nuisance, e.g. cause smoke, smells or other pollution.

Easements are created either by an express grant, the implied grant or by prescription. The variation of an easement by prescription is a complex subject covering both prescription at common law and statutory prescription under the Prescription Act 1832.

Easements are a legal minefield through which the landowner needs to tread warily. Developers often run into problems when building or adopting properties. There are countless cases that have come before the Courts for the existence or extent of easement to be determined. One man's right can be his neighbour's trespass. It all depends who's shoes you are standing in and the outcome can have devastating consequences on the use and value of the land concerned.

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175th ANNIVERSARY

This year is the 175th anniversary of the firm in Saffron Walden. Although there have been a few name changes in between, solicitors have been practising from our office in Church Street continuously from 7th January 1834 when Joseph Collin rented 16 Church Street from his father, the Rector of Quendon. Joseph's grandfather, John Collin, had also practised law in Saffron Walden. We think he did this from Dorset House which he had built and which, before it was demolished, stood on the corner of Church Street and Church Path.

Joseph's son Turner Collin joined him in 1877 to form the firm of Josh Thos & Turner Collin. In 1895 the firm changed its name to Collin and Adams when William Adams formed a partnership with Turner Collin. Turner Collin retired in 1929 at the age of 77. Among many other achievements he climbed Mont Blanc when he was 75. Discussions have taken place with the existing partners to see if any of them want to try to repeat this feat but, so far, there have only been excuses like 'I would if only there was somewhere to practise locally'.

The firm changed its name to Adams and Land in 1929 when Edmund Land joined William Adams as a partner. Adams & Land

opened a branch in Haverhill in 1966. The firm changed to its current name in 1989 when Tom Harrison merged his existing practice of Harrison and Co which was also based in Haverhill with Adams and Land.

Since its formation Adams Harrison has acquired a number of other local firms - Bates Ellison and Morris (Haverhill), Roger Lord (Saffron Walden) and Steed Marshall (Haverhill). Most recently in November 2008 it took over the practice and premises of Webb and Partners so that, in addition to its original premises in Saffron Walden, it now practices from offices in both Haverhill and Sawston High Streets.

ROD WEBB – Practice Manager

BUDGET IN BRIEF

Not one of the greatest budgets it must be said, but if anyone thought the Chancellor would be in a generous mood then they must have been living under a rock for the last 12 months.

The biggest howls were prompted by the new 50% marginal income tax rate for those earning over £150,000 per annum. As the national debt surges to £1.4 trillion (what is a trillion anyway?) the Conservatives claim that every child will be born owing £22,500. Do you follow this? No, neither do I.

Savers can take heart: the ISA contribution limit is raised to £10,200 (half of which can be saved in cash). This assumes anyone has got any cash left of course.

Inheritance tax (IHT) nil rate band goes up to £325,000 (from £312,000). The rate stays at 40%.

Trusts are hit again, with tax on trust income rising to 50% (£42.5% on dividends) from 6th April 2010.

VAT registration threshold: this goes up to £68,000 from £67,000 – hardly worth the bother you may think. The standard rate of 15% VAT will end on 31st December 2009 – it was only a temporary measure, remember?

Small companies corporation tax remains at 21%

Tax relief on pension contributions will be restricted to the basic rate for individuals with incomes over £180,000 from 6th April 2011. Also only basic rate tax relief on contributions exceeding the greater of £20,000 per annum or the individuals "normal pattern of contributions" from 22nd April 2009. No joy there either, then.

MELANIE PRATLETT – Partner

SAWSTON FUN RUN

Runners and walkers turned out on Sunday 10th May to take part in the 24th annual Sawston Fun Run sponsored by Adams Harrison. Our team shown pictured joined a large number of participants who completed the five mile course and helped raise thousands of pounds for local charities. For more information go to *www.sawstonfunrun.co.uk*

ENFORCEMENT OF CONTACT ORDERS

The Children and Adoption Act 2006 came in to force on 8th December 2008. It gives the court additional powers when dealing with applications for contact orders made under the Children Act 1989. They have been introduced to address concerns that contact orders often break down and are easily breached.

The new powers mean that the person in breach may now be made by the court to pay financial compensation to the other parent if they have suffered a financial loss as a result of the breach. If, for example, a parent travels by train for a contact visit, which is recorded in a contact order, and the visit is cancelled by the other parent for no good reason, then the cost of the train fare may be claimed back.

REBECCA VAREY – Solicitor

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