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MAGAZINE

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The Giving Of A Gift

The first thing people think about when we discuss gifting is... the ‘seven-year rule’!

Annual Exemption

Presuming that the gift is not being made to a non-chargeable beneficiary such as a spouse/civil partner or charities etc., if you make a gift out of capital, you can give away £3,000 per tax year, free of Inheritance Tax. This is called your annual exemption. If you have not used your annual exemption from the previous tax year, you can also use that once the current tax year’s allowance has been exhausted. Any gifts exceeding the available annual exemption/s will be subject to the seven-year survivorship period, known as a Potentially Exempt Transfer (PET).

If the person making the PET dies within seven years of making the gift, the gift will use up some or all of their Inheritance Tax free threshold. This is known as the Nil Rate Band (NRB) and is currently frozen at £325,000 until at least April 2026. This will effectively push any Inheritance Tax onto their estate.

Taper relief can apply to PETs made at least 3 years before death and is applied against the rate of tax (i.e. the PET exceeds the NRB). The rates are:

Years between gift and death	Rate of tax on gift
3 to 4 years	32%
4 to 5 years	24%
5 to 6 years	16%
6 to 7 years	8%
7 + years	0%

Gifts out of surplus income

The lesser-known exemption and often very useful one is gifts out of surplus income. To qualify, the following criteria must be met:

- 1 Gifts must be made from your income.
- 2 There must be the intention to make the gifts regularly.
- 3 The gifts will not impede your standard of living.

The advantages of using the gift out of surplus income exemption is that the seven-year survivorship period does not apply. The gifts can be stopped at any time without invalidating the ones already made. There is also no cap on the amount you can gift so the gifts can increase or decrease in line with your actual income.



Practical tips

You should always keep a record of any gifts made. The basics are:

- Date of the gift;
- Recipient of the gift and their relationship to you;
- The asset gifted and its value;
- Which exemptions are to be applied against the gift and the net value after the exemption is applied.

For gifts out of surplus income, more comprehensive information will be required as the claim will have to be made at the time of death to HMRC. HMRC will require details of all income (e.g. salary, pension, interest, dividends, rents, annuities etc.) and normal expenditure (e.g. mortgage, insurance, household bills, council tax, travel, entertainment, holidays etc) for each tax year so that HMRC can see that the gifts fall within any excess income.



Speak to one of our Wills Lawyers.
Call us on **0161 941 4000** or email lawyers@myerson.co.uk
Bik-Ki Wong
Partner, and Head of Wills, Trusts and Probate.



Has Granny Made A Prenup?

With an increasing population of elderly people, there are more and more people entering into marriage in their later years and a growing number of them are now wanting to protect their premarital wealth in the event of marriage breakdown or death.



When considering marriage breakdown, the Family Court has a great deal of discretion to distribute assets on divorce. Whilst matrimonial assets built up during the marriage are generally divided equally, there is no guarantee that non-matrimonial assets (assets acquired prior to marriage) will be treated any differently and they could just as easily be divided between the parties on divorce to meet the individual financial needs of both parties.

Failure to enter into a Prenuptial Agreement and a Will in contemplation of marriage may lead to expensive litigation if the marriage were to eventually fail, or may it lead to the surviving spouse inheriting everything, leaving the deceased's children and grandchildren with nothing.

A well-drafted Prenuptial Agreement is the best way to protect wealth built-up prior to marriage. Whilst Pre- Nuptial Agreements are not automatically legally enforceable, the Family Court tends to uphold the terms of a Pre- Nuptial Agreement provided that:

- Both parties have been separately legally advised prior to signing the Agreement.
- The terms of the Agreement are fair and reasonable.
- There has been at least 28 days between signing the Prenuptial Agreement and the wedding (to avoid

any suggestion that either party was placed under unfair pressure or duress to sign the Agreement at the last minute).

- Both parties have disclosed their respective financial positions to each other ahead of signing the Agreement.
- Both parties entered into the Agreement of their own free will and neither party was placed under any unfair pressure or duress to sign the Agreement.

If there is insufficient time to sign a Prenuptial Agreement ahead of the wedding, then it is advisable to enter into a Postnuptial Agreement after the wedding to protect your prenuptial wealth if the marriage breaks down, or to protect your children's inheritance in the event of your death.

Our Family team have a wealth of experience dealing with Prenuptial and Postnuptial Agreements. To find out more, please feel free to contact a member of the family team on 0161 941 4000 or email lawyers@myerson.co.uk



Speak to one of our Family Law Team.

Call us on **0161 941 4000** or email lawyers@myerson.co.uk

Jane Tenquist
Partner and Head of the Family Law Team.

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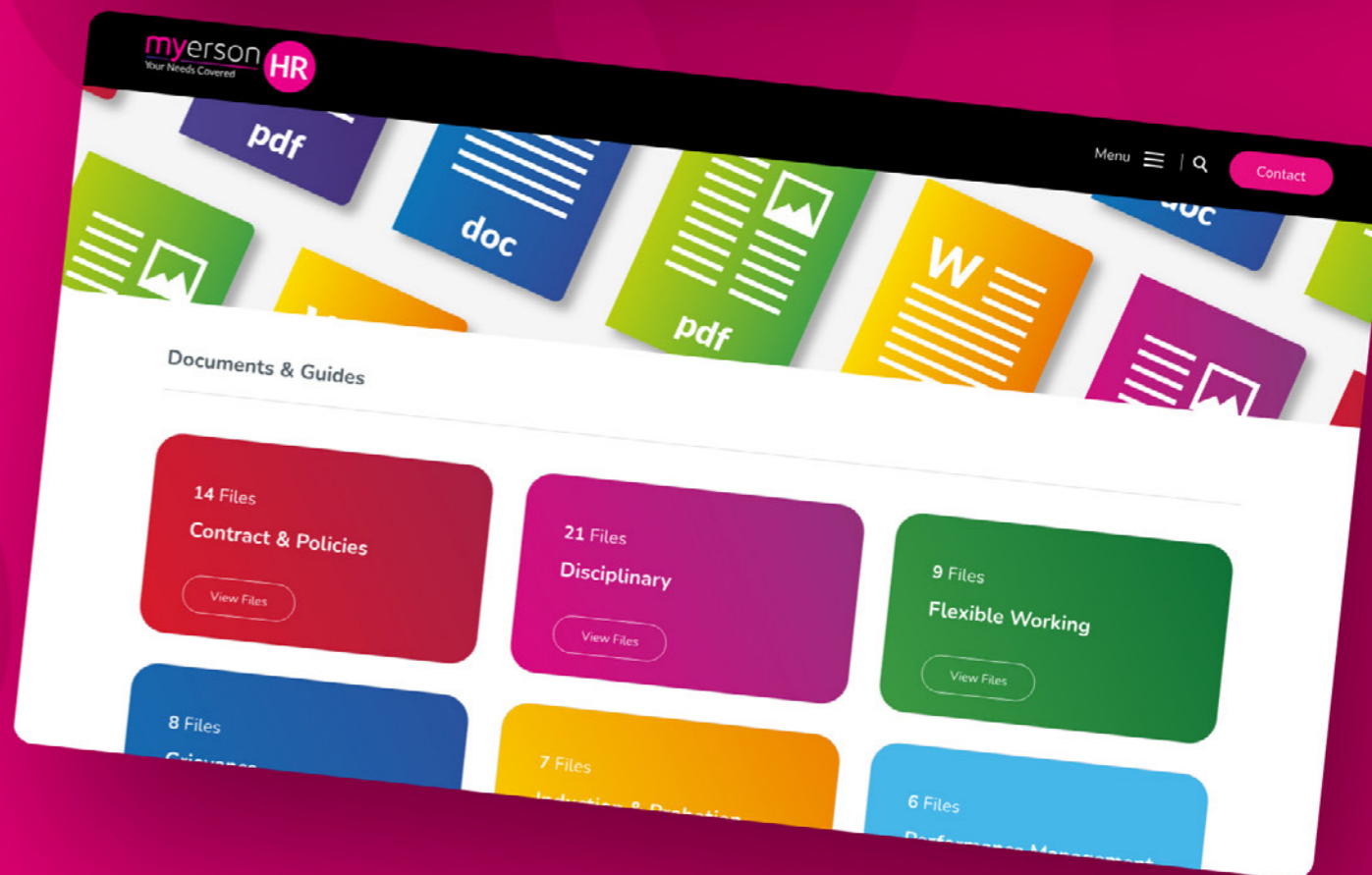
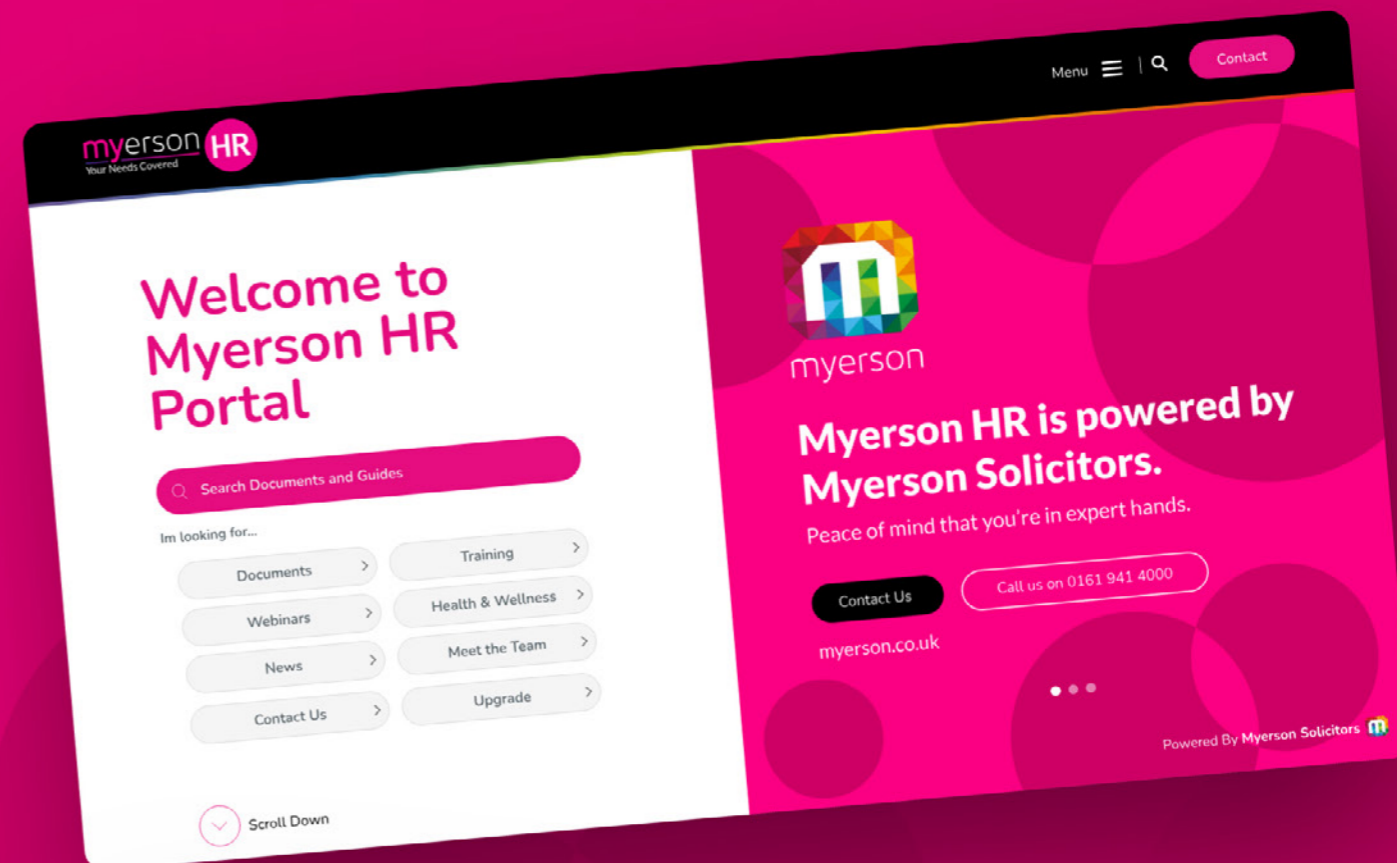


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A Return To The Office?

As many workplaces around the country closed last year, millions of employees were required to work from home. As businesses reopen their premises, staff are returning to the workplace either on a full time or a hybrid working arrangement. Some are keen to return, others less so.

Can your employer insist you return to the workplace?

Your contract of employment should set out where you can be required to work. In most cases, employers will be able to require employees to return to the workplace provided they have ensured, so far as reasonably practicable, a Covid-safe environment.

Can you refuse to return to the workplace?

If you stay away from the workplace because you reasonably believe you will be at serious risk of illness, you will be protected from detriment your employer has completed risk assessments and consulted with you, it may be in a strong position to require you to return. If you refuse to return, and do not have a sensible reason for doing so, your employer may consider disciplinary action.

Can you ask to continue working from home?

If you are concerned about returning to the workplace, you should discuss these concerns with your employer to try to resolve them together. If you wish to permanently work from home, you should consider a formal flexible working request, provided you meet the qualifying criteria.

Can your employer require you to take a Covid test?

Your employer may introduce testing to protect the health and safety of employees through identifying positive cases of coronavirus and reducing transmission.

In most cases, this will be a reasonable instruction. It will rarely be the case that you can refuse such an instruction and this may lead to disciplinary action, unless there is a special reason not to comply with the instruction, for example, a medical condition.

Can your employer require you to be vaccinated?

The Government has not made it a legal obligation that people are vaccinated (with the exception of care homes), and your employer will not be able to compel you to receive the vaccination.

From 16 August 2021, fully vaccinated individuals no longer need to self-isolate if they have been in contact with someone who has tested positive. An employee who has not been double vaccinated will be required to self-isolate and may be eligible for statutory sick pay only. Lack of attendance at work can lead to disciplinary action, and vaccination status may be a factor when deciding outcomes.

The landscape has changed for office workplaces. There are advantages and disadvantages to office working and home working, and employers and employees need to find the right balance, taking into account commercial, personal and legal considerations when moving to the new 'business as usual'.



Speak to one of our Employment Team.

Call us on **0161 941 4000** or email lawyers@myerson.co.uk

Jack Latham
Associate in our Employment department.

Buying A Property At Auction

A property auction is a popular method for a prospective buyer to purchase a property due to the speed and security it offers compared to the standard conveyancing process. There are two types of property auctions – a Traditional Auction and a Modern Auction.

Content within these articles is for general information only and does not constitute legal advice. Specialist legal advice should be taken in relation to specific circumstances.

Traditional Auctions:

A legal pack from the seller will be made available to prospective buyers shortly before the auction date. The legal pack will contain the Contract of Sale and the title documents. It may also contain conveyancing searches such as the Local Authority Search, Drainage Search and Environmental Search.

The seller will set a guide price, and prospective buyers will make bids on the auction day. When the hammer falls at the auction, Contracts are exchanged there and then. The buyer is then required to pay a deposit of 10% of the purchase price, with the balance to be paid to the seller on completion. Usually, completion must take place within 28 days of the exchange of Contracts at auction. During this time, the seller cannot sell the property to another party.

A successful bid at a Traditional Auction is contractually binding and pulling out of the purchase afterwards could be extremely costly; a buyer could ultimately forfeit the deposit together with any auctioneer's fees already paid. For this reason, if you are looking to purchase a property at auction, we would strongly recommend that you instruct a solicitor to review the legal pack and advise you of any burdensome provisions in the Contract, any potential problems with the property title and any adverse matters revealed in any searches provided before you make any bids at auction.

We have, unfortunately, seen instances where there have been defects in the property title, which meant that, although the buyer could complete the purchase, they would not be able to register their ownership of the property at the Land Registry following completion, and, therefore, would not have any formal title to the property. In one such case we dealt with like this, the buyer had already committed to the purchase by the exchange of Contracts at auction and paid the 10% deposit and, therefore, if they had chosen not to complete, they would have lost their deposit. Similarly, under the terms of the Contract, the seller could have kept the buyer's deposit and resold the property to someone else because the buyer did not complete within the contractual time of 28 days. Fortunately, the seller was amenable and so over several months, we managed to resolve the defects with the seller's solicitor. In this instance, the issues with the title caused significant delays and increased costs due to the unforeseen problems, which could have been avoided had the legal pack been reviewed and the issues brought to light before the auction.

Modern Auctions:

A Modern Auction is conducted online. Again, a legal pack will be prepared for prospective buyers to review prior to the auction. Prospective buyers will submit their bids online and when a successful bid is made, the buyer will be required to pay a reservation fee to secure the property. The reservation fee is not the deposit and it does not form part of the purchase price. It is a non-refundable fee that is payable in addition to the purchase price and auctioneer's fees.

Unlike Traditional Auctions, Contracts are not exchanged at the auction and buyers are not required to pay the deposit on the day of the successful bid. Completion must usually take place within 56 days of the successful bid and during this time, the seller cannot sell the property to another party. If the buyer is unable to meet the completion deadline or if they choose to pull out of the purchase following the successful bid at auction, the buyer will lose the reservation fee and the seller will be free to sell the property to someone else.

Whilst buyers have more time to exchange Contracts and complete the purchase following a successful bid at a Modern Auction, and despite the fact that the reservation fee is less than the 10% deposit required at a Traditional Auction, withdrawing from the purchase can still be costly as the reservation fee and auctioneer's fees will be lost. Therefore, it is still imperative to have the legal pack reviewed by a solicitor and the appropriate legal advice sought prior to bidding at the auction to avoid any nasty surprises further down the line.



Speak with one of our Residential Property Lawyers.

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Heather Adams

Partner and Head of our Residential Property department.

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