

myerson MAGAZINE

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The Cheshire Housing Market Boom

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The Cheshire Housing Market Boom

At Myerson Solicitors, we have found that despite the toll lockdown has taken on the wider UK economy, the adverse economic conditions have not impeded the housing market. We have seen a sharp rise in new instructions as many of our clients have reassessed their property requirements and are looking to take advantage of the reduced stamp duty land tax rates.

The past year has brought about a period of great change in how people live and work, and with considerations such as home working/schooling, individuals have been in search of new indoor and outside space to use. Properties with work from home space and larger gardens are particularly in vogue.

Cheshire has had a long-standing reputation as a desirable location to live in and, as such, has been no exception to the housing market boom. The rural pockets of the North West have seen their popularity soar. Many people now find they no longer have to tailor their housing location to their employment and property priorities for many have shifted. Estate agents are finding that houses are not on the market for long – sometimes only a couple of days – as the competition for finding the perfect home is heating up, and we are seeing a return to competitive bidding for properties, where multiple parties are chasing the same property. As a result, sealed bids are becoming common in certain areas.

Springtime is usually the busiest period for those looking to sell their properties. This year we have seen many people putting their properties on the market earlier than usual in light of the ever-increased demand, but, despite this, there seems a strong supply of new properties coming to market, and so this seems set to continue.

property price in Cheshire stands at around £258,370, a 0.57% rise since February and a 6.82% increase since last May.

The forecasts predict that the property market is likely to remain very active throughout 2021, as the Stamp Duty concessions supercharge the market, lockdown measures are eased and there is a move towards agile working by many employers. It has been an extremely busy period and the team have been working hard to keep up with market demands.

The Residential Property Team at Myerson are very different from bulk conveyancers or standard high street solicitors and offer a bespoke and personal service. Our team works hard to ensure matters are dealt with in an effective and efficient manner, and we strive to provide the best possible service for our clients.

What are the Housing Reports showing?

Reports are showing that values have risen strongly in the first few months of the year. According to the property website Zoopla, the current average



Speak with one of our Residential Property Lawyers.

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

Heather Adams
Partner and Head of our Residential Property department.

Have you divorced but not sorted out the finances?

There can be many reasons people do not pursue a financial claim following a marriage or civil partnership breakdown.

If you have separated and divorced but not formalised your financial arrangements, it is important to think about the types of financial claims you may make.

The Court can make a range of financial orders to divide assets and income on a divorce or dissolution. The Court's powers apply to all property in which either or both parties have an interest.

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.

The types of orders the Court can make are governed by the Matrimonial Causes Act 1973 and include: –

- An order for the sale or transfer of property;
- An order for a property to be held on trust with a sale delayed until a later date. For example, when the children have reached the age of 18 or completed their education;
- An order for a sum of money payable in one sum or by instalments;
- An order for one party to pay maintenance to the other either for the rest of their joint lives or for a fixed period;
- An order to meet the educational expenses or special needs of a child;
- An order that a pension is shared.

It is important to be aware that obtaining Decree Absolute does not sever the financial obligations between you and your former spouse. Only by obtaining a court order can the financial claims that you may be able to make against each other, by virtue of your marriage or civil partnership dismissed, either immediately or at a date in the future.

Even if one party has remarried, this does not by itself prevent the other party (who has not remarried) from applying for financial provision on divorce.

The remarriage does not prevent the remarriage party from pursuing claims for a lump sum, property adjustment or pension sharing issued prior to their remarriage. The application would need to have been included within the divorce petition or answer or by way of an application in Form A. However, the remarriage does prevent the remarriage party from applying or pursuing an existing application for maintenance payments for themselves.

There is no time limit for making a claim. If you are concerned that you have walked away from your marriage or civil partnership without a fair financial settlement, financial claims you may have against each other can only be dismissed by way of a court order.

The family team at Myerson are all members of Resolution, an organisation of family professionals committed to promoting a constructive approach to family issues that consider the whole family's needs.



Speak to one of our Family Lawyers.

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

Sarah Whitelegge
Senior Associate in our Family Law department.

Can Deeds of Variation save tax?



We have seen a sharp increase recently in the number of clients instructing us to prepare a Deed of Variation for them, but what are they, why would you want to make one, and how do you make one?

What is a Deed of Variation?

A Deed of Variation is a document that allows the beneficiary of an estate to alter what they are entitled to receive from the estate. The entitlement can be:

- 1 a gift under a Will or the rules of intestacy (such as property, cash, a share in the estate, and possibly even an interest under a trust).
- 2 an asset nominated by the deceased (such as a pension).
- 3 an asset inherited under the rules of survivorship (such as a share in jointly owned property).

A Deed of Variation can be drafted to change some or all of the entitlement and redirect that entitlement to someone else of the beneficiary's choosing. It must be made by the beneficiary giving away their entitlement, and one document can vary the entitlement of multiple beneficiaries of an estate.

A Deed of Variation can only be used to change the Inheritance Tax and Capital Gains Tax position so that the redirection is treated as having been made by the deceased.

A Deed of Variation cannot be used for other purposes, such as to give away an inheritance to reduce the beneficiary's estate for assessing care fees.

Why would I want to make a Deed of Variation?

There are several reasons someone might want to make a Deed of Variation, such as to:

- 1 Redirect assets to those more in need. For example, a parent could redirect (some of) their entitlement to their children, or to a trust for their children and future descendants, without eating into their tax-free allowance.
- 2 Reduce Inheritance Tax. We have seen a number of cases where there have been two or more deaths in quick succession, with one estate inheriting from another. A Deed of Variation can be made even if the person whose entitlement is being varied has passed away, and we have experience of advising clients in these circumstances.
- 3 Get the benefit of unused Inheritance Tax reliefs if the deceased owned a business or agricultural property.
- 4 Sever the joint ownership of a property that passes outside a Will so that it can pass to a lineal descendant and qualify for inheritance tax relief.
- 5 Redirect the estate to pass in line with the deceased's wishes.

For example, if the deceased did not make a Will, or their Will was out of date, they may not have left provision for everyone they would have wanted. A beneficiary can use a Deed of Variation to redirect their entitlement in line with the deceased's wishes and ensure that there are no inadvertent tax consequences for them in doing so.

How do I make a Deed of Variation?

A Deed of Variation must be completed within two years of a person's death. There are specific rules to follow depending on whether you want the Deed of Variation to be effective for one or both of Inheritance Tax and Capital Gains Tax.

The solicitors in the Wills, Trusts and Probate department at Myerson are experienced in dealing with Deeds of Variation and will be able to advise whether they are right for you. They can then prepare the document and register it with HMRC to claim back any Inheritance Tax due if necessary.



Speak to one of our Wills, Trusts and Probate Lawyers.

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

Simon Cieluch
Associate in our Wills, Trusts and Probate department.

Restrictive Covenants and Confidential Information

What are the implied duties of an employee?

During employment, an employee will have certain duties to their employer. This can be expressly set out in a contract of employment or implied by law, by the parties' intentions or through custom and practice.

It is implied into the contract of employment that an employee must not:

- Work in competition with their employer;
- Solicit the employer's customers for their own purposes;
- Entice another employee to leave the employer;
- Use the employer's confidential information for their own purposes; or disclose an employer's confidential information or trade secrets;

Generally, these implied terms only apply during employment and not following termination of employment. The exception to this is the implied duty of confidentiality, which remains in place but only extends to trade secrets – information that is secret, has commercial value and has been subject to reasonable steps to keep it secret – and not mere confidential information.

Therefore, to continue to protect itself, an employer may wish to impose further restrictions on the employee after their employment has ended.

What is a restrictive covenant?

A restrictive covenant is an expressed contractual term seeking to restrict an employee's activity after the termination of their employment with an employer. However, such restrictions can also extend to consultants, partners, LLP members and shareholders.

Why would an employer want restrictive covenants?

During employment, a senior employee may build up close relationships with client's customers, suppliers and other employees. They may also acquire valuable confidential information about their business, finances, or business plans.

These could all be used to the employee's advantage at a subsequent employer to set up their own rival business or damage, the business of their employer.

Where are restrictive covenants usually found?

- Employees: On the commencement of employment in the Contract of Employment or on

termination of employment as part of a Settlement Agreement.

- Consultants: In the Consultancy Agreement.
- Partners, LLP Members and shareholders: In the Partnership, LLP Agreement or shareholder agreement.

What are the different types of restrictive covenants?

- Geographical restraints: These prevent an employee from carrying out certain activities within a set radius of a specified area – such as the employer's offices or areas in which they trade.
- Non-competition: These prevent an employee from working for a rival business after termination of employment.
- Non-solicitation: These prevent an employee from contacting clients or suppliers of the employer after termination of employment.
- Non-dealing: These prevent an employee from acting for clients or suppliers of the employer after termination of employment.
- Non-poaching: These prevent an employee from employing other employees of the employer or enticing other employees to leave the employer after termination of employment.
- Representation: These prevent an employee from representing themselves as connected to the employer in any way after the termination of employment.

Is the restriction enforceable?

A contractual term restricting an employee's activities after the termination of employment will be void under the restraint of trade doctrine unless it is reasonable and goes no further than is necessary to protect the employer's legitimate business interests. For example, a restriction may be enforceable if it seeks to protect confidential information being used but would not be if it purely sought to prevent an employee from working for a competitor.

A restriction that is unlimited in time is bound to be unenforceable. The length of

time that an employee is restricted should be based on how long the employer's interests legitimately need protecting and will vary on a case-by-case basis. Similarly, a geographic restriction will be harder to enforce the larger the area being restricted. Time limitation does not apply to protecting confidential information.

A covenant may also be harder to enforce in the context of an employer-employee relationship than a commercial or partnership relationship due to the unequal bargaining power between the two parties. Generally, the more senior the employee, the easier it will be for the employer to enforce a restriction.

Employers who are serious about protecting their confidential information and trade connections should include express covenants in contracts of employment and ensure that they are carefully tailored to the circumstances to ensure that they are enforceable.

Would an employer enforce the restriction?

Restrictive covenants are enforced by applying to the Courts for an injunction. It is a myth that such contractual clauses are unenforceable – well-drafted clauses are regularly enforced.

Employees who are required to enter into restrictive covenants either on recruitment or promotion should satisfy themselves that they understand the effect of the covenants and that they are clear and reasonable in the circumstances. It is best to have a discussion and clarity at the outset of the relationship – it will be a difficult discussion once an employee has already announced their departure!

The Court has discretion as to whether or not to grant an injunction. Before doing so, the Court will assess whether there is a 'serious matter to be tried', whether monetary damages would be adequate to cover any losses to the employer and which party would be most prejudiced by the Court's decision to grant or not grant the injunction. However, a court will not shorten or lessen restrictions to make it enforceable if it is too wide-ranging.



To find out more speak to one of our Employment Team.

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

Jack Latham
Solicitor in our Employment department.



Is my home protected from an inheritance claim?

If you jointly own a home with your spouse or partner, it's important to ensure it is protected from an inheritance claim.

Property can be owned as either "joint tenants" or "tenants in common". If the former, then on death, the deceased's share of the property will pass to the co-owner outside the terms of their Will by the "right of survivorship". If the latter, it will fall into their estate and be dealt with according to the terms of their Will.

However, the co-owner, commonly the surviving spouse or partner, should be

very mindful that claims against the deceased's estate under The Inheritance (Provision for Family and Dependants Act) 1975 Act can alter the perceived protection the right of survivorship offers. This not only affects the value of the deceased's estate but may disturb the co-owners occupation or ownership.

How does the 1975 Act work?

The 1975 Act allows a limited class of applicants to bring claims on the basis that the deceased's Will, or intestacy, failed to make reasonable financial provision for them. There are many factors to consider both in respect of the applicant's own needs and resources and the size and nature of the net estate.

Property is often the most significant estate asset, and the concept of



homeownership within the UK is nothing new. The saying "An Englishman's home is his castle" has been used since the 17th Century, but few realise that pulling up the joint ownership drawbridge to claims under attack from the 1975 Act will not work. So why is this?

The attack comes under the guise of section 9 of the 1975 Act. In basic terms, this gives the Judge discretion to claw back into the deceased's estate their "share" of the property jointly owned with their co-owner. If the Judge considers this reasonable, then the deceased's share does not pass under the rule of survivorship in quite the way either they or their co-owner will expect.

How do the deceased's assets pass to the survivor?

This can be best highlighted by the following, Case study example:

The matrimonial home worth £600,000 is held in the joint names of a husband and his second wife. They own it equally as joint tenants and believe that their shares will pass to the other on death. The husband has no other significant assets. His income is from a pension which "dies" with him.

The husband has adult children and an ex-wife. He makes regular maintenance payments to her and, from time to time, financially assists his children. He makes a Will leaving all his estate to his new wife.

The ex-wife and children threaten a claim under the 1975 Act. They are told that the net estate is only £20,000 and that the property has passed to the second wife. They consider abandoning any claim until they are advised that section 9 could be relied upon to claw back £300,000 of the deceased's property share back into the estate, making a claim more viable. The spouse, and the children, successfully fire the arrows of section 9, giving the Judge discretion to consider allowing such sum to form part of the net estate.

So, jointly owned property may be at risk from inheritance claims and it is, therefore, crucial to understand how joint property is owned both in the administration of the estate and for anyone considering a claim.

However, bringing and defending claims under the Act is very complex and is important to take advice, as there are various further options you could look to consider.



Speak to one of our Contentious Trust and Probate Team.

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

Helen Thompson
Partner and Head of the Contentious Trust and Probate Team



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