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Agriculture and Estates

NEWS AND ADVICE FROM BIRKETT LONG

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Paying for care in later life is always a tricky subject

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Paying for care for you or your loved ones

Planning for and paying for care in later life is always a tricky subject and not one that we or our loved ones want to think about.

But, if we plan and know what to expect, this can help enormously in the future and make life easier for ourselves and our loved ones if we need to think about going into a care home.

With all the added pressures of farming, this is something that farmers especially should give some thought to.

There is a general perception that Social Services takes our homes, and even our farms, to pay for care fees. We have all heard of a situation where someone's relative is in a care home, paying their way whilst the person sat next to them is not!

Why is this?
Social Services will undertake an assessment of someone's needs to consider if their future care requirements can be met by them remaining in their own home, with carers coming in. It is possible that this may lead to people being granted an allowance to arrange their own care.

Social Services will also assess if a person has the means to pay for their own care ('self-funding') be that at home or in a care home.

If you have capital, inclusive of your home, of over £23,250 then you will pay your own care fees, but if you have capital of less than that figure then the local authority will most likely pay for your care.

So, it is true that your loved one may be paying for their care whilst someone else in the same care home is not, but that's not the end of the story; there are non-means tested benefits which can support you financially, but these are often overlooked and not applied for. These can be applied for if a person is in a care home paying for their own care or at home and needing care. Carers also frequently fail to apply for financial support for themselves.

What is NHS Continuing Health Care?
If your health needs are, or become, really serious and fit certain criteria such that you should not be paying for your care at all, then it may be that the NHS will pay for your care and nursing needs and your loved ones would no longer need to pay.

It's a minefield of information, there are so many different allowances of which you should be aware, particularly for farming families where so much is at stake. We have the specialist expertise to advise on these matters. We offer a one-off fixed fee meeting covering all aspects of funding care and future planning for £300. If you would like to find out more, please do not hesitate to contact me.

If you occupy land, you should familiarise yourself with the duties you have for visitors, whether invited or unlawful.

Occupiers' liability for visitors

Many people believe that occupiers' liability means that an occupier is responsible if an invited visitor suffers an injury, or worse, death, on their premises.

But how far does that duty extend? What if an individual enters onto the land uninvited and is harmed?

Making it easier to execute documents

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Many readers will be surprised to learn that electronic signing of documents is something that is still being considered by government.

It is possible that trust deeds and many other legal documents will move into the 21st century, as the Law Commission has published a report on electronic execution of documents. The Commission Report has found that the law does accommodate electronic signatures and it appears to have accepted that this needs to happen, but is recommending a working group to consider the practical issues.

Amongst other things, they expect the working group to consider potential solutions to the obstacles. An obvious area of difficulty is that which requires deeds to be signed 'in the presence of a witness', meaning the physical presence of that witness, even if both are executing electronically.

It is hoped that any working group will reach its conclusions swiftly, that common sense conclusions can be reached, and that the necessary protections against fraud will be preserved. A careful balance needs to be maintained, but the law is moving with the times - albeit slowly and carefully.

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The Occupiers' Liability Act 1957 places a duty upon occupiers to ensure that lawful visitors will be reasonably safe when using the premises. Whilst the degree of care and reasonable steps to be taken will heavily depend on the circumstances of a case, the general duty is nonetheless relatively clear cut.

However, what some may not be aware of is that, according to the later Occupiers Liability Act 1984, an occupier of premises also has a duty to trespassers for any injury they may suffer whilst on the premises. This duty arises providing that the occupier:

- was aware of a danger or had reasonable grounds to believe that it existed
- knew or had reasonable grounds to believe that the trespasser would or may come within the vicinity of danger
- may reasonably have been expected to offer the trespasser some protection

Naturally, the more evidence there is in place of steps taken to safeguard against risk, the less likely an occupier will be deemed to have not acted in a reasonable manner, although a thorough risk assessment would certainly be sensible for all those who own or control land.

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When all is not what it seems

Who owns the farmland that the farm operates on?

It's a fairly straightforward question, but the answer is not always what it seems. Invariably, farmland is passed down through the generations, and agreements completed with a handshake. Titles, therefore, do not always accurately reflect ownership, with no written documents to confirm the position.

It is vital that the ownership of the land is clear. Aside from the tax implications of ownership, clear records help to avoid potential conflicts. Recent cases highlight the importance of having a clear understanding of the ownership of land, particularly in respect of partnerships.

There is a misconception that if land is referred to in the partnership accounts, it is a partnership asset. This is not always the case.

In the case of Wild v Wild, the court held that despite the land being included within the accounts, this was not conclusive to include it as an asset of the partnership, and as such it passed under the terms of Mr Wild's will.

There was no written partnership agreement to rely on, which would have assisted the parties to determine the intentions of each partner.

The argument put forward by Mr Wild's son, Gregory, was that the land had become a partnership asset by virtue of the fact Mr Wild had allowed the partnership to use it. This argument was rejected. It is up to the partners to agree whether land is treated as partnership property.

On the facts, the judge considered that Gregory was added to the partnership at the age of 16, and it was therefore unlikely that Mr Wild would have ceded control over the farm at this stage. Mr Wild's will instructions also demonstrated that he believed the farm to belong to him personally.

If it is unclear if land constitutes partnership property, the legal title of the property should be checked. Statute provides that a disposition of land can only be done in writing. In this scenario, this could have been achieved by a written partnership agreement, or a declaration of trust.

In the absence of any written proof, other factors may be considered to establish how the land should be treated, including how the land purchase was financed, why it was purchased, how the land is dealt with in business accounts, and if the partners have made wills that contradict the ownership of the land.

This case highlights the importance of having a formal written partnership agreement, to be made in conjunction with wills, to ensure that these documents reflect a common outcome.

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