

Are you an Attorney? Common questions about gifting....

We are often asked by people acting as Attorneys whether they can gift some of the money that belongs to the person whose finances they look after (called the donor) to themselves, other family members or charity.

However there are rules about how an Attorney should look after the donor's money that allow gifting only in strictly limited circumstances...

What if the donor has capacity to decide whether to make a gift?

If the donor has capacity to decide to make a gift then it is their decision to make!

What do I do if I think the donor does not have capacity?

The test for capacity is set out in the Mental Capacity Act 2005 and there is helpful guidance in the Code of Practice for Attorneys. It is worth noting that capacity is not fixed and can vary from day to day and according to the decision that needs to be made - if you need further help please contact a member of our team.

How much can the donor give away?

If they receive benefits or contribute towards a care package (or may be expected to do so in the future) there can be financial repercussions if an excessive amount of money or property is given away and they then want to seek financial support from the Local Authority. Contrary to popular belief, if the donor (or Attorney) make gifts to avoid paying care fees there is no 'seven year' protection.

What if the donor doesn't have capacity and I, as Attorney have to decide?

In your role as Attorney you must always act in good faith and the best interests of the donor. You have a duty not to take advantage of your position.

The only gifts that are permissible for you to make to family and friends are those made on customary occasions (such as Birthdays/Christmas) or to a charity that the donor may have wanted to give to.

In addition to this you must follow the donor's historic 'pattern of gifting' - for example, if they used to give £20 to grandchildren at Christmas you cannot increase this to £100.

Can't I give away £3,000 per year?

People often mistakenly believe that they are 'allowed' by the tax man to give away £3,000 a year. This amount relates to inheritance tax rules and should be dealt with as a separate issue.

What if I do want to make a large gift?

If, as Attorney you want to make larger gifts you must apply to the Court of Protection for permission.



Without authority the gift would not be valid and you may find that you are asked to give the money back!

Whilst costly to refer the matter to Court, applications are often successful. The Judge will want to be satisfied that any proposed gift is reasonable and of course, most importantly, affordable. However, if evidence is produced confirming this the Court is likely to authorise the gift.

I am not sure what to do!

Becoming an Attorney can be daunting, but help and advice is available to enable you to provide the best support possible. If you want to understand more about your role, including gifting please contact a member of the team.

Lexcel Accreditation

Moore & Tibbits has secured the national Law Society's legal practice quality mark, Lexcel benefitting Warwick clients and staff for ten years in a row.

Lexcel is developed specifically for the legal profession. It is an optional, recognised accreditation scheme for law firms and in-house legal departments which gives assurance that a practice meets high client care and business management standards.

To gain and retain Lexcel accreditation, the practice must undergo a rigorous initial then annual application and assessment process. This includes conducting background checks and an on-site visit from an independent experienced trained Lexcel assessor.



Christopher Houghton,
Managing Director said:

"While we are proud to have secured Lexcel, it is our clients and staff who are the main beneficiaries. They can be assured that the way we manage the practice has their interests at heart and runs efficiently. There is a lot of choice in the legal services market, but being Lexcel accredited demonstrates our commitment to client care and best practice."

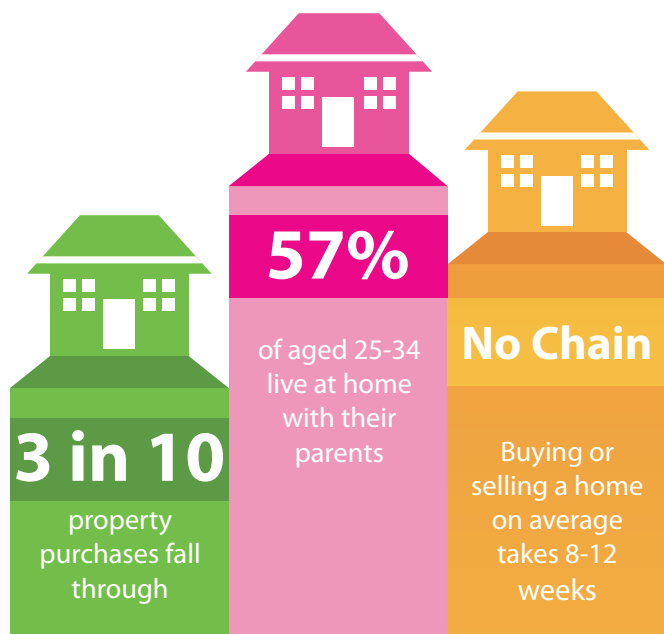
TOP TIPS

What to do when purchasing a home for the first time



Purchasing a new home is undoubtedly a stressful experience, especially for first-time buyers. To help ease the pressure and make the process as plain sailing as possible, Moore & Tibbits provides some expert advice...

- **Be proactive:** visit a mortgage lender and appoint a solicitor before you even start looking for a property. By doing so you can get proof of funding and complete all the background checks in advance, which can save up to two weeks off the process.
- **Get agreement from a lender:** get your lender to confirm your loan in writing as this is one of the first things your solicitor will ask you for.
- **Source a solicitor before your property:** most law firms won't start charging for their service until you find a property, meaning you can complete the relevant background checks and be ready to go as soon as you find your dream home. To speed things up, bring your ID, lender agreement and proof of wider funds, such as a bank statement to your first meeting. You should also use this time to go through what will be covered as part of the legal service and whether the price they quote is fixed.
- **Budget accordingly:** when budgeting for buying a house, there are a multitude of extra costs you'll need to factor in on top of the deposit, including stamp duty, survey, legal, mortgage and moving costs. If you are buying a flat there will be additional costs payable to Landlord/Management company.
- **Clarify ownership:** if a family member is helping you out with a deposit, make sure you have a conversation around whether it is a gift or a loan. If it's the latter, a formal agreement should be drawn up by your solicitor to save confusion down the line.
- **Protect your assets:** if you are purchasing a property with a friend, family member or partner and are putting in unequal monies, you must put a Trust Deed in place. This will protect your assets in the case that you want to sell or break-up with your partner. Again, your solicitor will be able to help with this.
- **Outline the process:** ask your solicitor to outline the conveyancing process to avoid wasting time on unnecessary calls. You should also let them know the best means of contacting you to ensure they can reach you when needed.
- **Be upfront:** let your solicitor know any concerns or requirements such as a desired move date upfront to ensure they can meet your expectations. You should also inform them of anything that could delay the process such as planned holidays or any delays in receiving deposit monies.
- **Notify your solicitor once you offer is accepted:** keep your solicitor in the loop at all stages and if possible pass on details of seller's solicitor, and estate agent so they can contact them if needed.



For Better: For Worse



When can a couple get divorced? That was the issue before a divorce court recently in a case which attracted publicity because the circumstances were so unusual.

Background

Mr and Mrs A had been married for over 40 years. Mrs A had decided that she could cope no more with what she described as the “bullying and controlling” behaviour of Mr. A. Their children had grown up and left home and Mrs. A felt that she did not want to continue in the marriage.

Mrs. A consulted a solicitor and then issued a petition for divorce. She claimed in that petition that the marriage had broken down because of the behaviour of her husband.

Mr. A did not want a divorce. He lodged a defence to the petition and said that, in his view, the marriage had not broken down and that, perhaps with some counselling, Mrs A would change her mind and that then they could continue together in the marriage.

The Law

As it stands at the moment, a divorce can only be granted if the judge deciding the case, is satisfied that the grounds on which the divorce is claimed have been legally proved AND that the marriage has irretrievably broken down.

Under the Matrimonial Causes Act, which was passed by Parliament as long ago as 1973, the court can grant a divorce only if it is satisfied that

“The marriage has broken down irretrievably”

The same Act then goes on to say that the only way that it can be proved that the marriage has “broken down irretrievably” is for one of 5 specific facts to have been proved.

Those facts are:-

- adultery
- unreasonable behaviour
- desertion for more than 2 years
- living apart for more than 2 years and both parties agree to a divorce
- living apart for more than 5 years even if the other party does not agree

There is currently a considerable body of opinion that the law should be changed. Although there has been no formal debate on the issue in Parliament, many Members think that the law should permit a divorce without any proof of “fault” (i.e. one of the “facts” mentioned above). Those who oppose a change, say that to do away with the need to prove “facts” would make divorce too “easy”, would be detrimental to the structure of family life and to society as a whole. It remains to be seen how those differing views will be resolved although there is no indication that a change is likely in the short term.

Unless and until Parliament changes it, the courts have to apply the law as it now is.

The judge’s decision in the case of Mr. and Mrs. A

The divorce petition of Mrs. A claimed Mr. A had behaved “unreasonably” (and she gave several examples of what she said was such behaviour) and that the marriage had “irretrievably broken down”. If satisfied with the evidence received in court that Mrs. A had proved both those facts, so that they were more likely than not, then, under the law, the judge would have had to grant Mrs. A the divorce she wanted.

However, Mr. A did not accept that he had behaved unreasonably. He also said that the marriage had not broken down

“irretrievably”. He thought that with help, the marriage could be saved.

Having listened to both parties give their evidence and some witnesses who knew them and had seen them together, the judge decided that he was not convinced either that Mrs. A had proved that Mr. A had behaved unreasonably or that the marriage had irretrievably broken down.

In light of those findings, the judge had no alternative but to dismiss the petition of Mrs. A. The net effect, of course, is that, despite her feelings on the state of her marriage, Mr and Mrs. A remain married.

Conclusions

It is extremely rare for divorce cases to be defended. The thinking is that, if one party has decided that the marriage has broken down, there is little that the other can do to save it. A court case where each party is giving evidence to contradict the other does not create an obvious atmosphere for the salvation of a marriage.

It remains to be seen what the future holds for Mr. and Mrs. A. One or other of them will be proved to have been correct but the likelihood is that we shall never know because there will be no further publicity.

One lesson that can be drawn from this sad case is that, where parties are on the brink of divorce, but there is a disagreement as to whether or not the marriage is capable of being saved, it is often very helpful for them to undertake professional counselling. At the end of that process, the future for the marriage will usually be much clearer and a good deal of heartache, distress and uncertainty, not to mention cost, can be avoided.

Our News

Dementia Training

Our staff recently completed their up to date 'Dementia Friendly Communities' training, which proved to be a huge success amongst the team. The aim of the training was to increase knowledge and awareness of Dementia as well as encouraging positive changes in practice to help assist people living with the condition. Feedback from the attendees was very encouraging and it's reassuring to know that our staff are refreshed on all areas of Dementia.



Leamington Business Show

Our Solicitors David Leigh-Hunt and James Williams represented Moore & Tibbits at the recent Leamington Business Show 2017. With over 80 exhibitors from the local area, it was the perfect opportunity to demonstrate the products and services we can offer to other local businesses. The B2B event showcased the businesses of the region and provided the ideal chance to build some great business relationships at the same time.



Galanos House



Our care team, were delighted to be invited to The Royal British Legion, Award Winning Care Home - Galanos House in Southam, Warwickshire. Debbie Anderson; Head of Health & Community Care Team presented to the staff and covered all areas of specialist care including Mental Capacity & Best Interest Decisions as well as Deprivation of Liberty Safeguards.

It was great to hear such encouraging feedback from the staff who found the presentation highly informative and beneficial for their roles.



Aylesford School Careers Fayre

Moore & Tibbits will be having a stand at the Aylesford School Careers Fair on the 3rd May. Some of our lawyers will be on hand to answer questions any aspiring Lawyers may have as well as provide you with information about what being a lawyer involves.

Musical Memories Café



We are proud to be sponsoring the new Musical Memories Café organised by Age UK Warwickshire. Debbie Anderson, Head of the Health and Community Care Team at Moore & Tibbits says

"The Musical Memories Cafe is a fantastic venue where people, their families and carers can come along and socialise and enjoy listening to live music in a relaxed, informal environment. We are delighted to be able to support Age UK Warwickshire and be part of this fantastic initiative"

Entrance is free and the Cafes are held at The Bull Inn, Clifton-upon-Dunsmore, Rugby every second Monday of the month (except Bank Holidays) from 10:00am - 12:00pm.

Did you know?

All of our useful guides and top tips are available on our website?

Moore & Tibbits Solicitors



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