Neves SOLICITORS **Client Update - Autumn 2014**

Neves Takes On New Trainees

Neves are pleased to welcome two new trainee solicitors to the firm. Olivia Ridout and Mark Chiverton joined our Luton and Milton Keynes offices this October as Paralegals the pair will work in various departments throughout our offices to help improve their knowledge and gain valuable experience over the coming years with the aim of becoming a qualified solicitor by 2017. We would like to wish them both the best of luck.

Our Milton Keynes Office Relocates

Neves are pleased to announce that as of **Monday 10th November 2014** our Milton Keynes Office will have relocated from South Seventh Street to Luminar House in Rooksley.

Caroline Hume, Partner and Head of Residential Property adds 'This is the third time we have expanded our Milton Keynes office since opening here in 2005. This move will be key to moving the business forward and catering for our growing client numbers and additional staff members. A key factor for relocating to Luminar House is to improve the ease of access. We have listened to our clients needs and as a result they will now be able to park outside our office without the cost of inner city parking. The new office is also conveniently located close to both the A5 and Central Milton Keynes train station.'

Harpenden Seniors Forum

On 2nd October Neves attended the annual Seniors Fair in Harpenden's Public Hall to inform local residents about the services we offer in our Private Client department. Over 300 local seniors attended. Gail Donaldson (Head of Private Client at Neves) had chance to speak to many of the attendees many of whom are already clients of the firm and were pleased to see Neves supporting a local event. This is the second year that the fair has been running and also the second time Neves have attended. Thank you to all involved in organising another successful event.

What Our Clients Say About Us

"I cannot thank you enough for such an excellent piece of work and for all your help. It has been an exceptional service."

"Very Professional, when matters arise then you know you can count on the expertise to deal with it. I would choose Neves over any call centre type conveyancers"

"Completely smooth process from start to finish. Delivered quality on time at the agreed price."

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"We very much appreciate the manner in which the business transactions were conducted, efficient and pleasant."

"I was so pleased with the service. I trusted my solicitor and felt I could always turn to her. It was easy to make initial contact."

"Trustworthy, reliable, extremely high attention to detail. Very friendly like a family-run business".

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The Legal 500 UNITED KINGDOM LEADING FIRM 2013

Cornish Riviera Inheritance Saga finally brought to an end

An 'extraordinary saga' that began in a seaside hotel more than 50 years ago – and ended with a bitter dispute between elderly ladies over a £2 million architectural gem on the Cornish Riviera – has been finally brought to an end by a judge.

Two daughters, whose businessman father died as long ago as 1960, insisted that they had been deprived of part of their rightful inheritance. They had for years been at loggerheads with a woman who owns a villa in Falmouth, claiming that they were entitled to a beneficial interest in the property.

Lawyers for the villa owner claimed that her mother had had an affair with the daughters' father in the 1950s. The pair had established a company to manage the hotel that the mother ran in the seaside town. Following the businessman's death, the executors of his estate had sold the hotel to the company for £11,500.

They had then transferred the deceased's majority shareholding in the company to the woman's mother and she had, prior to her death in 1995, handed the shares to her daughter, who had sold the hotel and acquired the villa in 2007.

The daughters of the businessman argued that the transfer of their father's shares to the villa owner's mother had been invalid and that they were entitled to 'trace and follow the value' of those shares into her hands and, ultimately, to the villa.

Rejecting those arguments, however, the High Court found that there was nothing suspicious about what had happened. The executors had transferred the shares to the woman's mother 'as part and parcel of an overall bargain' and after taking professional advice. They had not breached their fiduciary duties and the transfer was 'for a proper purpose' bound up with the administration of the estate.

The woman's lawyers had pleaded with the Court 'to put an end to this extraordinary saga'. Doing just that, the judge concluded, "In the light of my conclusions on the merits, I will make a declaration that [the daughters] have no beneficial interest whatsoever in [the villa]."

88th Birthday Will Valid, Rules Court of Appeal

A mother who decided to change her will at a birthday party attended by all her children except the one disadvantaged by the change had the mental capacity to do so, despite suffering from mild dementia, the Court of Appeal has ruled.

The woman had, over the years, written a number of wills. Her penultimate one, written three years before she died, had favoured her son. However, she changed her mind and signed a new will at her 88th birthday party. The new will divided her estate equally between all her children.

The new will was challenged by the woman's son on the basis that her dementia made her incapable of executing a valid will.

The Court of Appeal agreed with the lower court that the woman 'knew that she was making a will, took a conscious decision to make it and approved its terms'. Accordingly, she had the capacity to make it and the will was valid.

A number of cases have reached the courts in recent months in which the mental capacity of the person who has made a will has been disputed. This case is typical in that it shows that the courts require very solid evidence of the absence of mental capacity before they will order that a will is invalidated on these grounds.

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Attorneys Who Abused Position of Trust

The creation of a power of attorney is a good way of making sure that your affairs are dealt with by a responsible person if you are unable to manage them yourself. However, when the choice of attorney is a poor one, many difficulties can arise, as a recent case shows.

It involved powers of attorney created in 2010 by a woman who was then 68 and who had developed dementia but was still mentally capable. She appointed one of her daughters and one of that daughter's sons to act as her attorneys by creating two Lasting Powers of Attorney (LPAs), one in respect of her property and financial affairs and one in respect of her health and welfare.

A few months after the creation of the LPAs, the attorneys applied to the Court of Protection to obtain registration of the LPAs so that they could begin to act on the woman's behalf.

The county council that deals with the woman, who lives in sheltered housing, became increasingly concerned that, in exercising their financial powers, the attorneys were 'abusing' the woman both 'emotionally and financially'.

Legal argument followed about the fitness of the attorneys to act. When the Court revoked their right to do so, they challenged the decision.

The judge, in considering how the attorneys had used an Internet banking account belonging to the woman, said, "It is a salient reminder of how easy it is for someone unscrupulous, who is Internet savvy, to dupe an elderly person who is clueless about such matters."

When a power of attorney is entered into, it is important that the person or persons appointed as attorneys discharge their function responsibly. Although they can be removed if they fail to do so, this is only usually possible when the inappropriate behaviour comes to the notice of someone else who decides to act. By that time, it may be too late to prevent money or other assets being misappropriated.

One safeguard is to appoint a professional person to act as co-attorney. They can then oversee the activities of the other attorneys to help prevent an issue arising in the first place. Neves can act as attorneys for many clients. Contact a member of the team for more information.

Private Client *If you need help or assistance contact our team.* Email: **wills@nevesllp.co.uk**

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Informal Arrangements Land Woman With Massive Costs Bill

A woman who sold her mother's house in order to buy her a more suitable home has been left with a large legal costs bill as a result of her action. Her mother is incapacitated by dementia and unable to look after her own affairs.

The resulting court case shows how important it is for anyone acting on behalf of another person to be scrupulously careful and to take professional advice whenever they have doubts about the appropriateness of any action they intend to take.

The elderly woman is looked after by her daughter and her daughter's husband, and the court praised the care they give her. However, when the arrangements were being made to buy the new property, the woman's son was not fully informed. He was also not aware that his mother's pension income had been diverted into his sister's account.

The daughter eventually made an application to the Court of Protection for legal authority to manage her mother's assets. This brought the previous dealings, and the fact that she had acted without proper legal authority, to the attention of the Court, which found that the arrangements had been made without sufficient regard for:

- The financial and emotional vulnerability of the person who lacks capacity; and
- The requirements for formal, and legal, authorisation for the family's actions, specifically in relation to property and financial affairs.

Her brother applied to the Court objecting to her appointment as deputy.

The Court had considerable sympathy for the daughter, and the judge was prepared to accept that she had 'embarked on this project with her mother's best interests at the forefront of her mind'. However, within a short time, 'her own best interests and those of her husband dominated the financial arrangement'.

The Court ruled that the daughter should pay 80 per cent of the costs of the deputy of the Court and two thirds of her brother's legal bill. The total legal costs exceeded £70,000.

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Property Buyers Beware! Get a Full Structural Survey

In a reminder to property buyers that a full structural survey can often be well worth the money, a woman who had to have major work done to prop up her home has suffered a costly defeat in her fight for compensation from her mortgage lender.

The detached home was built on the site of a long-closed quarry and had to be underpinned due to cracking in its walls. The woman sued Bank of Scotland plc for substantial damages, claiming that a valuation survey carried out before she bought the property should have flagged up the potential risk of subsidence.

The woman had paid £715 for the survey report, which had pinpointed two cracks in a rear wall but concluded that there had been no recent movement and that there was no on-going subsidence. The property was valued at £690,000 and the bank, which had nominated the surveyor, agreed to extend finance on the basis of the report.

However, soon after moving in, the woman noticed that the cracks were growing wider and commissioned a structural expert to inspect the property. He concluded that it was affected by 'progressive movement' and recommended the underpinning work which was subsequently carried out.

The woman sought damages on the basis that the surveyor was negligent in failing to state that there was a risk of future subsidence. She also argued that she should have been told to take further advice. However, her claim failed at the High Court and her challenge to that decision was dismissed by the Court of Appeal.

The Court noted that the survey was not designed to produce an in-depth structural report and was primarily for the bank's benefit in confirming the value of the property as security for the loan. The advice attached to the report had expressly stated that the surveyor would not look beneath the surface and could not 'see through walls'.

The Court concluded, "A valuation surveyor's duty does not require him to recommend a full structural report. The judge was entitled to hold, on the material before him, that the survey was not negligent."

Residential Property

If you are in the process of buying or selling a property then contact our a member of our conveyancing team who will be happy to assist.

Email: **info@nevesllp.co.uk**

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Homeowner Wins Garage Extension VAT Dispute

The owner of a listed home has avoided a hefty VAT bill in respect of the construction of a garage to house his classic car collection after the First-tier Tribunal (FTT) accepted that HM Revenue and Customs (HMRC) had erred and that the project should have been treated as zero-rated for VAT purposes.

HMRC had insisted that 20 per cent VAT should be added to the cost of building the single-storey structure, which abutted the listed building and was fitted with double folding doors and its own heating and light supplies. It was submitted that the project was not an approved alteration to a protected building and so did not qualify for zero-rating under the Value Added Tax Act 1994.

However, in allowing the homeowner's appeal, the FTT found that HMRC had taken the mistakenly narrow view that, in order to qualify for zero-rating, either the garage had to be built at the same time as the house to which it was attached or the project must have involved 'substantial reconstruction' of the listed building.

The FTT accepted the homeowner's arguments that the listed building had been 'altered' by the addition of the garage and that the latter satisfied the statutory test. Although HMRC's decision had accorded with its published internal guidance, the wrong conclusion had been reached on the particular facts of the case.

Changes to the rules introduced in 2012 mean that approved alterations are now only zero-rated for VAT where the alterations were in progress at 21 March 2012 or listed building consent had been applied for before that date. The transitional arrangements come to an end on 30 September 2015, when zero-rating will cease for all such alterations.

It is interesting that HMRC fought this case at the FTT, bearing in mind that the tax involved was small and zero-rating on approved alterations to protected buildings is scheduled for abolition. It shows the pressure HMRC are under to maximise tax yields.