

The Brief

Calling All First Time Buyersand their Parents!



 KAREN LANG

Mortgage lending has decreased drastically over the past four years. Although the number of mortgage products now available, following a sharp decline, is slowly on the increase, the number of mortgages being granted remains a fraction of what it once was.

For first time buyers the main obstacle to obtaining a mortgage is the level of deposit required.

Some Lenders will provide mortgages at 80%-90% loan to value, however Lenders operating in this market have strict criteria, making it difficult for applicants to obtain the level of mortgage they require.

Mortgages are no longer linked to a multiple of income. They are now based on affordability and are linked to the applicants' credit score. For first time buyers, who may have student debts etc, mortgages in the 80%-90% loan to value bracket may be an unattainable dream.

Mortgages at 70% loan to value are often the only option for first time buyers.

So who can save the first time buyer?

With Bank interest rates remaining lower than ever, parents of first time buyers are often getting very little return on their cash deposits. Keen to see their offspring on the property ladder, more and more are choosing to assist their child purchase their first home.

For many, key to the decision to provide financial assistance is how to protect the investment made in the property, whether it is made as a loan to the child, or simply as a gift.

In the first instance, if the parents have several children,

is each child to receive an equal gift? If not, and only one child is to receive such a gift, is this to be in lieu of or as part of that child's future inheritance? If so, amendments may be required to the parents' Wills.

If it is to be a gift, is the child purchasing the property in his or her sole name? If not, and the property is to be purchased with a partner, married or unmarried, what is to happen to the gift if the relationship goes sour? If title is held jointly between the parties, then each will be entitled to 50% of the proceeds of sale of the property. A Minute of Agreement may need to be entered into between the child and his or her partner, to ensure that the value of the gift is returned to the child on the sale of the property. This Agreement could also address issues such as the split of profits on sale.

Where a property is being funded in part by parents and in part by the child, it might seem appropriate for title to the property to be in the names of the parents and child together. However, assuming the parents already own property, their being on the title can prevent the child, as a first time buyer, being able to benefit from first time buyers stamp duty exemption, available on properties purchased up to £250,000. This discount is available until 25th March 2012. With this in mind, it may be preferable for the property to be held in the child's sole name, with the parents having a security over the property (similar to what you would have with a mortgage) thus ensuring that the child cannot sell the property without repaying the loan to the parents. A separate Agreement could be prepared narrating how and in what circumstances the loan requires to be repaid and whether or not interest would be payable.

There may also be tax benefits to the property being in the child's name, particularly if the child is to live in the property as his or her principal private residence. In such circumstances, no Capital Gains Tax would be payable on the sale of the property.

Where a mortgage is available for the first time buyer but a deposit is needed from the parents, and this is to be provided as a loan, this loan should be documented. Most mortgage lenders will not allow a second charge to be registered over the property and so the parents' investment can only be protected by way of an Agreement between parent and child. Such an Agreement can include as much or as little information as the family require. Where the parents view their loan as an investment, provision can be made for interest on the funds advanced. As an alternative, the parents may wish to take a percentage of the sale proceeds, equivalent to their contribution to price.

Parents helping children to get on the property ladder is more common now than ever before and there are many issues that should be considered before cash changes hands.

Should you wish to discuss these issues in more detail, please contact either Karen Lang (kl@bsemple.com) or Karen Fulton (kf@bsemple.com) or your usual Bird Semple contact. For tax advice, please contact Amber Heron (ah@bsemple.com).

INSIDE



Think You Don't Need a Will?
Jacqueline Leslie



Digital Lives
Karen Stewart



Crieff Hydro competition

Think You Don't Need a Will,? Think Again!



 **JACQUELINE LESLIE**

Many people put off writing a Will. For some people, it forces them to confront their own mortality, which is too uncomfortable. In other cases, the family relationships are complicated and they cannot bring themselves to decide who should benefit from their estate after their death.

There are some individuals, however, who think they do not need a Will. Some feel that they are too young or that they do not have any assets, only debts. In many cases, these individuals have overlooked the fact that their mortgage might be paid off by insurance policies on their death, leaving a mortgage-free property as part of their estate. Others feel that their estate is straightforward, without always knowing what would happen to their estate in the absence of a Will.

If you do not have a Will, it is imperative that you understand the rules of intestate succession

which will apply to your estate. These were set out in the Succession (Scotland) Act 1964. Society has changed somewhat over the intervening years and the rules have recently been reviewed by the Scottish Law Commission, although no changes have been enacted as yet.

Many clients are surprised to find that, under the rules, their estate would not automatically pass to the surviving spouse or civil partner. Instead, the spouse or civil partner receives the house and furniture, but only up to a fixed value, and a cash sum of £42,000 or £75,000 depending on whether there are children. Thereafter, the spouse or civil partner is entitled to a one-half or a one-third share of the moveable estate (this excludes any land or buildings) with any children taking a one third share amongst them. The remaining half or one third share of the moveable property, along with any other immoveable property such as land and buildings, is then divided according to a list set out in Section 2 of the 1964 Act. This gives the remaining estate to the children. If there are no children, the remaining estate is divided equally between the deceased's parents on the one hand and his brothers and sisters on the other hand. It is only if there are no parents, brothers or sisters or descendants of the brothers and sisters that the surviving spouse or civil partner will take any more of the estate. One can imagine circumstances in which the spouse or civil partner not only has to deal with the bereavement but the prospect of financial hardship as a result of these rules.

Children will become entitled to have the funds paid over to them at the age of 16 when few will be mature enough to handle a large inheritance. Until the child reaches 16, their inheritance may have to be managed by the Accountant of Court, which adds a layer of officialdom to the administration of the estate.

The current rules on intestate succession give no automatic protection to cohabittees. The Family Law (Scotland) Act 2006 introduced a right for cohabittees (including same sex couples) to make a claim for provision from the estate. However any award is at the discretion of the Court. Where cohabiting couples own a property, it is

imperative that they consider what would happen to the property if one of them were to die. Otherwise, there is a risk that the surviving partner will be forced out of the home.

The flip side is that if you wish to avoid a cohabitee making a claim on your estate, you should grant a Will, as the claim can only be made where the deceased did not leave a Will.

Quite apart from ensuring that your estate passes to those whom you would wish to receive it, a Will has the advantage of avoiding costly administrative procedures. In the absence of a Will, it is necessary to petition the court to have an executor appointed. This becomes more complicated if the next of kin are unable to act or if there is competition (for example among the children) for appointment. Most intestate estates also require a Bond of Caution to be obtained. This is a type of insurance policy and, depending upon the value of the estate, the premium can run to several thousand pounds. If there are no close family members, it may be necessary to instruct genealogists to research the family tree to trace the beneficiaries. This can be costly and time consuming, particularly if the descendants are spread around the globe.

Even if you are satisfied that the intestate rules will deal with your estate appropriately, you can save your family a great deal of time and expense by putting a simple Will in place.

If you would like to know more about making a Will then get in touch with Jacqueline Leslie (jl@bsemple.com) or your usual Bird Semple contact.



Digital Lives.... Life After Death



 **KAREN STEWART**

The Internet has become an integral part of our daily lives - from Bank accounts and online auction accounts, to Facebook and Twitter, these all have a value whether monetary or sentimental. How many of us have actually thought about what would happen to these "assets" once we are gone?

Failure to properly plan for this so-called "Digital Afterlife" can undoubtedly cause problems for those who are left to deal with the affairs of the deceased. Without the relevant user names and passwords, family members would struggle to access online accounts. Would your loved ones know what to do with your accounts, or even know what accounts you have? If the answer is "No" then what should you do to ensure that your digital assets are not lost in cyber space?

Social Networking

Most people will be familiar with social networking sites such as Twitter and Facebook. Social networking sites are online services, which focus on building relationships and sharing information. They allow people to post information about themselves and pictures for their contacts or "friends" to see, but few people consider what happens to this information after death.

Facebook will "memorialise" the account of a deceased account holder, saving all previously posted information, which can only be viewed by their accepted friends. No changes can be made to the account. If requested by a close family member, the account can be deleted. Twitter are following a similar policy, although this is subject to change.

Email Accounts

Email accounts can be more complicated as every provider has a different policy.

For example, if you have a Hotmail account your next of kin will be allowed to access your account upon production of supporting documents (i.e. death certificate). Hotmail accounts, if inactive for a period of time, will eventually be deleted.

Google will also allow next-of-kin access to an account on the production of the death certificate and appropriate identification.

Yahoo, on the other hand, operate a much stricter policy. No one will be granted access to your account. The only way that the account can be accessed is through use of the deceased's account password.

Virtual Money

Funds held in online accounts, such as bank, gambling

and lottery accounts can easily be forgotten about.

Online banking has become part of our day-to-day lives, from receiving electronic statements to transferring money. There is often no paper trail of these online transactions. Online bank accounts will be dealt with in the same manner as traditional bank accounts; the accounts will be frozen on notification of the death. The money in the account can either be transferred (in the case of a joint account) or paid out to the Executors. Procedures vary from bank to bank depending on the value of the account.

Ladbrokes will close a deceased user's account, and pay the funds out on receipt of a death certificate, and a letter confirming who the next of kin is. The National Lottery will only release information and funds to the Executor of the estate on provision of the death certificate and a Certificate of Confirmation (Probate in England).

Other accounts to consider include Ebay, PayPal, online catalogue accounts, online investments and online credit card accounts. This is not an exhaustive list, and consideration should be given to your online activities as a whole.

So, how do you make sure your "digital assets" are not lost?

There are providers who, for a cost, are willing to supply what they term "secure electronic safety deposit boxes". They provide a place where you can securely store details of all your email and online accounts, a safe, secure repository for your vital digital property that lets you grant access to online assets for friends and loved ones in the event of loss, death, or disability.

This doesn't necessarily have to be done in an online environment; the key is proper planning and preparation.

It would be prudent to check the current arrangements in your Will, have you taken account of your digital assets? If not, now might be the time to do so.

To avoid any unnecessary stress for your loved-ones, start by making a list of your on-line assets and what you would like to happen to them. Include your passwords and user names and put the information somewhere safe, for example in a sealed envelope alongside your Will.

If you would like to know more about the treatment of online assets following death then please get in touch with Karen Stewart (ks@bsemple.com) or your usual Bird Simple contact.



Access all areas

Our website gives you access to information about us and the services we offer as well as useful legal information concerning matters such as Inheritance tax planning, house buying and selling and Powers of Attorney.

Visit us at www.bsemple.com to view our news articles and to read our frequently asked questions page. You will also find access to useful web links and to the extranet which, with a username and password, will allow you to tap in to our AgeCare resource, packed full of information about nursing homes, care providers etc. Your usual Bird Simple contact will be able to provide you with a unique username and password should you wish to use this facility.

Score a Hole in One...



One lucky reader will win the chance to enjoy a day out in the picturesque grounds of Crieff Hydro Hotel.

Located in 900 acres of Perthshire countryside, Crieff Hydro will be host to Bird Semple's summer day out this year. Many of our staff will be partaking in the leisure activities offered by the

hotel. Crieff Hydro has an unrivalled range of leisure pursuits for all ages, from Quad biking, off road driving, serene trips around the resort on horseback to relaxing in the hotel's Victorian Spa. It even offers a children's club so all members of the family can have a relaxing and enjoyable stay.

Our competition winner and their three guests will not only get the chance to play a round of golf on the hotel's 18 hole course, but will have the opportunity to enjoy breakfast and lunch too.

To have a chance of winning simply answer the following question:-

When does the first time buyer stamp duty discount end?

Now just complete and return the enclosed postcard, or e-mail: competitions@bsemple.com on or before 30th June 2011.

News from the office....

There has been both happy and sad news at Bird Semple over the last few months.

Recently retired Austin Leggatt, who had served as our stand-in mailman for over 26 years, passed away following a brief illness. Austin was a well respected stalwart of the firm, who had enjoyed carrying out his duties to the fine age of 85. He will be sadly missed by all who knew him.

Within the last few weeks, Allyson Gilchrist, an assistant in our Asset Protection team, has given birth to a beautiful baby girl. Isla Elizabeth eventually appeared (almost two weeks late!) weighing in at a fantastic 8lbs 15oz. Our congratulations go to Allyson and her husband, Fraser.

Following the success of our Day at the Races last summer, we are all looking forward to a fun filled and action packed day out at Crieff Hydro in Perthshire. Always up for a little healthy competition, the day will begin with a Highland Games – results to come in our Winter Newsletter! Following lunch, everyone will take part in an activity (for some of us this won't involve much action!) of their choice before bringing the day to a close over dinner. Let's hope the sun shines and that the competition doesn't get too fierce!

Getting to know.... Karen Fulton



If you would like to discuss any property matters with Karen then contact her on 0141 304 3434 or kf@bsemple.com

Q Tell us a bit about your career so far.

A I trained in a small firm in Ayr before moving to Bird Semple for the first time in 1995. After spells with another Glasgow firm and a firm in North Ayrshire closer to my home in Kilmarnock, I came back to Bird Semple in 2004 as an Assistant. I became a partner in the firm in 2006 in the Conveyancing Department.

Q Why did you join Bird Semple?

A I joined Bird Semple the first time as I was keen to get experience in a larger firm. My traineeship had been in a general practice firm and I wished to gain more experience in my chosen field. I came back to the firm in 2004 as it had at that point become the niche firm that it is now. I always enjoyed working with the people at Bird Semple and many of them who were working in the firm back in 1995 are still with us.

Q What do you like best about your role?

A I enjoy the client contact. Although moving house is very stressful, it is still generally an enjoyable part of people's lives and it is nice to be part of their lives for that period. I often have contact with clients beyond their move as they keep me informed of their family growing etc. I also love houses and I get to buy some very nice properties for people.

Q What do you like doing out of work?

A I enjoy travelling and am always planning my next trip. My husband and I are working our way around the world and I am often found with my nose in a travel book. I enjoy gardening and find it good for stress release. Finally, as most people who know me well would agree, my main hobby is shopping. Even more enjoyable is shopping on holiday, combining my two favourite things!