

# The Brief

## Nothing is certain but death and taxes...



**PAMELA NIVEN**

**Cast your mind back to March this year and you'll recall that the then Chancellor, Alasdair Darling, announced that the Inheritance Tax threshold would be frozen at £325,000 for another four years. He cited a need for funds to pay for the costs of care of older people as one of the main reasons for this decision.**

On the other side of the House, George Osborne and the Conservatives were pledging to raise the Inheritance Tax threshold to £1 m. Many thought the answer to their Inheritance Tax problems lay just around the corner.

Alas, that was not to be. It didn't take long for the Coalition Government to concede that the Labour Government's £325,000 threshold is unlikely to change. That Inheritance Tax problem is not going to go away after all.

Freezing the Inheritance Tax threshold is a far less overt tax rise than raising the actual rate of tax – some would call it a stealth tax. Last year, an estimated 15,000 estates were subject to Inheritance Tax and the Government took over £2b in tax. It is thought that somewhere around 6million households fall within the scope of Inheritance Tax at the moment. The number of tax payers who will be caught by the stagnant threshold is bound to increase in time and more estates will, as a result, have an Inheritance Tax liability. The Government's tax take from Inheritance Tax has the potential to soar.

Now, more so than ever, thought should be given to Inheritance Tax planning. It's never too early to assess your exposure to Inheritance Tax and to consider the tax planning tools available to you.

Planning is the key to defeating Inheritance Tax and the sooner steps are taken to minimise your exposure to Inheritance Tax, the greater the chances of success.

Simple planning can involve using annual gift allowances and maybe even making regular payments out of surplus, already taxed, income. Each individual can gift up to £3000 in any one tax year, carrying forward the previous year's unused allowance if appropriate. Gifts exceeding the annual allowances can also be made and, so long as the donor survives for 7 years from the time the gift is made, the value of the gift will fall outwith the estate for Inheritance Tax purposes.

More complex arrangements might also be appropriate. This could involve the use of Discretionary Trusts, where steps are taken to pass assets in to a vehicle to be held for the benefit

of a specified class of beneficiaries. This is often favoured where there is a desire to do some tax planning but no desire to pass funds directly in to the hands of those to be included within the class of beneficiaries. Other planning tools include the acquisition of favoured assets, such as those that attract Business or Agricultural Property Relief.

Having an up to date Will is also crucial to the Inheritance Tax planning process and thought can be given to tax efficient charitable and other legacies. It is also important to grant Power of Attorney documents, ensuring that your nominated Attorney has the authority to continue with Inheritance Tax planning on your behalf should you become unable to do so.

It is clear that Inheritance Tax is going nowhere but planning opportunities do still exist and careful thought now could save your estate a lot of money in the future.

**If you would like to discuss your exposure to Inheritance Tax, then Pamela Niven or your usual Bird Semple contact will be happy to help. email: [pjn@bsemple.com](mailto:pjn@bsemple.com)**

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Karen Lang



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# Hammering Home the Pros and Cons of Property Auctions



KAREN LANG

**Whilst there are advantages to buying and selling at Auction, there are also downsides that purchasers and sellers need to be aware of.**

The benefit of selling at Auction is that the process is quick. There are no protracted missives as no negotiations are allowed on the terms of the contract itself. Auction properties are sold on standard terms, set out prior to the Auction in the Articles of Roup.

Prior to Auction, the Seller's Solicitor prepares the Articles of Roup, effectively the contract for sale of the property. A copy of this document is placed with the property's title deeds and interested parties are given the opportunity to inspect all the papers in advance of making a bid on Auction day. The Auctioneer will produce an Auction catalogue and this will contain details of all lots to be marketed at that Auction as well as the General Conditions of Sale that will apply to all properties being sold that day. There will also be a guide price in the Auction catalogue, generally the lowest price the Seller is willing to accept.

Auction properties are 'sold as seen' and this means that, not only is the purchaser accepting the physical condition of the property when he submits a bid at Auction, he is also accepting the terms of the title deeds and everything it contains. It is not uncommon for properties to be exposed to Auction because there is, in fact, a title defect. This defect could prevent the property from being sold in any other way. An inexperienced purchaser could be caught out at Auction and bid for a property that

a deposit of 10% of the purchase price. A binding contract is then in place and settlement will tend to take place within a four week period, when the balance of the purchase price will be payable. After submitting the successful bid at Auction and once the Minute of Preference and Enactment has been signed, the purchaser will be asked to provide details of his Solicitors to whom the contract should be sent. For the reasons already mentioned, the purchaser's Solicitors will, hopefully, have been consulted prior to the bidding process.

Whilst there are benefits of selling at Auction, it must be borne in mind that, if the property does not sell, it could be stigmatized, making selling even more difficult than it previously was. If considering submitting a property to Auction, sellers should consult their Solicitor well in advance. This will allow the Solicitor to both compile the legal pack, comprising the Articles of Roup, title deeds and ancillary papers, and offer advice as to whether submitting the property to Auction is the best option.

There are benefits for the Auction purchaser too. Again, it is a quick process and there are no negotiations on contract terms, which can lead to some savings on legal costs. The process of purchasing at Auction is entirely transparent, with both the buyer and seller being witness to the Auction process as it unfolds. This can be attractive

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is otherwise unmarketable. As such, it is vital that the purchaser has the title deeds examined by his Solicitor in advance of a bid being made at Auction.

Never has the phrase "buyer beware" taken on more meaning than when purchasing at Auction. Once the hammer falls, there is an unconditional sale contract, binding on both purchaser and seller. In Scotland, after the hammer falls, the successful bidder is required to sign a Minute of Preference and Enactment and pay, in most cases,

for a Purchaser who is exposed to all other bids and bidders.

Some Purchasers believe that purchasing at Auction will allow them to "pick up a bargain". There may be some good deals to be had but the risks involved in buying at Auction are not always justified by the low price. Every conveyancing Solicitor dreads the call from their client who phones after the Auction, without prior consultation, to say they have been successful in their bid!

## As a purchaser at Auction key things to remember are:-

1. Have the property surveyed and valued (assuming there is no up to date Home Report available) prior to bidding. Not only does this provide you with essential information regarding the condition of the structure itself, and its valuation, it will also confirm whether or not the property has been structurally altered in the past. It is important to ensure alteration documentation is held with the title deeds prior to bidding at Auction, as the seller will not be obliged in terms of the Auction contract to produce any documentation at a later date.
2. Always consult a Solicitor well in advance of the Auction date. Do not leave it to the day before as it may be too late for the Solicitor to examine the title deeds and carry out the usual legal searches.
3. If a mortgage is required to assist in the purchase, your Solicitor must be made aware of this. Additional searches will be required to ensure that the property is mortgageable. Even if no mortgage is required, these searches are still recommended to be certain that there are no issues regarding the future marketability of the property, as future purchasers may require a mortgage.
4. Armed with the information contained within the survey, and taking on board the Solicitor's advice, set a budget and try not to get carried away with the excitement generated by the Auction process!

**If you would like to know more about buying or selling property at Auction, please get in touch with Karen Lang or your usual Bird Semple contact.**  
email: kl@bsemple.com

# Getting to know... Karen Stewart



KAREN STEWART

**"I like knowing that the work we do makes a difference to our clients."**

## Tell us a bit about your career so far-

I studied law at the University of Glasgow and completed the Diploma in Legal Practice at what was then the Glasgow Graduate School of Law. Following my Diploma year, I trained with Barnetts, in Kilmarnock doing a mixture of private client work and conveyancing. After 18 months there, I moved to McClure Naismith in Glasgow where I completed my traineeship and began working as an assistant solicitor, still doing a mixture of conveyancing and private client work. It was at this time I realised that my main interest was in private client work, and I secured my current post at Bird Semple, where I work as the assistant solicitor in Frank Fletcher's team.

## Why did you join Bird Semple?

As I say, it became clear to me very early on in my career that my main interest and focus was in private client. I wanted to work in a firm that specialised in

this area, where I could develop my career and be exposed to a wide and varied workload.

## What do you like best about your role?

It may seem like a bit of a cliché but, I like knowing that the work we do makes a difference to our clients. Often when we start work for a client, it will be in difficult circumstances, the death of a loved one, for example. I know that I can help our clients with what can be difficult situations and make it easier for them.

## What do you like doing outside of work?

I enjoy going to the gym for various classes, such as circuit training. I also enjoy dancing and often perform as part of a dance group through Dance with Attitude dance studios. We do regular shows and performances at the studios and throughout Glasgow. Any other spare time is spent out and about, socialising with friends.

## Walk This Way



**Over the summer, the staff at Bird Semple participated in a 16 week walking challenge organised by 'Get the World Moving'. The aim of the challenge was to encourage people to walk at least 10,000 steps per day, equivalent to about 4 miles. That might not sound like much but some of us don't cover much distance when beavering away at our desks.**

Staff and partners drew lots to form 3 teams and, notwithstanding some scepticism, everyone was willing to give it a try and help their team be the best. Motivational treats and gold stars were awarded each Friday – it's amazing what you can get people to do for a bar of chocolate!

As the walking challenge continued, the level of competitiveness amongst staff members grew. Partner, Karen Lang, embarked on a mammoth expedition whilst on holiday and moved in to pole position as the firm's Top Walker. Karen's reign was, however, short lived and IT Manager, Harvey Bernstein walked over 50,000 steps in one day just to secure the title of Top Walker.

Through rain, hail and shine the staff at Bird Semple did themselves proud, walking a total of 30,450,627 steps which translates as 12109.53 miles. Our top team, the BS Babes, pictured, finished a credible 2,397th out of the 13,972 teams that participated from all over the world.

## Goings on at Bird Semple

**As reported in our last Newsletter, this year marks our 10th anniversary. To celebrate this auspicious occasion, the staff and Partners enjoyed a Day at the Races in Ayr.**

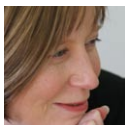
The sun shone for us during this wonderful outing and we all enjoyed a fantastic lunch before taking our places trackside for 'The EBF Bird Semple Solicitors 10th Anniversary Maiden Stakes'. Managing Partner, Frank Fletcher presented the winner's prize to the owner of Dubawi Gold on behalf of the firm and commented, 'It is testament to our team that we have come so far over the last 10 years. We are looking forward to the next decade and to continuing to serve the needs of our clients and our professional contacts.'

Our stand-in mailman, Austin Leggatt, retired at the ripe old age of 85, having worked with the firm (both the 'old' Bird Semple and the 'new') for over 26 years. Staff gathered to celebrate this special occasion and to wish Austin well in his retirement.

Frank Fletcher took to the streets of Glasgow for his second consecutive Great Scottish Run Half Marathon, raising funds for client charity The Cattanach Charitable Trust along the way. Achieving a new personal best, Frank completed the course in a very respectable 2 hours 24 minutes and 57 seconds. Frank declined to comment when asked if he would be running again next year...

*In other news, conveyancing assistant, Katharine Smith gave birth to a beautiful baby girl, Jessica. Both mother and baby are well.*

# Living Together But Apart



KAREN FULTON

**Making the decision to sell a property is not always an easy one. Whilst the media's view of the housing market has been gloomy and prices have fallen, the market has been supported by essential moves prompted by life changing events such as births, deaths and marriages. Another life event (and an increasingly frequent one) that can lead to a house sale, is divorce.**

For those couples in the throws of a separation or divorce, selling the matrimonial home is another hurdle to jump and not one that can necessarily be rushed.

Whether living in separate properties or both still under the one roof, prior to your property being sold, a Separation Agreement must be put in place.

A Separation Agreement can be entered in to as part of the divorce process itself. If divorce is still some way off, it can be a step towards the divorce process, governing the division of all matrimonial assets. For those keen to sell their property quickly, the Separation Agreement can simply deal with the selling of the matrimonial home.

At the very least, for the sale of the matrimonial home to proceed, a written agreement must be prepared and signed by both parties. This will narrate the parties agreement to the sale, will detail how related costs are to be dealt with and will confirm how sale proceeds are to be divided. If an offer is received for the property prior to a Separation Agreement being in place, the offer cannot be formally accepted. A Separation Agreement should, therefore, be attended to in advance of marketing a property.

Often one party will continue to live in the matrimonial home whilst the other moves out. If it is intended that the party residing in the property is to assume responsibility for utility bills, council tax etc, then all relevant accounts should be transferred in to that party's name.

Assuming the title to the property is held in joint names, buildings insurance should remain in joint names and that regardless of who pays the insurance premium. Where there is a mortgage over the property, both parties will remain jointly and severally liable for the repayment of the mortgage until it is redeemed upon sale. The only exception to this is where the lender documents their agreement otherwise.

If it is the intention that the party continuing to reside in the property is to take responsibility for the mortgage payments pending the sale completing, then this should be narrated in the Separation Agreement. It should be borne in mind that the Separation Agreement is only binding on the parties thereto and is not binding on the mortgage lender. As such, the mortgage lender is free to pursue either or both parties for any arrears, and

subsequent mortgage payments. The party failing to make payment of the mortgage, after agreeing to do so in terms of the Separation Agreement, would be in breach of the Agreement and liable to the other in terms of same.

There are instances where neither party can afford to move out of the Matrimonial Home pending the sale completing. Nonetheless, it is still essential

ensure the parties' estates pass in accordance with their wishes and don't, by default, fall to an estranged spouse. This is equally important for non-married cohabitants going through a separation, as cohabitants have certain rights if their partner dies without leaving a Will.

Whilst many separating and/or divorcing couples wish to sell their property and go their separate ways as

quickly as possible, it is important to ensure that the correct documentation is in place prior to rushing head long in to the marketing process. Failing to do so will simply create unwanted

delays and stresses in the course of the sale.

**For those keen to sell their property quickly, the Separation Agreement can simply deal with the selling of the matrimonial home.**

to ensure a Separation Agreement is put in place and this should again deal with the division of bills, mortgage payments etc. This can help secure the smooth sale of the property when the time comes.

In advance of the sale of the matrimonial home, the parties should also review their Wills. This will

**If you have any queries concerning the sale of property on separation or divorce, then please get in touch with Karen Fulton or your usual Bird Semple contact.**  
email: [kf@bsemple.com](mailto:kf@bsemple.com)

## Perfect for winter...



**We are delighted to offer you the opportunity to win this beautiful Blue Striped Knitted Throw (100% Merino Lambswool), from Papa Stour.**

Papa Stour is a delightful online boutique offering the finest Scottish Contemporary Craft and Design. Nothing is "mass produced" and all products are handmade in small batches in Scotland, with care.

Whether you need a Christmas or birthday gift for someone special, or want a unique piece of Scottish craft for your home, Papa Stour has the perfect solution. Papa Stour showcases gorgeous pieces handmade by talented artists and designers from across Scotland and the collection is a wonderful mix of ceramics, silverware, leather, textiles and antlers.

You can view the full selection of luxury products, including photography, lighting, throws, deerskins, scarves, and ceramics at [www.papastour.com](http://www.papastour.com).

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

**What is the current Inheritance Tax threshold?**

Now just complete and return the enclosed postcard or e-mail: [competitions@bsemple.com](mailto:competitions@bsemple.com) on or before 31st December 2010.

Competition