

IN BRIEF

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Making a Will

If you have not made a Will or your personal circumstances have changed since you last executed your Will, you should consider updating it. A Will only takes effect from the date of a person's death. If you own property/assets abroad you should also consider taking the necessary steps to make a Will in that country and take separate legal advice concerning the laws governing inheritance there.

Once you have made a Will it can be changed and/or revoked, if necessary, provided you are of sound mind.

Recent amendments under the budget have changed the threshold for Capital Acquisitions Tax:

Group A Son/Daughter €225,000.00

Group B Parents/Brother/Sister/Niece/Nephew/Grandchild €30,150.00

Group C applies in all other cases €15,075.00

The rate of Capital Acquisitions Tax increased to 33% from 30% in respect of all gifts or inheritances taken on or after 6th December 2012.

If you have any queries or require further information please contact Ms. Hilary Clarke at hilary@arthurmclean.ie or Ms. Fiona Ryan at fiona@arthurmclean.ie or telephone 01 6772519.



Welcome to our newsletter which is full of useful legal information that concerns you and your business.



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Arthur McLean

SOLICITORS

ENDURING POWERS OF ATTORNEY

A person can provide for who will manage their affairs if they are not able to do so for themselves or because of the onset of dementia or loss of mental capacity this can be done by executing an Enduring Power of Attorney.

This is a straight forward document which allows you to appoint somebody who you trust (for example spouse/son/daughter) to manage your affairs for you.

Two separate Notice Parties are also notified about the existence of the document at the same time as an additional safeguard. You can put in specific restrictions/limitations into the document as well.

It is necessary to also obtain a doctors certificate for the document to take effect which must then be registered in the High Court before the Attorney who you appoint has the formal authority to manage your affairs on your behalf.

This could be done at the same time as making or updating your Will.



If you have any queries or require further information please contact Ms. Fiona Ryan at fiona@arthurmclean.ie or Ms. Hilary Clarke at hilary@arthurmclean.ie or telephone 01 6772519.

PERSONAL INSOLVENCY ACT 2012

The Act is a radical reform of Insolvency and Bankruptcy Laws/Practice. It will now offer three alternatives to persons with insolvency issues:-

1. Personal Insolvency Arrangements – open to a person with debt of up to €3,000,000.00 including secured debt (for example bank mortgages).
2. Debt Settlement Arrangements – This process will allow a person to negotiate a fixed arrangement with all creditors of unsecured debts with no financial limit and if approved may allow an insolvent person to arrive at a situation where they can start afresh after five years (the old time limit was twelve years).
3. Debt Relief Notice – This allows a person to write off certain qualifying unsecured debts up to a maximum amount of €20,000.00 subject to a three year supervisory period.

If you have any queries or require further information please contact Mr. Larry Brennan at larry@arthurmclean.ie or telephone 01 6772519.

CIVIL PARTNERSHIPS

A STATUTORY CIVIL PARTNERSHIP REGISTRATION FOR SAME SEX COUPLES HAS BEEN SET UP UNDER THE CIVIL PARTNERSHIP AND CERTAIN RIGHTS AND OBLIGATIONS OF COHABITANTS ACT 2010.

In addition this law brought very significant changes to civil partnerships of opposite sexes. A civil partnership is now a legally recognised and binding civil contract and entering into one gives rise to far reaching legal consequences, which in general are very similar to those of getting married. Some of these consequences are outlined below:

Being in a Civil Partnership may affect your rights to inherit from your partner, for the purposes of most Social Welfare Claims people in a Civil Partnership are now treated the same as a married couple, and other consequences of Civil Partnership may include for example Power of Attorney (a Civil Partner must be informed of the registration of an Enduring Power of Attorney), Property Disputes (a Civil Partner may apply to a Court for a decision in relation to disputes over property with his/her Partner) and Maintenance (a Civil Partner may now apply for relief in the District Court for a Maintenance Order to be made in their favour as against a Civil Partner).

If you have any queries or require further information please contact Mr. Larry Brennan at larry@arthurmclean.ie or Ms. Fiona Ryan at fiona@arthurmclean.ie or Ms. Hilary Clarke at hilary@arthurmclean.ie or telephone 01 6772519.

Budget 2013

We set out hereunder a short summary of what we believe are significant changes that have been introduced under the terms of the 2013 budget that might be of relevance to our clients.

Mortgage Interest Relief

Mortgage interest relief ended on the 31st December 2012 which means that anyone who purchases a property after this date will no longer be entitled to any interest relief.

Income Tax, Universal Social Charge and PRSI

No changes were introduced to the income tax rates as they currently operate. The only change to the Universal Social Charge has resulted in a reduced rate for persons who are over the age of 70 years with income in excess of €60,000.00 which has now ended on the 1st January 2013 resulting in standard USC rates applying.

Changes to the PRSI has resulted in weekly PRSI exemption of €127,000.00 being abolished. As a result, most employees will now have to pay in addition an extra €264.00 per year in PRSI contributions. For self employed persons the PRSI contribution will be doubled to €500.00 and there will be an extension of PRSI to income from a trade or profession and unearned income for example rental income, interest on deposits and shares and dividend income.

Capital Gains Tax

As was expected Capital Gains Tax rates have been increased. All disposals made after the 5th December 2012 have been increased from 30% to 33%.

Capital Acquisitions Tax

The rate of Capital Acquisitions Tax has also been increased from 30% to 33% on all gifts and inheritances taken or on after the 6th December 2012.

The tax relief thresholds have also been decreased across the board by 10%.

Local Property Tax

In what was one of the most anticipated aspects of the budget the new residential property tax, also now known as the local property tax (LPT), will commence on the 1st July 2013. Property values will be arranged in a number of value bands up to



€1 million. The LPT will be charged at the rate of 0.18% of the mid-point of the relevant value band. For properties valued at over €1 million, the LPT will be payable at the rate of 0.18% on the first €1 million and 0.25% on the portion of the value over €1 million.

The amount you pay is based on the market value of your property at 1st May 2013. The Revenue Commissioners have stated that the initial valuation applied in 2013 will be valid up to and including 2016. Each property owner will have a variety of ways to discharge payment of the local property tax by direct debit, credit card, cash or to have the tax deducted at source from their salaries, pensions or social welfare payments.

It is understood that the Revenue Commissioners will provide property valuation guidance on their website at www.revenue.ie from March 2013.

Certain properties are exempt from the LPT, including properties bought by first time buyers between 1st January

2013 and 31st December 2013, if used as the buyer's sole or main residence, and new and unused properties purchased from a builder or developer between 1st January 2013 and 31st October 2016. There is however no exemption or relief for people who are in negative equity or in arrears with their mortgage.

The household charge that existed up until the end of 2012 ceased on the 1st January 2013. Any arrears that are not discharged by the 1st July 2013 will be converted to an LPT charge of €200.00 and will be collected by the Revenue Commissioners through the new local property tax system.

If you need any assistance in dealing with any of the issues raised above or wish to discuss any other aspect of this matter then please contact Ms. Ciara McMahon at ciara@arthurmclean.ie or Ms. Hilary Clarke at hilary@arthurmclean.ie or telephone 01 6772519.

Cookies regulations

ALL WEBSITES MUST PROVIDE INFORMATION ABOUT THEIR USE OF COOKIES AND MUST OBTAIN CONSENT BEFORE STORING COOKIES ON A USER'S COMPUTER.

It is important therefore for all businesses to ensure that their websites have been and continue to be updated and are in compliance with the European Communities (Electronic Communications and Networks and Services) (Privacy in Electronic Communications) Regulations of 2011 which are the Irish regulations implementing the European Directive on this issue.

The key aim under this directive is to enhance the privacy of internet users and to ensure that cookies will not be used by the operator of any website until a person who has accessed that website has specifically given his or her consent to the use of cookies. Any such consent will only be valid if the person who accesses the website has received clear comprehensive information about the use of cookies in what is deemed to be a user friendly manner.

A cookie consists of a piece of code sent from a website and stored in a user's web browser. When that user visits the same website again the website can retrieve information about the user's previous activity on the website from the cookie. Cookies are useful to website operators as they allow for targeted advertising to potential customers among other things.

Many Irish websites now incorporate, usually on the home page and each page of the website, a very clear statement that specifically deals with the fact that cookies are used by the website and alerting the website user to the specific policy of that website on the use of cookies.

Website operators need to consider if these new regulations impact upon the way in which their website operates.

The Office of the Data Protection Commissioner (ODPC) wrote to 80 Irish websites in 2012 requesting information as to how they were complying with the new cookie legislation. This development by the ODPC is a clear message to Irish website operators to comply with the requirement to provide information and to obtain a specific consent to the use of cookies. Data protection law is increasingly becoming a more important day to day concern for businesses and customers and for that reason it is important that websites be updated to take into account the requirements of these regulations.

If you need any assistance in dealing with any of the issues raised above or wish to discuss any other aspect of this matter then please contact Ms. Ciara McMahon at ciara@arthurmclean.ie or telephone 01 6772519.

CONVEYANCING CONFLICTS TASK FORCE REGULATIONS

ON THE 1ST JANUARY 2013 THE CONVEYANCE CONFLICTS TASK FORCE REGULATIONS CAME INTO EFFECT. THESE REGULATIONS WILL AFFECT BOTH MEMBERS OF THE LEGAL PROFESSION AND THEIR CLIENTS.

These new regulations came into effect on foot of the recommendations of a task force in light of concerns over solicitors acting for both Purchaser and Vendor or a Transferor and Transferee in property transactions and in recent times concerns regarding elderly and vulnerable clients.

Before the introduction of the new regulations a solicitor was allowed to act for both parties in a voluntary transfer or a transfer for value. This would often be very cost effective for all concerned especially where there was a voluntary transfer between family members. The new regulations will now require each party to instruct a firm of solicitors and to be separately and independently represented.

These new regulations undoubtedly change current conveyancing practices and will prohibit the same solicitor or indeed two solicitors within the same firm acting on behalf of the Vendor and Purchaser or Transferor and Transferee in property transactions.

There are two exceptions to the prohibition on solicitors acting for both parties in voluntary transfers and transfers below market value. The first is where it is agreed between the parties to transfer the family home into joint names under the Family Home Protection Act 1976 or the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 and the second relates to property held under bare trust.

This new law will undoubtedly bring the Irish Conveyancing System in line with many other jurisdictions and will provide greater protection to elderly and vulnerable clients.



If you need any assistance in dealing with any of the issues raised above or wish to discuss any other aspect of this matter then please contact Ms. Hilary Clarke at hilary@arthurmclean.ie or telephone 01 6772519.

LANDLORD AND TENANT LAW – COMMERCIAL

DURING THE BOOM YEARS IT WAS COMMON PLACE IN COMMERCIAL LEASES TO CONTAIN A PROVISION KNOWN AS “UPWARD ONLY” RENT REVIEWS. THIS RESULTED IN MANY GUARANTORS BEING EXPOSED TO VERY HIGH RENTS IN THE EVENT THAT THE TENANT DEFAULTED AND A LANDLORD CALLED UPON THE GUARANTOR TO PAY ANY UNPAID RENT. THE CASE OF REOX HOLDINGS LIMITED-V-DAVID CULLEN AND SIMON DAVIDSON (2012) IEHC 299 INVOLVED THE CONSIDERATION OF SECTION 132 OF THE LAND AND CONVEYANCING LAW REFORM ACT 2009 (THE 2009 ACT) WHICH ALLOWS FOR BOTH AN INCREASE AND DECREASE IN RENT IN ANY NEW LEASE ENTERED INTO AFTER THE 28TH FEBRUARY 2010.

This case is of considerable significance in Landlord and Tenant Law. The facts of the case concerned a Lease that was granted in 2007 in relation to an Industrial Unit located in Carlow. The Lease was for a period of 25 years and contained an upwards only rent review clause.

The tenant company went into both receivership and liquidation and the second named Defendant in these proceedings Simon Davidson was appointed as a Receiver over the property by Ulster Bank in July of 2011.

The Lease provided that if a liquidator disclaimed a Lease or the Tenant ceased to exist then the Landlord could call upon the Guarantor to execute a new Lease for a term commencing on the date of the disclaimer at the same rent as the original Lease for the remainder of the term of the Lease subject to all the same covenants, conditions and provisions.

In 2009 the Tenant changed its name and in 2010 a resolution was passed voluntarily to wind up that company. The Liquidator informed the Receiver that he was going to disclaim the Lease. The Landlord in those circumstances called upon the Plaintiff who was guarantor to execute a new Lease on the same terms as the previous Lease to include the upwards only rent provision. The Guarantor agreed to take on the new Lease but referred to and relied upon section 132 of the 2009 Act in respect of seeking an upwards and downwards rent review provision.

Ultimately the High Court found that the Guarantor in this particular case was entitled to a Declaration that section 132 of the 2009 Act applies to any new Lease entered into after the 28th February 2010 by the Guarantor with the Landlord resulting from the exercise of the provisions of the Guarantee contained in the Lease. The rent therefore when reviewed could be upwards or downwards or indeed remain the same.

Each case is dependent upon its own individual facts and circumstances. However this decision is of major significance. It clarifies doubts as to whether or not the provisions of section 132 of the 2009 Act would apply in circumstances where a Guarantor is called upon to enter into a new Lease.

If you need any assistance in dealing with any of the issues raised above or wish to discuss any other aspect of this matter then please contact Ms. Hilary Clarke at hilary@arthurmclean.ie or telephone 01 6772519.

LANDLORD AND TENANT LAW – PRIVATE ACCOMMODATION

THE HOUSING (STANDARDS FOR RENTED HOUSES) REGULATIONS 2008 (THE “REGULATIONS”) HAVE BEEN IN OPERATION SINCE THE 1ST FEBRUARY 2009 WITH THE EXCEPTION OF ARTICLES 6, 7 AND 8 WHICH WILL NOW AFFECT EXISTING TENANCIES SINCE THE 1ST FEBRUARY 2013.

The Regulations will apply to Landlords of rented houses whether they are single houses or houses that contain multi units.

A Landlord is deemed to be a person who is entitled to receive rent paid in respect of each housing unit and therefore Receivers are also obliged to take note of the obligations under the Regulations where they are in receipt of rent for rented residential property. Non compliance with these regulations may ultimately lead to these properties being incapable of providing rental income and consequently Receivers may only be able to sell assets at a far lower price. In addition Receivers may also have to incur very significant capital outlay and expenditure to ensure that rental properties comply with this new legislation.

There are certain exemptions which include holiday lettings, sheltered housing provided by the Health Service Executive or to certain approved bodies or housing provided by Housing Authorities under the Housing Acts. The new changes that came into effect on the 1st February 2013 will mean that every housing unit let or available to let for rent as a dwelling must provide tenants with adequate sanitary facilities (Article 6) heating facilities (Article 7) and food preparation and storage and laundry facilities (Article 8).

The most significant change will be in relation to sanitary facilities. The practical effect of this means that Tenants do not have to leave their own individual housing unit in order to access toilet/washing facilities and do not therefore have to share bathroom facilities with other tenants. This is of greatest relevance in pre 1963 divided properties where shared sanitary facilities are more common.

Heating appliances must now be capable of independent operation and management by a tenant and not necessarily by the Landlord who may up until the 1st February 2013 sought to regulate a heating system. The Regulations will also impose the provision of certain items in every kitchen to include fridge freezers, cooking facilities, adequate food storage facilities and extractor fans. In addition access to individual or communal washing and drying machines where a house does not contain a separate garden or area for outside line drying facilities must be provided within the confines of the building. It will be the responsibility of the Landlord to ensure the maintenance and provision of these.

The introduction of these Regulations will impose significant cost burdens on some Landlords but will equally ensure that tenants are provided with safe, clean and habitable accommodation standards.



If you need any assistance in dealing with any of the issues raised above or wish to discuss any other aspect then please contact Ms. Hilary Clarke at hilary@arthurmclean.ie or telephone 01 6772519.



Freedom of information requests – access to medical records

Individual patients may be entitled to be granted access to their medical records in a number of different ways.

1. By routine and administrative access to HSE records.
2. Under the Data Protection Acts 1988 and the Data Protection (Amendment) Act 2003.
3. Under the Freedom of Information Acts.
4. By discovery in the course of Court proceedings.
5. By virtue of a contract between the patient and the medical practitioner or hospital in question.

In the case of a deceased person access to personal information may be granted:

1. To the personal representative who is administering the estate of the Deceased.
2. To a person who is performing a legal function in relation to the individual or the estate of the individual.
3. To the spouse (including a divorced spouse or cohabitee), or next of kin or such other person a medical practitioner or hospital considers appropriate.

Where disputes arise about access to records under the Freedom of Information Acts these are ultimately adjudicated independently by the Information Commissioner.

In 2012 the High Court considered the law in relation to access to a deceased person's medical records in the case of O'Loughlin -v- Information Commissioner (2012) IEHC 117 heard before Mr. Justice White on the 8th March 2012.

In that case the High Court ultimately ruled that Mr O'Loughlin who was the Plaintiff whose wife allegedly died as a result of suicide was not, on the basis of the facts put before the Court, entitled to access the information concerning her psychiatric treatment in the course of her lifetime contained in her medical records. Mr. O'Loughlin's wife allegedly committed suicide as a consequence of

witnessing the murder of her brother. It was Mr O'Loughlin's intention to apply to the Criminal Injuries Compensation Tribunal for compensation and on that basis he sought access to her medical records.

Under the Freedom of Information Act 1997 Section 28 (1) of that act protects the privacy of individuals by allowing the withholding of personal information held by a public body i.e. in this instance a hospital from a third party access.

Under Section 28 (6) of the same Act it states that by way of regulations, being Regulation 4 of Statutory Instrument 387 of 2009 The Minister may provide for the granting of a request where the individual to whom the record relates to is dead and the requestor concerned is a member of a specific class specified in the regulations.

Ultimately Mr. O'Loughlin was refused access to the records sought by him in this instance by the Health Service Executive. On that basis he appealed the decision to the Information Commissioner. On considering the matter the Information Commissioner affirmed the decision of the Health Service Executive in deciding that the public interest was in favour of the non release of his deceased's wife's medical records to him.

Mr. O'Loughlin brought Judicial Review Proceedings in the High Court in which he sought a number of reliefs including a declaration to quash the decision of the Information Commissioner. The High Court noted that the prohibition on the release of personal information may be set aside where, on balance the public interest where granted outweighs the public interest to the right of privacy of the individual be upheld and the granting of the request would benefit the individual to whom the information relates.

Judge White, in his decision stated that the Act is clear in stating that the personal information of a deceased person is protected under the Act. The Court also emphasised that the personal information of the late Mrs. O'Loughlin given by her during the course of her lifetime was given in strict confidence to her medical advisors. Judge White on the basis of the facts of the case refused the application seeking to have the records be released and the reliefs sought by Mr. O'Loughlin and upheld the decision of the Information Commissioner.

If you need any assistance in dealing with any of the issues raised above then please contact Ms. Fiona Ryan at fiona@arthurmclean.ie telephone 01 6772519.