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## intention not enough rules court

**The importance of putting one's intentions into proper form was again emphasised in a recent case involving a couple who looked after an elderly friend when he became unable to care for himself.**

He offered them the use of two properties he owned and they used them for several years, decorating, maintaining and even carrying out improvements to one of them. The man told the couple that he intended to leave the properties to them when he died. He signed a document to that effect, but it was not a valid will and he died legally intestate. When he died, the properties were valued at £280,000.

The couple applied for the title to the properties to be transferred to them. When their request was refused, they went to court claiming that the man's promise had created a 'constructive trust' for them and that they were entitled to the properties because they had acted to their own detriment on account of the man's promise. The court rejected their claim, awarding them only £20,000, intended to compensate them for their expenditure plus a small sum for their disappointment. The couple appealed, claiming that there was in effect a bargain between them and the man which the court should uphold.



The Court of Appeal concluded that the man's offer of property for use was not accompanied by a requirement that the couple carry out the acts for which they claimed compensation, so there was no 'bargain'. Nor was there any ground for the assumption that receipt of properties worth £280,000 was in proportion to the detriment that the couple had suffered. The claim was therefore rejected.

This case was avoidable – had the man created a valid will passing on the properties, it would not have taken place. This would have been easy and inexpensive to do.

We can help you to ensure that your intentions are put into appropriate legal form.

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## what is phased retirement?

Phased retirement is the term given to the process by which retirement pensions are split into segments, which are then treated as separate

pension policies. It makes use of the rule that allows a pension policy holder to take each pension policy at a time of their own choosing, between the ages of 55 (normally) and 75.

Phased retirement can be particularly advantageous if you are likely to want to increase your income from your pension over time,

for example after giving up part-time work. It can form a valuable part of your Income Tax strategy in retirement and can have a place in plans to mitigate Inheritance Tax.

The main advantages of phased retirement are that it lets you control when you receive your income and can be used to supplement other income.

Ask us for advice on family wealth protection.

### In brief

#### HMRC target buy to let landlords



HM Revenue and Customs (HMRC) have launched hundreds of investigations into the tax affairs of buy to let landlords, including many who have long since sold their buy to let properties.

We can advise on all aspects of property ownership and tax compliance and assist in dealing with HMRC enquiries.

#### inheritance tax threshold

The threshold above which Inheritance Tax is payable on a deceased person's estate is £312,000 for the tax year 2008/2009. The threshold for 2009/2010 will be £325,000, followed by a further rise bringing the level to £350,000 for the tax year 2010/2011.

#### bereavement damages increase

The level of damages for bereavement in England and Wales has been increased from £10,000 to £11,800 and the new level applies for causes of action which commenced after 31 December 2007.

It is intended that in future, adjustments will be made at three-yearly intervals.

### mental illness and wills

A will is only valid if the person making it has 'testamentary capacity', which means the person:

- can understand the meaning of the will;
- has some sort of understanding of what assets the will deals with;
- is aware of their moral obligations and who will benefit from the will; and
- can understand in broad terms the effect of the will.

Recently, a woman died several years after writing a will which appeared rational. It was, however,

disputed after the grant of probate on the ground that the woman had lacked testamentary capacity when the will was made.

The court heard that the woman had a long history of mental illness and was likely to have been mentally disturbed when the will was drawn up.

As the mental condition from which she suffered was severe to the point of being disabling, the court revoked the grant of probate.