



**GROSS & CO**  
SOLICITORS

# Newsletter

## Grandparents' Rules

Special Guardianship Orders crept in almost unnoticed on to the Statute book at the very end of 2005.

A special guardian takes on their legal role in the child's life, during the lifetime of the child's parents, and can work alongside, or to the exclusion of the child's parents.

### How is a special guardian appointed?

Only by a Court. The Court can simply appoint a special guardian, or anyone who qualifies (see below) can apply to a Court for a Special Guardianship Order.

### Who is eligible to be a special guardian?

Special Guardianship is often the territory of grandparents who are looking after a grandchild or grandchildren, on a long term basis.

- Any individual who has a Residence Order in respect of a child or children
- Any person with whom the child or children has lived for a period of least three years
- Anyone who has the consent of each person in whose favour a Residence Order currently exists

- Anyone who has the consent of a local authority (where the child is in care)
- Anyone who has the consent of those who have parental responsibility for the child

### Why Special Guardianship?

A child's GP or school will not reveal any information about a child, to a person without parental responsibility or without an Order of the Court. Whilst the Special Guardianship Order exists, the guardian will have parental responsibility. This can be exercised to the exclusion of anyone else with parental responsibility for the child, with some exceptions. The exceptions are immunisation, a change in the child's education, consent to adoption, change of child's surname or removal of a child from the UK for more than three months.

Special guardians therefore have significant powers. Those powers can be varied by the Court, either if the special guardian themselves applies for a variation or, if the Court deems it in the best interest of the child or children. Special Guardianship Orders can continue until the child reaches the age of 18, unless otherwise provided for.

Many grandparents have acted as pseudo special guardians, for many years. They have done so without any legal title being



conferred upon them. Because of the ever more regulated nature of our society, this is largely no longer practical. It is often the case that following a marital breakdown, the parents of a child may no longer be able to provide parental care, and one or other parent will turn for help to a grandparent. Obtaining a Special Guardianship Order in these circumstances can avoid the conflict that would otherwise exist between one of the parents with parental responsibility, and the grandparents who are looking after the child on a day to day basis.

For further information, contact:

**Elizabeth Hodder**

Solicitor and Collaborative Lawyer

**eah@gross.co.uk**

Member of the Grandparents' Association



**The Grandparents' Association**

charity number 1105977

## Choose Your Wills Adviser Carefully

Many of you will have noticed a recent flurry in the media, including Panorama, focusing upon Will drafting, Will advisers and executors.

In the straitened times, we all, quite rightly, seek for a bargain or, at least, good value for our money.

However, shopping around for the cheapest alternative could be very expensive indeed.

To ensure as far as possible that you will receive good value in the form of full professional advice when making or changing your Will, bear in mind the following questions

you should be asking your adviser before you instruct them.

1. For how many years have you been advising clients with regard to Wills?
2. Are you a member of a recognized specialist professional body (such as the Society of Trust & Estate Practitioners 'STEP') which requires proven expertise and annual refreshers to ensure continuing competence?
3. Is your firm protected such that in the event of a mistake having been made, it is possible for a client to seek financial redress?
4. What arrangements has your firm made for the storage of my Will i.e. is it fully catalogued and registered and kept in a fire proof safe?
5. In the event of your firm ceasing to trade or being amalgamated, what arrangements will be made with regard to my file of papers and my Will?
6. What is your fee for drafting the Will and any other services regarding my Will including storage? Do you belong to a professional body which regulates your charges? Do you offer the ability for my details to be registered on a National Wills Register to assist my relations in checking

whether I have left a Will in the event of my losing touch with you?

For those of you who are not aware, perhaps I could remind you that we offer a free half hour review both for existing and new Wills clients to consider queries and needs including the revision of existing Wills. Our standard fee for the preparation of a Will including registration on a National Wills Register is £195 plus VAT and for a Codicil £90 plus VAT.

**Gary De'Ath**  
**gd@gross.co.uk**

**Sarah Lee**  
**sl@gross.co.uk**



# CHILDREN ENFORCING CONTACT

In the past the Courts have been criticised for not enforcing Contact Orders, leaving absent parents distraught and frustrated by the legal system. They have little or no contact with their children for months and sometimes years, while they fight to see them.

The Courts are now taking a robust approach to cases where a resident parent withholds contact with an absent parent. Three recent cases illustrate this:

- A mother refused to comply with a Contact Order on at least 11 occasions. The Court considered sending the mother to prison, but as she had recently had a baby with her new partner, the Court decided to make a Residence Order in favour of the father instead.
- The Court made a Residence Order in favour of a father, who had not had contact with his son for four years. The child, who was 12 at the time of the Court Hearing, made it clear that he did not wish to live with his father. However, during the proceedings it became clear that the child had suffered emotional harm by the mother. Even though it was considered to be traumatic for the child in the short term, it was decided that it would benefit his welfare in the long term if he were to live with his father.
- A mother had failed to comply with a Contact Order on a number of occasions. The Court committed her to prison for three concurrent terms of 28 days.

Recent changes in the law have also given the Courts powers to attach directions and Orders to Contact Orders in the event that parents do not comply. One example is a Contact Activity Direction, whereby the parent who does not comply with the Contact Order must take part in an activity to promote contact, e.g. parenting programmes. Another example is an Enforcement Order, whereby the parent must undertake a period of unpaid work. Finally, if a parent's breach of a Contact Order has caused financial loss to the other parent, the Court may order that he or she pay compensation, if they have no reasonable excuse for the breach.

**Julie McDonald**  
jm@gross.co.uk



83/84 Guildhall Street  
Bury St. Edmunds  
Suffolk  
IP33 1LN

Phone: (01284) 763333  
Fax: (01284) 762207  
[www.gross.co.uk](http://www.gross.co.uk)

## Homeowners Code for New Homes - Good News For Buyers -

In something of a surprise move a new Homeowners Code was announced and came into effect from the 1st April 2010 for new build properties. Although, in theory, it is not compulsory in practice it is since homebuilders cannot offer National House-Building Council, Premier Guarantee or Local Authority Board Control new home warranties without adopting the code.

The idea behind the code is to ensure that homebuyers are treated fairly, are given reliable information and know what service levels to expect. Some of the salient points are:

- All sales and marketing material must be clear and truthful;
- There must be a written reservation agreement with an explanation of the warranty cover, a description of any management services (plus an estimate of their costs) and a list of contents (e.g. white goods, carpets, curtains etc);
- There should be brochures or plans which reliably show the layout, appearance and plot position of the property;
- Contact details of the person in the homebuilders' organisation who will deal with any questions the buyer has must be provided;
- The reservation agreement must be signed by both parties and give the homebuyer the right to cancel the agreement at any time during the reservation period and the reservation fee must be returned; so the practice of holding non-returnable deposits must end.
- After completion the homebuilder must supply contact details for the first two years of the home warranty period and provide an after-sale service and an explanation of the process for handling emergencies.

If you require any more information about the code or are thinking of buying a new property please contact Steven Quy Conveyancing Manager [sq@gross.co.uk](mailto:sq@gross.co.uk)

## Tougher requirements for non-European nationals applying to join a settled partner in the UK

The Government have announced that from autumn 2010 non-EU nationals looking to join their settled partner in the UK will need to demonstrate a basic command of the English language before they are issued with a visa. The new Rules will apply to individuals applying as the husband, wife, civil partner, unmarried partner, same sex partner, fiancé or prospective civil partner of a British citizen or a person settled in the UK. The new Rule will apply to those individuals

applying for visas from abroad and also for those applying for permission to remain whilst they are already within the UK. The individual will need to demonstrate that they have passed a prescribed English language test with a UK Border Agency approved test provider.

The new Rule will apply in addition to the existing onerous Rules which already apply to those individuals looking to join settled partners in the UK.

If you require any further information or advice regarding anything contained in this article or any other matter concerning UK immigration laws and rules please contact Sohan Sidhu by email at [ss@gross.co.uk](mailto:ss@gross.co.uk) or by telephone on 01284 763333.

