

# YOUR QUESTIONS ANSWERED

The *Choice* panel of experts answers your queries on tax, pensions, benefits, investment and the law

## Could you clarify the Stamp Duty rules?

**Q** I am very confused by the changes to Stamp Duty which mean buyers with more than one property have to pay a higher rate, and I have been given conflicting information by two different solicitors.

My wife and I bought a holiday home in 2014. We now want to downsize our family home, staying in the same area, and keeping this new home as our main residence. However, we plan to keep our holiday home. My understanding was that, as we would be replacing our main residence when we downsize, we would not be liable to the additional Stamp Duty. Could you please clarify this?

Also, what would happen if we sold our current family home and temporarily decamped to our holiday home while we looked for a new main home? An estate

agent suggested this might be a good idea as it would mean we would be 'cash buyers', but we don't want to do that if it would mean having to pay the extra Stamp Duty.

Name and address supplied

*Teri Harman, Editor, YM&YR, replies:*

**A** The new Stamp Duty rules are confusing and I am not surprised that you have received conflicting advice. I contacted the Law Society, which referred me to an expert in this field, and my thanks go to Sarah Dwight, a sole practitioner solicitor in Birmingham, for this reply:

"Provided that you are replacing your main residence, even if it is not on the same day, then you do not pay the additional Stamp

duty. Compare this with the scenario where a person owns a property, which they then decide to let and buy a larger family home – that person would pay the additional three per cent Stamp Duty as at the end of the day, they will be buying a second property. In such cases, should that person wish to sell the first property, they have three years from the date of completion of the second property to do so and reclaim the difference in the Stamp Duty paid.

"Even if you were to move temporarily to your holiday home, you would still not have to pay the additional Stamp Duty as you would be replacing your main home when you buy again in your current location."

## Can I raise my tenant's rent if I improve the property?

**Q** I have inherited a three-bedroom property on the outskirts of Birmingham. It is rent-controlled at just over £303 a month. I pay 10 per cent to a managing agent and so receive around £267. The tenant is in his 70s and on benefits.

He keeps the house in reasonable order but there is no central heating or double glazing. The house also has a large garden which the tenant does his best to maintain but it is too much for him. I have recently paid £1700 to remove trees and tidy the garden.

I have had quotes for central heating and double glazing of £3540 and £8394 plus VAT respectively. Are there any government grants towards this work? I have heard of an ECO scheme and wonder would this be relevant?

The tenant has not asked me to carry out any improvements, but he may think the rent will rise if I do. On that subject, if I were to carry out these improvements, could I then raise the rent to a more realistic amount?

Name and address supplied

*Teri Harman, Editor, YM&YR, replies:*

**A** We don't have a property expert on our panel so I spoke at some length to David Cox, chief executive of ARLA (Association of Residential Letting Agents), about your queries, and he was most helpful.

As you might have guessed, the answers are not straightforward. We assume that your tenant has been in

the property since before April 1989 as after that rent controls no longer applied. Essentially, as your tenant is on benefits, he would be entitled to grants under the ECO scheme's 'affordable warmth' programme which covers central heating and other energy-saving improvements. It is your tenant who is eligible, but as the landlord you can start the application process. See: ([www.gov.uk/energy-company-obligation](http://www.gov.uk/energy-company-obligation)). You can ask for a 'Green deal advice report' which, as well as looking at what energy-saving improvements can be made, will decide on your tenant's eligibility, and also arrange for any work to be carried out: ([www.gov.uk/green-deal-energy-saving-measures/get-an-assessment](http://www.gov.uk/green-deal-energy-saving-measures/get-an-assessment)).

David told me that, whereas normally a landlord is responsible for the upkeep and maintenance of a tenanted property, where rent controls are in place it is the tenant's responsibility. If you were to carry out the improvements at your own expense, you would be entitled to put up the rent to a market rate. However – and this is the rub – your tenant can refuse to allow you to carry out the improvements, and David says in many cases this is what happens as tenants don't want their rent to rise. In many cases, of course, they cannot afford to pay a market rate and so would effectively be making themselves homeless by agreeing.

## Can I revise an Advanced Statement?

**Q** In August 2016 I made an Advanced Statement, lodged with my doctor and my family. In May 2017 I made a health and welfare Lasting Power of Attorney, which is registered and my doctor also has a copy. This includes the statement: "I prefer that decisions regarding my treatment and care, insofar as they don't conflict with the above two preferences, are in line with my Advanced Statement." Can I make a revision to my Advanced Statement, duly dated and lodged as before? If so, can I expect this revision to be taken rather than the one in force at the earlier time of making my LPA?

Name and address supplied

*Charmaine Hast of Wedlake Bell replies:*

**A** My colleague Ann Stanyer, replies:

An Advance Statement (also known as 'Advance Decisions/Directives') is a statement by an adult (who has full mental capacity) setting out a refusal of a specified medical treatment for a time in the future when they may lack the capacity to consent to or refuse that treatment. If valid, health care professionals must abide by the Advance Statement. It is acceptable to cross-refer to an earlier Advance Statement in

your Lasting Power of Attorney for Health and Welfare ('your LPA') and, indeed, this is preferable, to avoid confusion over which document is intended to prevail as they can both cover similar health care issues. A copy of the Advance Statement should be lodged with the Office of the Public Guardian (OPG) when the LPA is registered.

Your question about whether any later updates to your Advance Statement will effectively be 'read into' your LPA by virtue of your preference wording is not straightforward. The OPG has not issued guidance on this issue. However, the main point to note is that, provided your updated Advance Statement is correctly drafted and executed, it will be valid regardless of the cross-reference in your LPA. I would recommend that you send a copy of the updated Statement to the OPG.

It is possible your attorneys may not recognise the later Statement because it is not clear whether the reference to 'Advance Statement' in your LPA means the document in force at the date the LPA was signed, or the one at the time the LPA needs to be used. However, I cannot see this as being a problem in practice, provided you give a copy of the later Advance Statement to your attorneys (and doctor).

## Over to you

*Ask The Experts* is a free service exclusively for readers of *Choice*. Our experts aim to answer your questions on these pages in future issues of the magazine.

Write to Ask The Experts, *Choice*, 1st floor, 2 King Street, Peterborough PE1 1LT. Please aim to keep your letter to no more than one sheet. Or e-mail: ([editorial@choicemag.co.uk](mailto:editorial@choicemag.co.uk)). If you do not want your name publishing with your letter, please state this in your correspondence.

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■ All letters will be answered and you will receive a reply to the address supplied in your letter. However if your problem is urgent, or you need a reply by a specific date, we suggest you also contact a relevant professional adviser. It is also sensible to do so before making any major financial decision.

## MEET THE CHOICE PANEL OF EXPERTS

answering your letters on investing, tax, pensions, benefits, insurance and the law

LAW



**MICHELE WIGHTMAN** ranked by Legal 500 as a highly regarded Private Client practitioner in Yorkshire, heads h/w Keeble Hawson's Private Client Department. A full STEP-qualified fee earner, Michele has a wealth of expertise that comprises Wills and probate along with tax planning and estate administration.

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**JENNIFER STORROW** Jennifer Storrow is Investment Director of Gee7 Wealth Management, a firm of financial planners. She specialises in investments and pensions and answers personal finance questions on radio and in newspapers

INVESTMENTS



**SCOTT GALLACHER** is a director of Leicester-based IFAs Rowley Turton. An award-winning chartered financial planner and personal finance expert, Scott advises on investments, pensions, retirement planning and long-term care

LAW



**CHARMAINE HAST** is head of the family team at London law firm Wedlake Bell. She has particular expertise in advising on high profile divorces, can advise on cross-border money matters and has a particular interest in trusts and pensions

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**MORAG WATSON** is a partner with accountants Scott-Moncrieff. She has a wealth of experience dealing with tax issues including CGT and Inheritance Tax ([www.scott-moncrieff.com](http://www.scott-moncrieff.com))

INVESTMENTS



**ANNIE SHAW** is founder of financial website ([www.cashquestions.com](http://www.cashquestions.com)) which offers subscribers the chance to ask money questions online. She has worked as a financial journalist and broadcaster

LONG-TERM CARE



**ANDREW DIXON-SMITH** is Business Development Director and Adviser of Eldercare Group Limited and Advisory Board Member of Solla (The Society of Later Life Advisers). He has worked in financial services for 30 years, specialising in long-term care advice since 1998 and has twice won the Health Insurance Award for Best Long-Term Care Intermediary