



### E-Conveyancing – Where Are We Now?

Anyone who has bought or sold a residential property has probably wondered why the conveyancing process takes so long. Surely, in this digital age something could be done to 'speed up the searches' and generally make the whole experience easier and less stressful?

Plans to transform the paper-based conveyancing process in England and Wales were first mooted in 1998. The Land Registry was subsequently given the task of developing a system whereby all those involved could deal with each other electronically and, to this end, the Land Registration Act 2002 established laws to enable this. Over 10 years later and after several consultation exercises, where are we now?

The conveyancing system in England and Wales is the most complex in Europe, so to make electronic conveyancing secure was never going to be easy.

Some services which will eventually form part of the comprehensive e-conveyancing system are now available. For example, professional users can gain instant access to information on more than 20 million registers of title covering the majority of properties in England and Wales. Some simple applications can now be made online for the same fee as a paper application. For a fee, members of the public can also download copies of entries or a title plan for a particular property.

Electronic Discharges enable very high volume lenders to remove legal charges from the Land Register. Following redemption of a legal charge affecting registered land, a lender's computer updates the Land Register automatically.

In early 2008, the Land Registry and PISCES, a not-for-profit organisation set up to promote the rapid take-up of e-commerce for the benefit of the property industry and its customers, began collaborating on the best way forward. The intention is to introduce new services in stages. 2009 should see electronic transfers between banks and the Land Registry, with conveyancers following in 2010. A burning issue is whether or not the e-security issues can be overcome so as to minimise the risk of fraud,

so electronic change of ownership is likely to be a long way off.

If it materialises, a swifter conveyancing system will take some of the stress out of moving house. We can help you ensure your property sale or purchase runs as smoothly as possible.

Contact Chris Pease on 01992 300333 for advice.



### Valuation Not Binding if Not All Parties Agree

*In the present market, it is likely that there will be many instances of shareholders in unquoted companies, which are often owned and managed by a small group of people, selling their shares to other shareholders...*

The main problem in such instances is almost always the question of the valuation of the shares.

Sometimes, a company's Articles of Association will contain a mechanism outlining the steps to take in such circumstances. Alternatively, and more commonly, a shareholders' agreement will have been entered into. In either case, unless a valuation formula has been set out, the shares which are changing hands will have to be independently valued and this is where the problems usually start.

In a recent case heard by the Court of Appeal, a minority shareholder

who had been a director of a company was required, by the Articles of Association of the company, to sell his shares as a result of leaving the company.

Independent valuers, a large firm of accountants, were appointed by the company. When they delivered their valuation of the ex-director's shares, he disagreed with it.

The circumstances were that the company had appointed the accountants and signed the letter of engagement. The ex-director maintained the stance that he was reserving his position and refused to sign the letter of engagement. The

argument turned on whether the accountants were validly appointed to value the shares.

In the view of the Court, they had not been validly appointed under a tripartite agreement and the ex-director was therefore not bound by their valuation.

Lord Justice Mummery commented that the issue '...would not have arisen if the Articles had contained the provision commonly included in the Articles of Association, in the context of invoking the compulsory transfer provisions, that the value of the shares is to be determined by the auditors of the company. The

auditors of the company are already in office. The issue of a disputed appointment would not arise'.

As this case illustrates, buyouts of minority shareholders are often subject to dispute, even in those instances where relations between the shareholders are relatively cordial. It is sensible to think about such things early on in the life of a small company as once it becomes successful, delay normally makes things more difficult.

Contact Richard Taylor on 01992 300333, for advice on all matters relating to company law and the purchase and sale of businesses.



*'We continue to be satisfied with the service of Longmores and will remain clients even though we have moved away.'*

## Credit Crunch - Divorce Settlements in the Spotlight

A city tycoon has failed in his attempt to reduce the divorce settlement agreed with his wife in 2008.

Investor Brian Myerson and his wife Ingrid divorced at the peak of the recent boom. The settlement involved him giving his ex-wife a lump sum of £9.5 million and a property in South Africa worth £1.5 million. Although he had mortgages and other liabilities of £2.5 million, this still left Mr Myerson with a considerable fortune, his investment company being then valued at more than £15 million. At the time, the settlement left Mr Myerson with 57 per cent of the couple's total assets. Then came the credit crunch. Mr Myerson's shareholding in his

company is now valued at less than £2 million, meaning he has a negative net worth in the region of £500,000. £2.5 million of the original sum due to Mrs Myerson is still unpaid. Mr Myerson went to the Court of Appeal in a bid to have the settlement overturned but the Court rejected his argument. In its view, the 'natural process of price fluctuation, however dramatic', did not satisfy the legal test for a change in a settlement.

The ruling will come as a blow to many wealthy divorcees who were hoping to renegotiate their settlements. However, Mr Myerson has said that he will now take his appeal to the House of Lords.

## Charities - Changes Ahead

*The second wave of measures introduced under the Charities Act 2006 comes into force in October 2009.*

One important change is the creation of 'exempt' charities, which will not be registered with or governed by the Charity Commission. These will be larger public institutions with charitable ends, such as museums and universities.

The biggest change, however, will be the ability for a charity to become a Charitable Incorporated Organisation (CIO), which will permit limitation of liability for the charity's officers and members in a simpler structure than is now possible. In principle, this would seem to be an excellent idea, but there is a potential

downside, which is that suppliers and others might be more cautious in their approach to the charity as they could perceive the new structure as representing a greater commercial risk than was the case when the charity was an 'unlimited' organisation.

The Charity Commission is to undertake a consultation on the implementation of CIOs and this should shortly be published on its website at:

[www.charity-commission.gov.uk/](http://www.charity-commission.gov.uk/).

For further advice contact Richard Horwood or Graham Field on 01992 300333.

## Be Careful What You Talk About In Taxis (or emails)



It is often thought that for a binding contract to be created, you have to 'sign on the dotted line', but most contracts do not need to be in writing to be valid. In a recent case, the claimant argued that he had made a contract with the defendant for the latter to purchase the whole of his shareholding in a company called Premier Resorts Limited. The sum claimed was £346,760. The narrow point at issue was whether a legally enforceable contract had been created by the exchange of unsigned emails and ancillary correspondence and as the result of a conversation in a taxi – but without a formal contract having been created.

The judge found that the contract was validly created and enforceable. Be careful what you agree 'informally'.

## IHT and Agricultural Property - Europe Demands Equal Treatment



*The European Commission (EC) has requested the UK to cease its discriminatory application of Inheritance Tax relief for agricultural property.*

What the EC is objecting to is not the relief, but the fact that, under UK law, agricultural property relief is available only in respect of agricultural and forestry property held in the UK, the Channel Islands or the Isle of Man, not in the entirety of the EU.

In the view of the EC, this is not compatible with EU law relating to

the free movement of capital. Says Graham Field, "If the Government is forced into changing the law, this will be good news for owners of agricultural businesses who have bought holdings in other EU countries."

For further information contact Graham Field on 01992 300333.

*'Fantastic service - our solicitor was extremely helpful and everything ran very smoothly.'*



## Pre-Nuptial Agreements – Parliament Must Act if Law to Change

*Pre-nuptial agreements are persuasive, not binding, in English Law and look set to remain that way for the foreseeable future.*

A relevant decision by the Privy Council stated that 'the validity and effect of ante-nuptial agreements is more appropriate to legislative rather than judicial development'.

The decision not to enforce a pre-nuptial agreement was taken by the Privy Council in a hearing involving two US Citizens who are resident in the Isle of Man. The case was the first substantial one following the referral of the law on pre-nuptial agreements to the Law Commission

last year. Accordingly, any alteration in the law relating to pre-nuptial agreements will have to await a change in the law by Parliament.

However, the Law Lords agreed that an agreement entered into after a marriage is contracted (a 'post-nuptial' agreement) would generally be enforceable, provided there was no exploitation of a dominant position by one of the parties to it. Such an agreement should always be made with the benefit of independent legal advice on both sides.

The position remains, therefore, that a pre-nuptial agreement which has been properly drafted with legal advice taken on both sides, whilst not binding, is persuasive to the court regarding a couple's

intentions for the distribution of their assets should their marriage fail. Accordingly, a 'pre-nup' will, in many cases, be worth consideration, especially where the family assets are very substantial.

If a pre-nuptial agreement is not made, it is sensible for married couples who are able to do so to consider making a post-nuptial agreement, which will normally be effective if the appropriate conditions are met.

Says Anna Baptist, "Putting in writing how family assets should be distributed in the event that a marriage fails may sound unromantic, but it can save much bitterness as well as money if the worst does come to the worst. We

can advise you on the creation and negotiation of pre- and post-nuptial agreements."

For advice on pre-nuptial's or any other area of Family law, contact Anna Baptist on 01992 300333.



## ECJ Rules on UK's Mandatory Retirement Age But the Fight Goes On

*People aged over 65 who want to keep on working face an uphill battle, following the long-awaited judgment of the European Court of Justice (ECJ) in a challenge to the UK's Employment Equality (Age) Regulations 2006, which were introduced to stamp out ageism in the workplace.*

The challenge was made by Heyday, a branch of the charity Age Concern.

Specifically, Heyday challenged the Government over the inclusion in the Regulations of a mandatory retirement age of 65 on the grounds that this meant that they do not fully implement the EU Equal Treatment Framework Directive.

The ECJ has ruled that a national retirement age may be lawful, but such a measure must be justified by legitimate social policy objectives, such as those related to employment policy, the labour

market or vocational training. It is for the national courts to decide whether a compulsory retirement age can be justified as a proportionate means of achieving a legitimate aim. There is no requirement for the Regulations to contain a list of legitimate aims that are permissible.

The case will now return to the High Court to determine whether or not the UK's imposition of the retirement age limit of 65 passes the justification test. There are an estimated 800 age discrimination tribunal claims that have been stayed pending this decision.

However, Age Concern and Help the Aged have vowed to fight on and have called on the Government to abolish the mandatory retirement age, thereby obviating the need for the case to return to Court.

Nearly 40 per cent of people wish to continue working after 65 and the two charities have criticised Government Ministers for applying double standards and sending mixed messages to older workers. On the one hand they are being encouraged to carry on working beyond the age of 65 yet there is legislation in place that can prevent them from so doing. The mandatory retirement age for civil servants was scrapped some

months ago and, were the rule to apply to MPs, one in eight of them would be out of a job.

Says Richard Gvero, "In practice, this means that a compulsory retirement age is lawful if the Government can demonstrate that its introduction was justified in order to fulfil legitimate aims connected with national social or employment policy. The Department for Business, Enterprise and Regulatory Reform has said that it will review the default retirement age in 2011."

For more information call Richard Gvero on 01992 300333.



## Executors be Warned

HM Revenue and Customs (HMRC) have quietly made a change to their policy regarding Inheritance Tax (IHT) that could leave executors of estates facing unexpected IHT liabilities.

The new risk results from the way HMRC intend to deal with estates in which gifts ('gifts inter vivos' in the parlance) are made in the seven years prior to death. Such gifts are called 'potentially exempt transfers' in IHT terminology, because they affect the IHT position unless the donor survives seven years after making the gift.

HMRC have previously raised any enquiries about gifts inter vivos within 60 days after the papers relating to the estate have been filed. The new policy abolishes this time limit, meaning that HMRC

could potentially instigate an investigation into the gifts made prior to death several years after the estate tax returns are filed. If they find undeclared gifts, IHT may be payable on them.

This has potentially very serious implications for executors as not only may they be personally liable for any IHT that subsequently becomes payable, but also penalties can be levied. This could all take place years after the estate has been wound up and the assets distributed to the beneficiaries.

Furthermore, it makes it wise to conduct a proper review of the deceased's financial records relating to the seven years prior to the death and to retain the records in case there is an enquiry. For advice call Graham Field or Richard Horwood on 01992 300333.

## A Current Tenant is a Good Tenant

A recent report by commercial property agents King Sturge (KS) may concentrate the minds of commercial landlords, who may be faced with a substantial reduction in income if they have to find new tenants in the event that existing ones terminate their leases.

KS has reported that commercial rents have fallen by 0.4 per cent in the last year and predicts that in 2009 rents will fall by a further 5.6 per cent, in 2010 by 4.7 per cent and in 2011 by 2.1 per cent. More worryingly, KS also predicts that there will be no upward movement in rents until 2013 and that landlords will have to resort to a variety of 'sweeteners' to obtain replacement tenants or to retain those they have.

In the present market, a landlord

may feel that a bird in the hand (even one that is less than ideal) is worth two or more in the bush and it is to be expected that negotiations over rents and lease terms will become more difficult, particularly where the property being let is retail premises.

We can assist you in negotiating new leases and lease reviews, contact Liz Gallop, or Heinrich Ferreria on 01992 300333.



## Longmores clients donate £3,940 to charity

Longmores Solicitors in Hertford raised £3,940 in support of the 2008 Will Aid Campaign due to the generosity of Longmores' clients and the hard work of the Private Client Team.

This was the fourteenth highest amount raised nationwide and sixth within the Home Counties.

In November 2008 Longmores took part in the Will Aid promotion that enables members of the public to seek expert advice from Solicitors in the preparation of a Will.

In return for making a donation to the Will Aid consortium of Charities Longmores make no charge for the preparation of Wills. As Richard Horwood, a Partner in the Private Client team explained:

*"It is a great opportunity for people to review and update their Wills,*

*or a chance to make a Will for the first time, at the same time as doing something for Charity.*

*Longmores has been taking part in Will Aid for the last 10 years as it is a great way to give something back to the community and provides clients, both new and existing with*

*a motive for sorting their affairs out"*

Further information about Will Aid can be found on the website [www.willaid.org.uk](http://www.willaid.org.uk). Longmores are planning on participating in Will Aid 2009, which will be taking place in November later this year.

## Contact Us

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