

BOWLES & CO

S o l i c i t o r s

OUR NEWS

It has been an extremely busy year for Bowles & Co. As a result we have seen some new faces. Simon Leo is now a settled member of the conveyancing team and we have recently been joined by Angela Sikuade. Angela trained with a firm in East Yorkshire and was admitted as a solicitor in 1989. Upon qualification she moved to London to work in the Commercial Property department of city firm Manches. More recently Angela has been working for a local firm in Kingston.

For the first time in Bowles & Co history we have taken on a Trainee Solicitor. Zoe Haylett joined us in September. Zoe graduated from the University of East Anglia in 2006 with a 2:1 in Law and then completed her Legal Professional Course with Distinction at the College of Law in



Guildford. Zoe will spend time in each department in the firm during her 2 year training contract.

We are pleased to welcome back our name plate and number to the outside wall that was so cruelly damaged by a lorry. The original nameplate is now restored to its former glory having been in situ for over 40 years!

CODE OF PRACTICE FOR COMMERCIAL LEASES

For a small or start up business, taking a lease of commercial premises can be a daunting and complicated experience and, at the same time, an apparently annoying technicality.

Eager to commence money generating activities, many potential tenants neither have the time, inclination nor experience to protect themselves against overbearing landlords. Some landlords may, in turn, take advantage of an eager tenant by forcing on them lease terms which, with calm reflection, the tenant would not normally accept. Usually, by the time the heads of terms reach solicitors' hands, they are, so far as the landlord is concerned, set in stone. Attempts by the tenant's lawyers to alter fundamental problems with them are usually met with the stock phrase "this was agreed in the heads of terms".

One way of protecting yourself is to get us involved at an early stage – when the heads of terms are being negotiated. We can advise on what is usual or reasonable and point out traps that you should be wary of. You may also find it useful to review the new Code of Conduct for business tenancies.

The Code is a non binding set of suggestions which the Government has generated in order

to protect small tenants against abuse from commercial landlords. The Code is intended to set out a framework which both parties should keep in mind when preparing heads of terms for commercial leases. It seeks to provide a balance between the relative power of the landlord and the relative weakness of the tenant. It states, for example, that leases should, at a minimum, allow tenants to assign the whole of the demised premises and that their repairing obligations should be proportional to the length of the term (so that the repairing obligation of a short term tenancy will be less comprehensive than the obligation contained in a twenty five year lease). It also contains guidance on the drafting of break clauses (often a thorny issue) and in relation to rent reviews. The Code also contains model heads of terms, which you might wish to consider before entering into negotiations for a new lease. Consulting us and the Code at an early point in the lease negotiation can save you a lot of time and trouble later on.

If you would like more information on the Code or negotiating commercial leases generally, please contact Adrian Jones or any of the property team on 01372 725241.

TAX TALK

In his 2007 Autumn Pre-Budget report, the Chancellor announced a change to Inheritance Tax rules which will apply to all estates where the deceased dies after 9 October 2007. The media headlined the rule change as the Government doubling the Inheritance Tax nil rate band. This is not quite the case. Firstly, the rule change is of help only to married couples and civil partners, there is no change to the existing rules for single people, or unmarried couples. Secondly the new rule works by allowing the executors of the estate of the second spouse of a married couple to die (as long as that death occurs after 9 October 2007) to bring about, by making a formal claim, that the nil rate band applicable on the survivor's death is increased by the percentage of the nil rate band which was unused when the first spouse died. If some of the nil rate band was used on the first death then the nil rate band available on the second death will not double but instead increase by the percentage unused on the first death. In the majority of cases this is a very welcome measure and for many couples will mean that they can, if they prefer, now leave their affairs on the simple basis that on the first death everything is left to the surviving spouse, with the children then sharing the estate after the survivor dies, rather than worrying about how to make use of the nil rate band on the first death through gifts to the children at that stage, as many people had previously done.

Those who have in place nil rate band discretionary trusts which are designed to utilise the nil rate band on first death should now review these arrangements, although in many cases these wills can be left as drafted on the basis that the trust arrangement can be brought to an end after the first spouse dies, if the family prefer not to have the a trust arrangement in place, by the simple expedient of the trustees exercising their discretionary powers to appoint all the trusts assets out to the surviving spouse. If this is done within two years of the first death then the estate will be treated for Inheritance Tax as if the nil rate band has not been used, so bringing the new rules into play. It should be emphasised that it is up to the trustees to exercise their discretion to do this, and that whilst the surviving spouse may be a trustee it will not be their decision alone.

Clients whose spouse has already died and who have inherited all their assets may wish to check how the new rules will now affect them, as they may have been considering making lifetime gifts to help with Inheritance Tax planning which may not now be necessary.

For some whose spouses have died some years ago, the application of the new rules may require some research in order to establish what use was made of the nil rate band on the first death. Ensuring that any available information is collated and made available to the surviving spouse's intended executors is a sensible step to take to ensure the relief allowed under the new rules can be claimed.

Capital Gains Tax Proposals

Clients will also have noticed the announcement of major proposed changes to Capital Gains Tax made in the Autumn pre-Budget Statement. These are due to come into effect from 6th April 2008, if the Finance Bill is passed. There is pressure on the Government to make some changes to its proposals so the final format of the changes may yet be different. The main change is the reduction in the CGT rate to a flat rate of 18% (as opposed to CGT being charged as the top slice of income at income tax rates) but with the rate reduction comes the sting in the tail which is the proposed removal of indexation and taper reliefs. Clients who hold investment properties which they have owned for many years and are now contemplating selling may therefore choose to do so before the rule changes take effect, although for many the effect of the rule changes will have to be assessed in their particular case to see if they come off better if they delay a sale until the lower rate of CGT comes in or if they should act now to sell pre-April in order to secure valuable indexation and taper reliefs.

And finally A&M trusts

Transitional provisions relating to the change in Inheritance Tax treatment for

accumulation and maintenance trusts come to and end on 5th April 2008 so any clients who have such a trust in place and have not checked the effect that the new Inheritance Tax rules will have on the trusts and whether and alterations to the trusts provision should be made in advance of 5th April are urged to take action to get their trust provisions checked before it is too late to make any changes.

If clients need help and advice on any of the above, please contact:

Stephanie Williams on **01372 725241**
or **StephanieW@bowlesco.co.uk**

FUNDRAISING

Once again Bowles & Co were pleased to support St Raphaels Hospice Make a Will Week we raised over £1,200 – thank you for your support.

Congratulations to Simon Leo and his family on the opening of a school in Kovilorr, Vettavalam Parish in India which has been funded by the family. Simon visited the opening of the school earlier in the year. To help a little further and to see the children in Vettavalam smile, the Partners of Bowles & Co agreed to sponsor a surprise. Simon hired a minivan and filled it up with cricket bats and balls, wickets and pads, skipping ropes, volley balls and nets, tennis balls and rackets, carom boards and accessories, hula rings (which apparently the girls love), footballs, snakes and ladder games and a few other games and toys that he could squeeze into the van. The joy of the children was apparently fantastic to see. Well Done!



Do you know what to do with an Assured Shorthold Tenancy Deposit?

The Housing (Tenancy Deposit Schemes) Order 2007 came into force on the 6th April 2007 and afforded greater protection to Tenants under an Assured Shorthold Tenancy ("AST") in relation to the repayment of Deposit at the end of the Tenancy.

It has been designed to encourage Landlords and Tenants to make the necessary arrangements to evidence the condition of the Property before the Tenancy is agreed whilst it also helps Tenants get their Deposits back at the end of the Tenancy when they are entitled to it.

The introduction of this new law requires Landlords who enter into an AST for their residential property, to pay the agreed Deposit into a Tenancy Deposit Scheme within 14 days of receiving the Deposit (and not from when the funds are cleared).

There are two schemes which are: (i) a custodial scheme or (ii) an insurance based

scheme. Three companies have been appointed by the Government for Tenancy Deposit Schemes. They are; The Deposit Protection Service (The DPS); Tenancy Deposit Solutions Limited (TDSL); and The Tenancy Deposit Scheme (TDS).

Sections 213(5) and 213(6) of the Housing Act 2004 state that the Landlord must also provide the Tenant, again within 14 days, prescribed information relating to the chosen Deposit Scheme. For example, details of the deposit scheme, its purpose, how the Deposit is to be released, what to do in the case of a dispute and the contact details of the Landlord (and/or agent).

Should the Landlord fail to perform these obligations not only will the Landlord be prevented from using the usual Notice Seeking Possession procedure to regain possession of the Property; but the Tenant could bring a claim within the County Court against the Landlord who could be ordered to repay three times the deposit to the Tenant as a penalty.

At the end of the Tenancy where the Deposit is to be returned, the parties must both agree the level of damages (if any) for which the Tenant is to compensate the Landlord for disrepair, although in the case of a dispute each of the Tenant Deposit Schemes available will have an Alternative Dispute Resolution Service for the parties to resolve their issues. All deposits are to be repaid within 10 days of the resolution. Hopefully it will ensure that the parties are treated fairly and give them peace of mind throughout the Tenancy.

As a result of this new legislation it is now vitally important, if you are a Landlord or a Tenant, that your position with regard to the Deposit from an Assured Shorthold Tenancy is protected. Bowles & Co are able to assist and advise both Landlords and Tenants and would be delighted to discuss matters further if required.

Lasting Power of Attorney – Important Changes to Lifetime Planning

It is no longer possible to put in place an Enduring Power of Attorney ("EPA") to appoint another person(s) to act on your behalf if you lose the capacity. This system has been replaced from the 1st October 2007 by the new Lasting Power of Attorney ("LPA"). However, please do not be alarmed, EPAs that were correctly signed prior to 1st October 2007 continue to be valid and the two systems will run concurrently.

In essence the purpose remains the same, however, there are differences between the systems which are not just limited to the length of the new documents (LPAs being at least 24 pages compared to the 4 of the EPA Form!)

You can now create two different LPAs; an LPA for property and financial affairs, which is like the old EPA and an LPA for personal welfare matters, such as healthcare. It is the healthcare LPA that has caused much discussion, mainly surrounding who will agree to take on responsibility for making another person's medical decisions.

In addition, a vital part of the LPA process is the certificate provider. This is an independent third party who will confirm that in their opinion, the person putting in place the LPA understands its purpose, has not been subjected to fraud or tricked into making the LPA and that there is no other reason to stop the LPA being created. This is an important extra safeguard to protect the vulnerable to ensure that they are not manipulated. There were no such procedures under the EPA system.

The LPA system may seem a little daunting, especially because each LPA form is supported by equally lengthy Guidance Notes for each person involved in the step-by-step process which must be followed to put one in place.

However, we can guide you through the new procedures if you wish to create a LPA. We have prepared a short note giving more background information which we suggest you read before going ahead. If you would like this sent to you please contact Stephanie Williams.

COHABITATION

The law relating to cohabitation has been in the news over the summer months with proposals for reform being published by the Law Commissioners in July 2007.

The proposals will no doubt spark considerable debate from interested parties. Whether or not it leads to any legislative change remains to be seen. In the meantime surveys produced off the back of the Report consistently suggest that the majority of cohabiting couples mistakenly believe they have the same or similar rights as married couples. The law is however far more complicated in relation to cohabiting couples. The number of cohabiting households is predicted to grow from one in six to one in four by 2031.

If you would like advice in relation to your situation please do not hesitate to contact:

Sarah Lambert on **01372 725241** or sarahl@bowlesco.co.uk

At Bowles & Co we pride ourselves on providing a professional, efficient and supportive service to all our clients whether large corporations, small businesses or individuals.

Our aim is to help clients achieve their objectives.

Our location means that we are able to provide comprehensive legal services to clients based both locally and further afield.

Please contact us to find out how we can help you.

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