

“ We are experiencing massive change in the laws relating to real property and the trend is set to continue. ”



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Among the best!

The definitive legal guide to the top law firms in the country places Charles Lucas & Marshall's Commercial Property Team among the best. The firm's Commercial Property Team has been included on the 'recommended list' in the latest Legal 500 – an acknowledgement of the Team's growing reputation and the rate at which it is expanding. Legal 500 is compiled annually following detailed research by the publishers and includes recommendations from clients.



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The disability discrimination act

The Disability Discrimination Act came into effect in December 1996 but it has been introduced in phases. The latest phase came into effect in October 2004 and requires every business which provides services to the public to overcome physical barriers to access. There are no exemptions for smaller

businesses. For commercial premises with multiple lettings this may have implications for the common parts. Again it is often thought this relates to wheelchair access but it goes well beyond that and, for example, includes those with sight and hearing impairments.

Licensing

The Licensing Law has undergone the most radical shake up in forty years with the new provisions starting to take effect on 7th February 2005. This introduces a completely new code for licensing which will now be managed by the Local Authority rather than the Licensing Justices. The premises themselves will require a licence from the Local Authority

for "Licensable Activities". In addition, if alcohol is to be served a "personal licence" will also be required which relates to the individual. This licence is portable and the licence holder may use it in relation to other premises that hold a Premise Licence. For further details please contact Paul Trincas our licensing expert. e-mail: paul.trincas@clmsolicitors.co.uk

Asbestos

The new rules in relation to Asbestos Management came into force on 21 May 2004. If you are responsible for the maintenance or repair of non domestic property then you are responsible to identify, record and manage

any asbestos that is or may be present. It is anticipated that HSE inspectors on routine visits will make enquiries as to what steps have been taken. ■

Stamp duty land tax

As most of you will be aware by now Stamp Duty has been replaced by Stamp Duty Land Tax. Although superficially similar to Stamp Duty it is a fundamentally different tax. It is now based on transactions rather than documents

and many Stamp Duty loop holes have been closed. There is a lengthy tax return that has to be made and in some cases a further return may be required many years after the transaction itself has been completed. ■

Land registry

The new Land Registry Act came into effect during 2003 which rewrote the law relating to registered land. Effects include:

1. Land Certificates no longer exist.
2. Records are maintained electronically.
3. Minimal transactions lead to compulsory registration.
4. Leases of seven years or more have to be registered.
5. Rights and Leases otherwise not registerable have to be registered.
6. Cautions against dealings replaced by unilateral notices.
7. Wide disclosure requirement as to rights affecting the property.

The objective is to lead towards electronic conveyancing on the one hand and to the legal rights and obligations of the property being fully disclosed on the Register on the other. Whether the latter will ever be achieved is debatable. ■

Commonhold

The Commonhold system of holding a property is now with us. This sits between Freehold and Leasehold and is particularly aimed at flats. It enables owners to hold an interest in property which is not limited in time as is the case with a lease. However it does not only relate to flats. For example it could be used in relation to shopping centres or office blocks to enable investment units to be sold

individually. The Commonhold Association will own the common parts and there will be a Commonhold Community Statement which sets out the rules and regulations governing the units within the Commonhold. This has taken a very long time in gestation and time will tell whether it takes off although some commentators believe it may create as many problems as it solves. ■

Mezzanine floors

Generally internal works to a building do not require planning permission. Provided there is no change of use involved this means that it is possible to install a mezzanine floor to increase useable space. This is particularly prevalent in Supermarkets and out of town stores and the Government are now seeking to close what they perceive as a loop hole in the planning legislation. ■



Commercial leases code of practice

The interim report from the Reading University Team monitoring the Government backed Code of Practice concluded that it was not having a great impact on the market. We have found that when negotiating leases on behalf of tenants reference to the Code often produces a more reasonable result from the landlord and their advisors.

A particular area of concern to the Government is upward only rent reviews. This means that on each review of the rent it either goes up or stays the same, i.e. it can never go back down. Rent review provisions that are not upward only are rare. The Government is seeking to change that. Many tenants may think this is good news but there may be a down side. Investment properties

are generally valued by reference to the rent. If there is a possibility of the rent going down during the term then the value of the lease at the outset is likely to reduce. To compensate for this landlords are likely to increase rents to recover their capital values. The result could therefore be a hike in rents in the marketplace. However, there is a great over supply of office space, in particular, and it is very unlikely that the market would currently bear such a hike. ■

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