

Issue 1 2008

## A BIT ON THE SIDE CAUSES PROBLEMS

**T**he law requires that a contract for the sale of land needs to be in writing and all the terms must be set out in the written document.

Where both parties have intended the contract to say one thing, but due to an error, it says something different, then the Courts will usually rectify the contract to reflect the parties true intentions.

In a recent case, the vendor and purchaser expressly agreed to omit from the contract one of the terms they had agreed. As they had agreed not to include it the contract could not be rectified. As the contract did not include that term it was void.

It is therefore important that your lawyer is aware of all the terms you have agreed.



**Malcolm Poynter**

Head of Commercial Property

malcolm.poynter@clmlaw.co.uk

**CONTACT OUR TEAM:**

Tel: 01635 521212

www.clmlaw.co.uk

## RESTRICTIVE COVENANTS

**W**ith the emphasis on reusing land it is becoming quite common for people to secure planning permission for one or more houses on part of their garden. Quite often there may be a restrictive covenant which, on the face of it, could prevent the development.

The covenant should be reviewed to see whether it does in fact preclude the specific development proposed, whether it is valid or it may be that insurance is available to cover the risk of a claim should the covenant be breached.

## TENANT'S BREAK CLAUSES

**M**any leases these days include provision that the tenant may terminate his lease usually on one or more particular dates during the lease term. This is achieved by the service of a notice and it is important that that notice is validly served. There may also be pre-conditions and if these are not complied with the lease will not terminate. It is therefore important to ensure that you seek our advice in good time preferably several months before the notice needs to be served.

## SIGNING DEEDS ON BEHALF OF COMPANIES

**U**ntil now deeds have normally been signed either by two directors or a director and the secretary. Other parties to the deeds are, in those circumstances, entitled to assume that the document has been properly signed. It was always possible to make different arrangements but the other parties would have to check the company's constitution to ensure the signatures were appropriate.

However, it is now possible for a single director to sign a deed provided he does so in the presence of a witness who also signs the document.



This may well be convenient for smaller companies. Larger companies may wish to consider whether they should have internal procedures regulating whether a sole director can sign deeds which more often than not deal with important property issues for the company.

## MAILING LIST

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## VILLAGE GREENS

Where the locals use land for lawful sports and pastimes it is possible over time that the land may become a village green. This has connotations of green grass and duck ponds. However it can apply just as much to an expanse of tarmac in the middle of a town regularly used for football.

If the land is registered as a village green

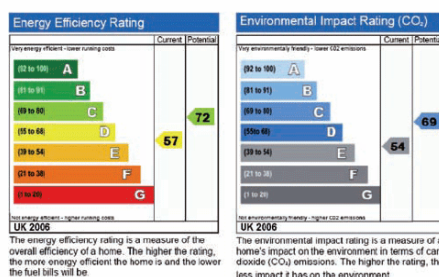
then this would pretty much prevent any development of the land.

If you do have land used in this way then you should consider taking steps to prevent it becoming a village green. Although the use must be regular it does not have to be that often. There is one example of a field used for a bonfire party once a year for 20 years being registered as a village green.

## ENERGY PERFORMANCE CERTIFICATES

Buildings in excess of 10,000sqm already require energy performance certificates and those over 2,500sqm will require them from July. From the 1<sup>st</sup> October all commercial buildings (with a few minor exceptions) will require these certificates.

They are not required until you intend to buy or let the building but then they will be required to be given to any prospective buyer or tenant. If you are yourself a tenant and you intend to either transfer your lease to another or underlet your premises, again energy performance certificates will be required.



One complication for tenants who have leased part of the building is that where the heating or other systems are shared systems then a certificate may be required for the whole building.

## DEPOSITS

When purchasing a property it is normal on exchange of contracts for the purchaser to pay a deposit. Traditionally, this was 10% but, certainly in the case of residential property, these days it is often less.

What happens to the deposit if the buyer breaches his contract and fails to purchase the property? The contract will provide that the deposit is forfeited to the vendor. The Courts have a discretionary power to order the refund of part or the whole of

the deposit to the purchaser.

Generally, the Courts expect any amount received in these sorts of circumstances to be a reflection of the actual loss suffered by the injured party or in line with a reasonable pre-estimate made at the time the contract was entered into.

However, special rules apply to property deposits and it is becoming clear that the Courts are taking the view that deposits should only be refunded in exceptional circumstances.

## COMMERCIAL PROPERTY TEAM

David Thomas 01235 771234

david.thomas@clmlaw.co.uk

Hemant Amin 01635 521212

hemant.amin@clmlaw.co.uk

Hugh Ellins 01793 511055

hugh.ellins@clmlaw.co.uk

Julie Lloyd 01793 511055

julie.lloyd@clmlaw.co.uk

Mark Sarnowski 01488

682506

mark.sarnowski@clmlaw.co.uk

Paul Wilkinson 01635 521212

paul.wilkinson@clmlaw.co.uk

Sam Hornett 01635 521212

sam.hornett@clmlaw.co.uk

## STAMP DUTY LAND TAX - END OF LEASE

Often when the contractual term of the lease expires the tenant remains in occupation particularly if the lease has the protection of the Landlord and Tenant Act 1954 which would have the effect of extending the term of the lease.

However, what is not appreciated is that if a tenant remains in the premises after the end of the contractual term (i.e. the term specified in the lease) it is treated as a one year extension to the expired lease for the purposes of Stamp Duty Land Tax. This may trigger a further payment of Stamp Duty Land Tax and, if it does, the making of a return to HM Revenue and Customs within 30 days from when the holding over period begins. If the holding over period lasts for more than a year then this will apply all over again.