



Outside the Box

SPRING
2010

Wortley Byers Solicitors



Michael Lightowler
Corporate
Commercial



Warren Hawkings
Wills, Probate,
Tax and Trusts



Albert Barrett
Property



Brian Spencer
Property



Lucy Folley
Corporate
Commercial



David Chapman
Property



Jane Winfield
Property



Anne Elliss
Property



Sue Dowman
Corporate
Commercial



Wendy Beach
Litigation



Nick Traill
Corporate
Commercial



Michael Callaghan
Litigation

Wortley Byers LLP

Cathedral Place
Brentwood
Essex
CM14 4ES
Tel: 01277 268368
www.wortleybyers.co.uk

Regulated by the Solicitors
Regulation Authority

Articles:

[Thinking of Selling Your Business? - Page 1](#)

[Changes to Empty Property Rates Relief from 1 April 2010 - Page 2](#)

[Homes Under the Hammer? - Page 2](#)

[Are You Complying with the Construction \(Design and Management\) Regulations 2007? - Page 2](#)

[Recovering Legal Costs in the Small Claims Court - Page 3](#)

[Are You Involved in a Charity? - Page 3](#)

[Do You Own a Village Green? No? Think Again - Page 3](#)

[Trusts - Past their 'Sell By' Date? - Page 4](#)

[Agents Have Rights Too! - Page 5](#)

[A Load of Old Tripe?! - Page 5](#)

News:

[Aaron Cane - Page 2](#)

[Brentwood Half Marathon - Page 3](#)

[Handelsbanken Charity Bowl - Page 3](#)

[Carpe Diem - Cycle California 2010 - Page 4](#)

[Keep on Running! - Page 5](#)

[Wortley Byers LLP's Charity of the Year - Street Kids Rescue - Page 5](#)

Thinking of Selling Your Business?

Article by Nick Traill

01277 268 301

ntraill@wortleybyers.co.uk



There are a number of issues to consider if you are thinking of selling your business. One factor which will interest most Sellers is their potential tax liability on a sale.

Entrepreneurs relief was introduced two years ago and enables individuals who are selling their business or company to benefit from an effective capital gains tax rate of 10% on gains up to £2 million per individual (increased from £1 million in this year's Budget). This is a useful relief and it is worthwhile checking whether the relevant conditions will be applicable to your situation.

Broadly entrepreneurs relief is available in respect of the sale of an unincorporated business (e.g. by a sole trader or partners in a partnership), provided the business is a trading business which has been owned for 12 months and the assets sold are not investments. Alternatively it is also available in respect of the sale of the shares in a trading company or group, where the Seller has for the previous twelve months held 5% of the shares and voting rights in the company and been an officer (namely a Director or Secretary) or employee of the company. There is no limit on the number of individuals who can qualify for entrepreneurs relief, provided that each satisfies the necessary conditions. Thus, a husband and wife can

each be entitled to entrepreneurs relief in respect of their own shares or interest in the business being sold.

Of course tax issues are not the only issues to consider. It is also worthwhile, prior to a proposed sale, checking that the business or the company is in a suitable condition for a sale. For example the relevant customer contracts are in force and up to date, the employees all have Employment Contracts or Terms of Employment issued to them, there is no significant litigation and the existing contractual arrangements would not be terminated in the event of a sale and all appropriate consents and licences are in place for the business and are not subject to revocation.

We would recommend that professional advice is taken on these matters before a business is put up for sale and also before any Heads of Terms for the sale of the business are signed. It is also recommended, before any confidential information in relation to the business is given out to a proposed Buyer, that he signs a Confidentiality Agreement with the Sellers undertaking not to use this information for the purposes of his own business.



NEWS

Aaron Cane



The Partners are delighted that Aaron Cane has accepted an invitation to join the partnership of Wortley Byers LLP on 1 January 2011.

Aaron qualified as a solicitor in 2005 and joined Wortley Byers the following year. He was made an Associate of the firm in January 2009. Aaron specialises in all areas of commercial property work ranging from development projects, investment acquisitions and disposals and landlord and tenant work. He also heads the Licensing Unit.

Commenting on the appointment Managing Partner David Chapman said "We all congratulate Aaron. He is a real asset to the firm and a valuable addition to the partnership. We wish Aaron the very best for his future with us."

Wortley Byers LLP

Cathedral Place
Brentwood
Essex
CM14 4ES
Tel: 01277 268368
www.wortleybyers.co.uk

Regulated by the Solicitors
Regulation Authority

Changes to Empty Property Rates Relief from 1 April 2010

Article by Aaron Cane

01277 268 398

acane@wortleybyers.co.uk



The Chancellor has announced a 12 month extension to the rates relief for some empty business properties.

The Government had initially provided a one off exemption for all empty business properties with a rateable value up to £15,000 for the year 1 April 2009 to 31 March 2010. The Chancellor has now confirmed that this relief has been extended until 31 March 2011 and the threshold has been raised exempting all empty properties with a rateable value up to £18,000.

It should be noted that the threshold increase up to £18,000 is in line with the average rateable value increase that will occur as a consequence of the 2010

revaluation of commercial properties. Furthermore from 1 April 2011 the rateable value threshold below which empty properties are exempt from rates will revert to its normal level. The normal level was previously £2,200 but this will be increased in line with the general movement of property rateable values to £2,600.

If you have an empty commercial property which has a rateable value of £18,000 or more and are interested in ways in which you might mitigate your rates liability please contact Aaron or a member of our Property team.

Homes Under the Hammer?

Article by Anne Elliss

01277 268 304

aelliss@wortleybyers.co.uk



Buying a property at auction may prove to be one of the benefits of the recent downturn in the property market. For those investors looking for a bargain or for those looking to get onto the property ladder this can be a way of making your money stretch further.

There are risks which do need to be considered and it is vital to make sure:-

1. The legal pack (including the contract) which is made available by the auctioneers is reviewed as early as possible. The contract itself may reveal additional costs which will be incurred by the successful bidder and additional searches may need to be undertaken.
2. A survey is commissioned and if there are

works required to the property, that you are aware of the cost implications.

3. Your finance or funding is secured. If it is not you will need to be confident that it will be in place for completion or you risk being in breach of contract, losing your deposit and suffering penalties.

If your bid is successful the purchase is binding on you and contracts are deemed to be exchanged. You will be expected to pay a full 10% deposit immediately and usually complete within 28 days. The contract may require you to put buildings insurance on risk from the auction date and you will therefore need to make sure that you have a policy available.

Are You Complying with the Construction (Design and Management) Regulations 2007?

Article by John Southan

01277 268 357

jsouthan@wortleybyers.co.uk



The Health and Safety Executive (HSE) are responsible for making developers aware of the CDM Regulations and their enforcement. They are presently attempting to bring the Regulations to the attention of smaller developers.

Someone who commissions construction projects ("the Client") has duties, as well as those who carry out the construction, if either (1) the Client is commissioning the work as part of its business or (2) if the premises are commercial or mixed use.

The duties on the Client include: (a) checking the competence and resources of its contractors; (b) allowing sufficient time and resources for all stages of the construction to be completed; (c) providing pre-construction information to designers and contractors and (d) ensuring suitable management arrangements are in place for welfare facilities.

"Notifiable projects" (which exceed 30 days or 500 person-days) attract additional duties: to appoint a co-ordinator who oversees the project and notifies the HSE; to appoint a principal contractor; to have a health and safety plan and to keep a health and safety file after completion.

Failure to comply with the Regulations might result in death or injury and a claim against you; stop-notices or financial penalties imposed by the HSE; or prosecution for serious failures.

Further information can be obtained from www.hse.gov.uk/construction or the HSE leaflet "A quick guide for clients on the Construction (Design and Management) Regulations 2007" or from a member of our Property team.



NEWS

Brentwood Half Marathon

Jane Winfield, Nick Traill, John Southan, Rachel Brown and Les Adler were out in action in the spring sunshine at Brentwood Half Marathon on Sunday 21 March. Some personal bests were achieved with Jane achieving a time of 1:42:31, Rachel 1:44:51, Nick 2:27:30, John 2:28:16 (Rachel's and John's first half marathon and an excellent achievement!) and Les 2:51:34 (for Les it was his 130th half marathon!). A great day was had by all and the weather was just about perfect. Luckily, all the runners managed to make it into the office the next day with no major aches and pains!



Handelsbanken Charity Bowl

Two teams from Wortley Byers joined 62 other teams from a variety of local businesses at the 2010 Handelsbanken Charity Bowl in Chelmsford. A grand total of £4,000 was raised on the night for Farleigh Hospice and Little Havens Children's Hospice and a great time was had by all from Wortley Byers whose various bowling skills were reflected in a broad range of scores. Litigation Partner, Michael Callaghan, headed up the Wortley Byers scoreboard just ahead of Property Solicitor, John Southan.

Wortley Byers LLP

Cathedral Place
Brentwood
Essex
CM14 4ES
Tel: 01277 268368
www.wortleybyers.co.uk

Regulated by the Solicitors
Regulation Authority

Recovering Legal Costs in the Small Claims Court

Article by Rachel Brown

01277 268 365

rbrown@wortleybyers.co.uk



In court proceedings the normal rule is that the successful party can recover its legal costs, subject to assessment by the Court. However, where a claim is worth £5,000 or less it will normally be allocated to the small claims track where the successful party is typically limited to minimal fixed costs. The result of this is that the successful party often has to bear most of its own legal costs. This can deter parties from taking disputes worth less than £5,000 to Court. The legal costs of doing so would often be disproportionate to the value of the claim.

However, a recent High Court decision has indicated that a successful party can recover its legal costs in the small claims court where there is a contract dispute and the contract provides for the recovery of

legal costs. In that case the defendant sought to rely on a term within a loan agreement that permitted him to recover 'reasonable expenses and any legal costs' incurred in taking action to enforce the agreement. The claimant resisted the defendant's application for costs and argued that the defendant should be limited to fixed costs because the claim had been allocated to the small claims track. The judge disagreed and awarded the defendant his legal costs.

Following this ruling, businesses may wish to consider including a provision in their contracts to provide for the recovery of any legal costs incurred in enforcing those contracts at Court.

Are You Involved in a Charity?

Article by Miz Choudhury

01277 268 343

mchoudhury@wortleybyers.co.uk



The Charities Act 2006 introduced a new legal form of incorporation designed specifically for charities. Charitable Incorporated Organisations (CIOs), are a new corporate structure giving existing and new charities an alternative option to the current range of structures available to charities. It is expected that they will become available as a new structure sometime in 2010.

Presently, charities can be set up with a corporate structure, but this means that they fall within the requirements of both company and charity law. This is not ideal as charities have to register with the Charity Commission and the Registrar of Companies, and due to dual regulation, are required to provide accounts and returns to both regulatory authorities.

CIOs will combine the advantages of a corporate

structure such as having a separate legal personality which will allow them to contract and hold property in their own name and benefit from reduced personal liability for their members and trustees, and yet be regulated by a single regulatory authority. CIOs should also benefit from having less onerous reporting and accounting requirements, and should make it cheaper and easier for existing incorporated charities to comply with their administrative responsibilities.

We can advise on these issues. Should you have any queries regarding CIOs, or you wish to register your interest in CIOs with us so we can contact you once the CIO structure becomes available, please contact Miz or a member of our Company Commercial team.

Do You Own a Village Green? No? Think Again

Article by David Chapman

01277 268 348

dchapman@wortleybyers.co.uk



Do you own land? Do the locals use your land as open space for walking their dogs or for taking the air or for games or some other recreational use or pastime? If so you may inadvertently be the owner of a village green and unable to stop those uses in the future.

In R (on the application of Lewis) v Redcar and Cleveland Borough Council & anor, the Supreme Court confirmed the right of the local inhabitants of Redcar to register Coatham Common as a village green under section 15 of the Commons Act 2006 despite sharing the common with golfers.

The local inhabitants had been using the land for at least 20 years "as of right" for activities such as dog

walking and playing with their children. The decision of the Supreme Court means that any open space used by local inhabitants for the requisite period may be the subject of a successful village green application.

Owners of open space should be careful to make sure that if local inhabitants use their land the use is not "as of right". Clear and unequivocal signs granting permission must be displayed.

If you believe you may have an issue about Village Greens, please contact David or any member of our Property Team.



NEWS

Carpe Diem - Cycle California 2010

Starting over Easter this year, four friends will be cycling approximately 1000km in ten days to raise awareness and money for the Cardiomyopathy Association. Andy, Nick, Rick and Patrick hope to complete this distance unsupported in ten days and will be



cycling the American Pacific coast from San Francisco to San Diego. During the countdown to Easter, the four have been training hard throughout the winter (they recently successfully made it from London to Brighton and back again) and are hoping the ride in California will be significantly warmer! They will also be holding various fund raising events as well as auctions to reach (and hopefully exceed) their target of £5,000. Any support is greatly welcome and to that end they have set up a donations page at www.justgiving.com/nickandandy/.

Cardiomyopathy is a condition relating to the deterioration of the heart which has tragic consequences for those and their families affected by it. This cause holds special significance for Andy and Nick who lost a friend to cardiomyopathy some years ago. For more information on Cardiomyopathy, please visit www.cardiomyopathy.org.

Wortley Byers LLP

Cathedral Place
Brentwood
Essex
CM14 4ES
Tel: 01277 268368
www.wortleybyers.co.uk

Regulated by the Solicitors
Regulation Authority

Trusts - Past their 'Sell By' Date?

Article by Poh Shan Chong

01277 268 347

pchong@wortleybyers.co.uk



Trusts have been the subject of major changes in legislation in the last few years. Although change has been enacted under the cloak of realignment and unification, their tax treatment has been viewed by many as an attack on their use.

This article considers their use in a family setting for financial planning and security.

Immediate Post Death Interests (IPDIs) in Wills

A change in legislation in 2007 means that you can now transfer unused allowances for inheritance tax between spouses or civil partners so that they are available on the second death. To many people, this means a return to a straightforward gift in a Will to the surviving spouse on first death (the reference to 'spouse' throughout this article will include a civil partner).

Prior to the change in legislation it was common to incorporate a nil rate band discretionary trust into the Will which would come into effect on the death of the first spouse thereby making effective use of the nil rate band for both spouses. The surviving spouse would be included as a beneficiary of the trust.

For those with nil rate band discretionary trust provisions, it is not necessary to change the Will. Retaining these provisions give the executors and trustees flexibility to exercise their judgement on how best to deal with the estate in the circumstances existing at the time of death.

For those who are considering updating their Wills, incorporating an IPDI trust is a useful tax planning measure. It will usually take the form of a life interest given to the surviving spouse. On their death the trust fund will usually pass to the children or grandchildren. IPDI provisions balance the interests of both parties by giving security to the spouse whilst protecting the assets for the next generation.

The Trust can comprise all the assets in the estate or a mixture, for example, the share in the matrimonial home, with the remaining assets passing to the spouse outright. All the inheritance tax benefits available to the spouse will apply to the IPDI.

Such provisions will protect the assets for the next generation in the event of the surviving spouse remarrying or going into care. Whether to give the Trustees a power to advance capital to the spouse should be carefully considered but is not generally

recommended in the context of care charge contributions.

Bypass or Pilot Trusts

Bypass trusts are a useful tool for holding lump sum death benefits which may be payable from an occupational pension or personal pension scheme, life assurance policy or insured death in service benefit.

Usually the lump sum is paid to the surviving spouse. This has the effect of increasing their estate for inheritance tax purposes.

A lump sum benefit can instead be nominated to a bypass trust, the beneficiaries of whom will include the spouse and children.

Whilst the spouse will be able to benefit from the trust, the value of it need not be added to his or her estate for inheritance tax purposes. In practice this works by the surviving spouse benefiting from capital and/or income payments and/or a loan made by the trustees. Where a loan is made and remains outstanding at death, the spouse's estate is reduced by the value of the loan, thereby reducing his or her liability to inheritance tax.

The trust is discretionary in nature and any of the other named beneficiaries can benefit. The ultimate distribution of the trust fund lies with the trustees, who will have flexible powers given to them.

The trust can be set up at the time of joining the pension scheme or taking out the life assurance policy. It can also be set up after that, usually with the trustees holding a nominal sum pending payment of any lump sums made to them.

Thus, despite adverse press, trusts are still an essential tool to:

- Protect and provide for beneficiaries at a later age
- Protect assets
- Mitigate tax.

The tax implications for the use of trusts are complex, and setting them up should be undertaken only with professional advice.



NEWS

Keep on Running!

Jane Winfield, Partner and Head of Property, is running the Virgin London Marathon 2010 on behalf of the Mayor of Brentwood and his nominated charities, Helen Rollason Cancer Care, Crossroads Caring for Carers, Brentwood British Legion Youth Band and Children's Holiday Ingatestone Play Scheme.



The Virgin London Marathon on 25 April 2010 will be Jane's third marathon in a year having run the Flora London Marathon in April 2009 and the Abingdon Marathon in October 2009. Jane has also recently run the Rome half marathon. She has confirmed that training is going well and she is really looking forward to running the 26.2 miles on the day (if that is possible?!).



If you would like to find out more about Jane's "marathon" efforts and would like to sponsor her please visit her website at www.justgiving.com/Jane-Winfield.

Wortley Byers LLP

Cathedral Place
Brentwood
Essex
CM14 4ES
Tel: 01277 268368
www.wortleybyers.co.uk

Regulated by the Solicitors
Regulation Authority

Agents Have Rights Too!

Article by Sue Dowman

01277 268 355

sdowman@wortleybyers.co.uk



Some businesses use third parties to market or sell their products. Regardless of whether or not there is an agency agreement in place you should be aware of the implications of the Commercial Agents Regulations.

If you use agents or you are an agent selling or buying goods (and not services) in the UK then it is likely that the Regulations will apply.

The Regulations confer substantial rights on self-employed agents and provide them with a level of security and protection. Many of the terms cannot be avoided, or at least may only be avoided, if the change operates in the agent's favour.

The rights enjoyed by the agents address all aspects of the agency arrangements including their remuneration and commission, their duties and responsibilities and importantly provide for a compensation or indemnity payment being made to the agent on termination of the agency arrangement. In extreme cases this termination payment could be as much as two years' gross commission.

If you would like advice on this complex area and whether it applies to you, please contact Sue or a member of our Company Commercial team.

A Load of Old Tripe?!

Article by Jane Winfield

01277 268 314

jwinfield@wortleybyers.co.uk



When reading through fairly ancient deeds and documents we often come across quaint and old fashioned terminology. We wonder how many of our clients are able to recognise the trades referred to in the restrictive covenants set out in an 1874 Indenture?

"...The covenantors shall not nor will use or permit or suffer to be used any shops which may be erected in the said **** Road for and in connection with the

trade of a slaughterman, tallow chandler, melter of tallow, stoke melter or boiler, tobacco pipemaker, currier, smith, fellmonger, dyer, distiller, common brewer, coppersmith, working brazier, tinplate worker, cooper, tripe boiler, fried fish seller, farrier, vendor of coals, beater of flax or any of them or any trade of a like nature or any noisome offensive or dangerous trade or business whatsoever..."

Wortley Byers LLP's Charity of the Year - Street Kids Rescue

Managing Partner, David Chapman, explains how the firm heard about Street Kids Rescue:

Wortley Byers acts for a number of charities and the partners and staff give freely of their time to support charities and not for profit organisations whether as trustees or advisers or fund raisers.

Without detracting from our support for charities generally the partners have taken the decision to highlight a charity every year for publicity and support. Our first chosen charity is Street Kids Rescue www.streetkidsrescue.org.

I first heard of Street Kids Rescue from a client, Dick Beaumont, who told me how he became involved:

Last year at the N E C I bumped into an old customer of mine, Duncan Mundell and as we talked he told me about a charity he had founded called Street Kids Rescue. He told



me he had gone to Burma on holiday but had been so appalled by the poverty, he abandoned his holiday plans and spent his time trying to help the orphaned and homeless children he saw.

After his holiday Duncan returned to the U.K. and set up Street Kids Rescue committing both his time and cash. He pays all the administration and travel costs. I have checked the books and confirm 100% of money raised is spent directly on the children.

The Burmese regime obstructs foreign charities which only adds to the children's plight. To combat this Duncan has a network of workers and volunteers who — physically take the aid into the areas where it is needed.

A small amount of money goes a long way in helping these kids. Without the kind of help Duncan and his team are giving there will never be any light at the end of the tunnel. Please support them - I do.

This newsletter has been prepared for general interest and it is important to obtain professional advice on specific issues. We believe the information contained in it to be correct at time of print. While all possible care is taken in the preparation of this newsletter, no responsibility for loss occasioned by any person acting or refraining from acting as a result of the material contained herein can be accepted by the firm, the authors or the publishers.

Click [here](#) to unsubscribe from the Wortley Byers newsletter

© Wortley Byers LLP 2010