



Outside the Box

WINTER
2010



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Commercial



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Dealing with Tenants in Difficult Economic Conditions Article by Michael Callaghan



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For many landlords, the economic downturn has affected rental income from tenants. What are the best ways to recover any outstanding sums and to keep cash flowing?

Options vary depending on the nature of the property and particularly whether it is commercial or residential premises.

For commercial premises, the first option is to sue for the debt in County Court proceedings. Once issued, an application could be made for summary judgment to avoid the matter proceeding to a full trial. These applications can be successful if the money is outstanding and the tenant is still in situ at the time of the hearing. It is difficult to deny that judgment should then be delayed. Enforcement options can then be considered.

Forfeiture is another option but it requires more careful consideration. Preliminary checks of the lease are needed to ensure it is allowed in the circumstances which have arisen. Forfeiture effectively terminates the lease at that point. It ends any covenants to make future payments of rent. Only the tenant can apply to the courts to have the lease resurrected. This is something that the landlord cannot do. The implications arising from forfeiture need careful consideration

before any decision is taken.

Distrain also needs prior consideration. It is an alternative to forfeiture. Certificated bailiffs are used to secure and retrieve items of value from inside the property which (once sold) cover the rent arrears. If the property is, for example, a relatively empty warehouse then this procedure is not going to be of any help to you.

For the residential landlord, their options are different. You can still sue for the rent as a debt and obtain judgment from the court.

You can also take steps to evict residential tenants. To attempt to do so without a court order in place breaches criminal law. In order to gain possession of your property you need to apply to your local County Court and, if necessary, use the Court Bailiff. Possession proceedings are usually initiated by section 8 and/or section 21 notices. In due course an application is made to the Court. There are various options (such as accelerated possession proceedings) and it is always important to talk it through and decide on the most appropriate way forward.

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NEWS

Children In Need

Eyes down! Bingo was the name of the game for this year's Children in Need charity event at Wortley Byers. Tickets were sold in advance of the event with prizes for one line, two lines and a full house on two games held at lunch time.

Warren Hawkings and Linda Plant dazzled in their sequins and loud waistcoats as they took the roles of Cyril and Doris, bingo callers in the board room bingo hall. With their 'two fat ladies' and 'blind twenty' number calling they had the room in stitches. The lucky winners were Donna Harrington, Anne Elliss, Brian Spencer, Andrew Dashwood-Begg, Andrew Spearman and Linda Tranfield all walking away with prizes including chocolates, wine and spirits, kindly donated by the Partners of Wortley Byers.

All in all the bingo, Pudsey lottery and dress down day donations amassed to a fantastic £215 for the Charity. A massive thank you to everyone who helped make the day a success.



(From left to right - Anne Elliss, Cyril, Andrew Spearman, Doris, Andrew Dashwood-Begg, Linda Tranfield and Donna Harrington)

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EMI Share Options

Article by Nick Traill

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Options granted under the enterprise management incentive scheme allow a trading company or group to offer share options to its full time employees without any income tax charge on the increase in value of the shares between the date the option is granted and the date it is exercised.

If therefore options are granted to employees to acquire shares at their current market value, there will be no income tax charge if, when the options are exercised, the shares have a higher value. The employees will only be subject to capital gains tax on the difference between the disposal proceeds of the shares (when sold) and the price paid for them.

In the current economic climate, share valuations

have been falling and this presents an opportunity for companies to grant share options to employees without exceeding the maximum limits for EMI share options (£120,000 per employee with an overall limit of £3 million in total).

EMI options can be an efficient and cost effective method of rewarding employees. The terms upon which the options are granted can be flexible. If they are only exercisable on a sale of the shares in the company, this provides a means of incentivising employees without the proprietors of the company suffering any immediate dilution in their shareholdings.

The Current Law Regarding Pre-Nuptial Agreements

Article by Ros Plumb

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Under English law Pre-Nuptial Agreements are not binding but are increasingly influencing the outcome of financial settlements within any divorce proceedings. How far Pre-Nuptial Agreements will influence the Court will depend upon all the circumstances of the case as assessed by factors under current legislation and the guiding principle remains that of being fair, just and reasonable to both parties.

The Pre-Nuptial Agreement is a contract entered into by the parties to a proposed marriage by which they intend to regulate the arrangements to be made between them in the event that the marriage breaks down.

Pre-Nuptial Agreements have been thrown into the spot light again in a recent Court of Appeal decision.

It was held that the existence of such an Agreement in any case required the Judge to consider the weight it should be given as one of the circumstances affecting making a decision regarding any financial settlement within divorce proceedings. He further stated that over the following decade greater weight will be given to properly negotiated agreements not tainted by any abuse or manifest unfairness.

Until reform of the law takes place, Pre-Nuptial Agreements will continue not to be binding, however, given the Court of Appeal's decision in this case, any party looking to protect and/or preserve monies in the event of a divorce would be well advised to sign up to a Pre-Nuptial Agreement.

Lifetime Gift Exemptions

Article by Warren Hawkings

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Over the Christmas period thoughts have turned to giving rather than receiving. With this still in mind, there are some very useful gift exemptions. Basically inheritance tax is a charge on value transferred. There are however a number of transfers which are totally exempt. The apparent policy lying behind such gifts are the encouragement of philanthropy and avoidance of unnecessary administration.

The exemptions can be summarised as follows:-

- The annual exemption. An individual may make gifts totalling in any one tax year £3,000. If wholly or partially unused in any one tax year it, or the balance, can be carried forward to the next tax year. However, if it is not used in that tax year it will be lost.
- Potentially exempt transfers. These gifts which can be of unlimited value will escape tax completely if the donor survives seven years.
- Charity gifts. This is an unlimited exemption.
- Small gifts. Gifts of up to £250 can be made to any one person in any year provided the recipient is not a donee of the annual exemption.

tion.

- Gifts forming normal expenditure out of income. Provided these are totally out of income and no resort is made to capital for payment of other outgoings then the amount of this gift is unlimited. There is no need to survive for seven years, but appropriate paperwork is an absolute necessity.

It is recommended that proper legal advice is obtained before utilising any of the above exemptions to ensure that no challenge can be made.



NEWS

HSBC Quiz

Our team consisting of Sue Dowman, Mike Callaghan, Andrew Moore, Andrew Spearman, Andrew Dashwood-Begg and John Southan (also known as The Andrew Sisters) attended the HSBC Quiz on 17 November 2009 at the Ivy Hill Hotel and came a very credible joint second with Bird Luckin and narrowly missed taking first place by one point. We will be brushing up on our general knowledge skills between now and next November to ensure that we take the winner's cup next time.

Thanks to all those that took part and most importantly, HSBC raised money for their chosen charities, Farleigh Hospice and Teenager Cancer Trust.

Abingdon Marathon

Jane Winfield, Partner and Head of Property Department completed her second marathon last year in a time of 3 hours 50 minutes knocking 59 minutes off the time she ran in the London Marathon.

"Luckily this time I had no injuries and I followed a rigorous training regime to the letter so I knew that unless something went horribly wrong I should be able to do it" said a delighted Jane. "On the day the conditions were great for running and I managed to maintain 8½ minute miles consistently so that I was at mile 21 at just under 3 hours. As with all marathons, those last few miles were hard but crossing the finishing line at a time of 3:50 is something I will never forget!"

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Commercial Properties and Fire Safety - Have You Checked the Risks?

Article by John Southan

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Local Fire and Rescue Authorities enforce the fire safety requirements imposed by the Regulatory Reform (Fire Safety) Order 2005, which apply to most commercial premises, the common parts of residential blocks, hotels and residential care homes.

The "responsible person" (RP) is the person in control of the premises. This can therefore include a number of people at the same time - such as a landlord, management company, employers, tenants and other occupiers, as well as directors of such companies.

A lease might contain details as to whom such obligations have been delegated between for example the landlord, tenant and any management company. It might refer explicitly to fire safety or to a general obligation to observe statutory requirements.

The RP must appoint a "competent person" (CP) to carry out a risk assessment and to make recommendations to deal with any risks identified.

Advice can be obtained from the local fire and rescue authorities but they will not do the assessment for you. CPs/ fire safety assessors can be found in local directories, by recommendation from your insurer, or at trade websites such as the Institution of Fire Engineers www.ife.org.uk.

The CP must have the expertise to identify the potential sources of ignition; combustible materials; vulnerable occupants; insufficient or faulty escape routes, fire detection, and warning systems. The CP must also make recommendations as to fire-fighting equipment, maintenance, testing, information and any other improvements.

The RP is responsible for considering if the CP's assessment is adequate and is ultimately responsible to the enforcing authorities. Some RP's decide to be the CP themselves, although this is not advisable unless the RP has the expertise. General advice and advice specific to particular types of premises - such as offices and shops, warehouses and factories, animal premises and stables, sleeping accommodation, theatres and others - is available at www.communities.gov.uk/firesafety.

The RP must keep the report, and evidence of compliance with the recommendations, where it can be easily accessed together with a record of regular checks, and reviews whenever considered necessary.

Failure to comply with the Regulations can lead to imprisonment, financial penalties of tens of thousands of pounds, and the obvious dangers if a fire should occur and the resulting claims arising from it.

Community Infrastructure Levy Regulations

Article by Brian Spencer

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For some considerable time, the Government has been grappling with how to achieve more certainty (and, possibly, more cash) in the process of developers making contributions towards infrastructure improvements.

Some Councils, perhaps most notably Milton Keynes, already operate a tariff-based system (in other words, a set of payments based upon the size of development). That system operates within the existing legislative framework, including the use of Section 106 planning obligations. The Government's previous proposals for "planning gain supplement" have now been consigned to history and what we have coming into force in April 2010 is CIL.

Previously the message from Government has been

that CIL will be entirely optional and that Councils can if they wish continue to use the Section 106 planning obligation mechanism. However, the draft CIL regulations which are currently out for consultation contemplate that, for all intents and purposes, Councils will be forced to operate CIL by April 2012.

Once the regulations are finalised we will see whether a sensible balance will have been struck between the desire to raise finance and the value of preserving potential developments which were at risk of becoming unviable. We should also then know whether the Government is in effect going to make CIL compulsory throughout the country within a relatively short period of time.

Inheritance Tax Threshold Frozen at £325,000

Article by Andrew Spearman

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The proposed rise in the inheritance tax "nil rate band" threshold to £350,000 was shelved by the Chancellor in the pre-budget report on 9 December. That means from 6 April 2010 the threshold will remain at the current rate of £325,000 until at least 5 April 2011.

If house prices rise over the coming 18 months then

the static threshold could mean more estates facing an inheritance tax (IHT) bill. Anything above the threshold is taxed at 40%. Proper estate planning and advice could help mitigate any of your IHT liability and we have an experienced team of solicitors to help you. Please contact us for further information.



NEWS

Brighton 10k Run

Corporate Commercial Partner Nick Traill ran the Brighton 10K, which his daughter Jenny also ran, on 15 November. The course ran along the Brighton sea front, which make for a pleasant location; and the event was very well attended. Fortunately the gales and heavy rain of the day before had mostly subsided by the time the race started.

Nick has previously run the Brentwood Half Marathon in 2008 and 2009 (on that occasion with his other daughter Louise who also ran the 2009 London Marathon); and Nick plans to run the Brentwood Half Marathon again this year.

Wine Tasting

A good night was had by all on 4 December when the Litigation Department at Wortley Byers held a 'Festive Tasting of French Wines'.

Neil Hornsby of Drinks of France came to the offices to share his knowledge of French vino with a selection of the department's professional contacts.

The festive evening got off to a sparkling start and after a taste of a selection of white and red wines from a variety of French regions, the evening ended with a fortified pudding wine for those with a sweeter tooth.

With the wine flowing, the guests enjoyed a selection of fine French cheeses, patés and bread, together with petit fours to help 'soak up' the French ambiance and history.

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Oakwood Asset Management

It's a new year (wait, it's a new *decade!*) so what better time to run a health check over existing investments or to consider new financial possibilities? Wills, Probate, Tax and Trusts solicitor Andrew Spearman met with independent financial adviser Claire Heritage, a partner with Oakwood Asset Management, to get some useful information on performing a "financial MOT".

AS: Why should an investor seek independent financial advice?

CH: It can be tempting to use the internet, gather information and make investment decisions yourself. However, financial advice is a complex area with legislation and products that can change quickly. It is therefore vital that you seek professional advice from an adviser who is independent and can offer advice for the whole of the market.

If you already have an adviser, make sure they are providing you with the best possible service. If they aren't, remember you are free to change your adviser at any time.

AS: What type of investments should an investor consider?

CH: It is important to spread the risk of your investments by diversifying the type of assets you hold, whilst taking into account inflation, liquidity and currency.

When making cash deposits you should also bear in mind the risk of the provider defaulting. The Financial Services Compensation Scheme currently covers cash deposits up to £50,000 made into each UK institution. It is worth checking to see who the underlying institution is as one institution may have several banks.

AS: When should people start saving?

CH: When making an investment or any type of regular savings it is important to start as early as possible. This allows time for investments to weather market fluctuations. Most investment plans are designed for the medium to long term (minimum of 5 years).

AS: How can an investor ensure that savings are tax efficient?

CH: To make the most of your money make sure you take advantage of any tax efficient investments such as Individual Savings Accounts (ISAs) and Personal Pension Plans.

ISAs offer an attractive tax-free shelter. The maximum you can invest has changed. If you are over 50 you can currently invest up to £10,200 each tax year in an ISA. For those under 50 the limit is currently £7,200 but this is increasing to £10,200 from April 2010. All of your allowance can be invested in stocks and shares, or you can split it by investing in cash ISAs

(up to the maximum permitted) with either the same or a different provider.

Personal Pension plans benefit from tax relief on the contributions you make. This means that to invest £100 into your pension it will only cost you £80 after tax (2009/10 Tax Year) or less if you are a higher rate tax payer. The money you pay in is invested and used to provide an income when you retire.

In the last Budget the Chancellor changed the rules on tax relief on pension contributions for high earners (£130,000 and above). If this applies to you then you should be seeking advice.

AS: How can an investor ensure that savings and income are protected in the event of unforeseen events?

CH: As well as building your wealth it is equally important that you protect the investments you already hold. What would happen to your savings in the event of being unable to work through ill health? Would you need to live off your savings should you be made redundant? How would your family cope in the event of your death?

It is possible to protect yourself against these events in the form of insurance plans. It is also important that any cover you already have in place is regularly reviewed.

AS: Should investors regularly review their arrangements?

CH: Yes absolutely, the only constant we have is change. It is important that your investments are regularly reviewed in line with any changes in market conditions, legislation or your personal circumstances. We generally review our client's arrangements annually.

AS: How can you be contacted and what do you charge for the first meeting?

CH: Oakwood Asset Management is based in Brentwood in Essex and Ware in Herts. We believe that true financial planning and wealth management can only be delivered from a total understanding of the client leading through to fully bespoke advice and solutions.

Each of our advisers has over 20 years' experience in financial and investment planning. If you would like to speak to one of our advisers contact us on 0845 4594025, or visit our website www.oakwoodassetmanagement.co.uk. The first meeting is without charge or obligation.

Please note that past performance is no guarantee of future returns. The value of investments can go down as well as up. There are risks to investing and it is always advisable to seek independent advice.

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