

Cozens-Hardy LLP

Refreshing Legal Services

the Brief

A very warm welcome to the ninth edition of our newsletter

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Mr Whipp has kindly invited me to be a 'guest' writer of the introduction to this edition – something to do with age, I'm sure! As many of my clients know, I will shortly reach the 60yrs milestone; my colleagues kindly tell me this is only the 'new 40' and, on this basis, I should be good for another year or two at least. This also means that I have practised in commercial property law for nearly 35 years from the Chambers - and part of the reason for my introduction is to reflect on the current market in light of my experiences.

Particularly relevant at the present time, is the fact that this is the third property recession, which I have worked through. Well managed and financed businesses survive and this can be good time for developers to pick up sites for long term development and investment. Several of my clients over the years have used recessionary periods as a foundation for successful business expansion and investment. The one element that may be different this time around is the internet and the increasing use of e-commerce - yes, even I have been taught to use email and the web! This may well have an impact on the requirement for retail premises and the nature of office premises, not to mention the increasing use of home offices.

While certain sectors of the property market may be affected by e-commerce, others will not.

For example, agricultural property and related services are areas where the physical aspects of the work require premises from which to carry on business, for storage and distribution.

There is one area of commercial property which has remained constant over the years. Leases are central to commercial property and, while tenancies are now granted for much shorter periods, the key concerns remain untouched: a balance must be struck between the landlords' and the tenants' interests and the client must be confident that their premises suit their businesses needs. The French expression 'plus ca change, plus c'est la meme chose' might be appropriate. For 35 years the enduring aspect of all commercial property work is to give the client accurate advice, tailored to their business needs, in a prompt, efficient and cost effective manner. The methods of delivering this service and the law may have changed, but what the client wants from his or her solicitor remains the same.

On a different note, it falls to me to deliver the fantastic news that our many fund raising activities last year raised a grand total of £8,502.37 for the Big C charity. A huge thank you to everyone who kindly contributed to the cause – we were genuinely touched by the generosity of our clients and friends.

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BUYING PROPERTY AT AUCTION by Rebecca Edwards



With the attraction of 'picking up a bargain', buying a property at auction has become a popular and attractive proposition for many, especially property developers.

Many properties at auction are those which require updating or modernising which could then (hopefully!) be sold at a profit or retained as an investment property.

Cozens-Hardy has close links with the local property auctioneers and at least one member of staff is usually in attendance at the local auctions, therefore being on hand to assist would-be buyers with any last minute queries, as well as representing sellers.

Associate, Rebecca Edwards, answers some typical questions asked by clients thinking of buying and selling a property at auction:

I am interested in a property at a forthcoming auction. Can you help?

Yes! It is very advisable to get your solicitor to check through the 'legal pack' and 'special conditions' prior to the auction, especially if you require mortgage finance. Unless you have the funds available you will need a written mortgage offer prior to the auction. We can contact the auctioneers and/or seller's solicitors on your behalf. You should also inspect the property and carry out any required surveys.

Can I not just turn up at the auction?

It is recommended to have the advice of a solicitor before bidding at the auction. If you make a successful bid this is treated as 'exchange of contracts'. You then become

legally contracted to buy the property in its current condition and are deemed to have accepted the legal title.

Why is this property being sold at auction?

The majority of properties included in an auction are those in need of repair or updating - but not all. If you are looking at a property as an investment, there are many things to look out for and to be aware of, for instance is there a sitting tenant in the property, has work been carried out without the required planning consent or building regulation approval, is the property subject to an agricultural occupancy restriction? All these circumstances would make the property less attractive and possibly difficult (or impossible) to get a mortgage on. This is why it is important to have the legal paperwork checked beforehand.

What if I cannot personally attend the auction?

It is possible for us to attend the auction and bid on your behalf, but we will require your written authority and your written instructions on the maximum bid you can make. However, you can make a telephone bid with the auctioneers on the day of the auction.

What happens if my bid is successful?

You will need to provide the auctioneers with identification, so remember to take a passport or driving licence with you. You will also have to pay a 10% deposit. Building insurance should be arranged and commenced immediately. You will then need to contact your solicitor and pass them the auction paperwork so they can prepare for completion. The completion date is usually set by the seller and is normally 21 or 28 days after the date of the auction. However, if both parties agree completion can take place sooner.

What are the advantages of buying at auction?

You may be lucky and manage to purchase a property at a good price. However, if you are not successful you may have wasted

costs, ie solicitor, survey and mortgage fees. It is a good idea to go along to some auctions to see how things work and carry out lots of research before you consider bidding for a property.

I want to sell my property at auction. What should I do?

You should contact a local agent who specialises in auctions. They will then value the property and place it in their next auction. They will discuss with you the guide price and also agree a reserve price, that is the lowest price you would be prepared to accept for the property at auction. Your solicitor will also need to prepare a legal pack to be made available to buyers and auctioneers.

Should I accept an offer prior to auction?

If you wish to accept an offer prior to the date of the auction it is advisable to state that the buyer must exchange contracts before the auction. This then gives you the option of still having the property made available at the auction. If you do sell prior to auction then you could be accepting a price less than that you could possibly achieve at auction. On the other hand, if you do not sell prior to the auction, you run the risk of the property not selling at auction.

If you would like more information or would like Cozens-Hardy to represent you in either buying or selling a property at auction, please contact me as below.



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LEGAL UPDATE: LAND AGREEMENTS AND COMPETITION COVENANTS

by Dan Evans

On the 6th April 2011, an existing exclusion that previously kept land agreements out of the clutches of competition law comes to an end. Up until now, all land agreements had an automatic exclusion and they have not been subject to UK competition law in the same way as other commercial agreements.

The 'land agreements' most affected will be contracts for the sale of land and leases of commercial property. For decades it has been common practice to include provisions that may have an anti-competitive effect in such land agreements.

The move comes following extensive investigation and consultation into the practice of some organisations (it is often alleged against supermarket chains) of buying up suitable land in a town/city and then immediately re-selling it, this time subject to restrictions on the future use of the land.

The upshot of this change is that from April all land agreements, both existing and future, between businesses will now be subject to the full force of competition law - and you do not have to be a large business to be affected by this change. Any clause or covenant that seeks to restrict competitors

from a particular market, or could have that effect, could fall foul of the new law. Examples of matters that may fall foul include:

- A tenant wishes to be the sole supplier of a particular product or service in a shopping centre and negotiates that the lease contains an agreement with the landlord preventing the landlord from letting other units in the centre for the same use

- A seller who is selling some land does not wish for the buyer to open a shop selling handbags as this may affect the seller's own handbag shop in the same street. Accordingly the seller wants to impose a restrictive covenant on the future use of the land being sold

One important aspect to grasp is that this change does not only affect new transactions and new leases, it means you cannot rely upon or enforce similar clauses in existing agreements and leases.

However, for an agreement to be deemed to have an anti-competitive effect it must distort the market by materially impacting the ability of potential competitors

to compete. This will need a careful consideration of what exactly the 'market' is and whether it is really being affected.

If you are concerned that you may be party to an agreement that may fall foul of the changes to legislation, please feel free to contact Dan Evans to discuss matters further.



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SWIMMING, CYCLING, RUNNING – ENDURING THE PAIN TO GAIN FOR LOCAL CHARITIES!

We are delighted to announce that we will be supporting two fantastic local charities this year, **Nelson's Journey** and the **Norfolk and Norwich Families' House**.

Nelson's Journey is a Norwich based charity which supports children and young people living in Norfolk who have experienced the death of a significant person in their life. The Norfolk and Norwich Families' House provides support services to families in Norfolk, assisting parents with the difficulties they experience in raising their children.

We will be raising money throughout the year with different fundraising activities, but our two main events will be the firm's sponsorship of the Broadland Half Marathon and the Norwich Triathlon. Several staff members will be competing in the half marathon, which takes place on Sunday 3rd April, starting and ending in South Walsham. And we have three team entries confirmed for the gruelling triathlon at Whitlingham Country Park, on Sunday 3rd July.

If you would like to support our fund raising endeavours this year, we'd be delighted to see you at either event, or please visit: www.justgiving.com/teams/cozens-hardy. Thank you.



READY FOR THE NORWICH TRIATHLON! Our intrepid Principals, from left to right - Philippa Rudd, Chris Groves, Iain White

EMPLOYMENT LAW ALERT!

From 6th April 2011, the default retirement age will start to be phased out. Currently you can compel employees to leave at 65yrs and you must let them know their expected retirement date in writing between six and 12 months before their 65th birthday. Under the changes, the last day that employees can be compulsorily retired is 30th September 2011, so the latest you can give them the required notice is 30th March. If you need employment law advice, don't hesitate to contact Andrew Spencer – tel: 01603 625231 and ajspencer@cozens-hardy.com.

ABELS MOVING SERVICES - TOP TIPS FOR PEOPLE ON THE MOVE

ABELS
THE ART OF MOVING



John Watson
UK Services Managing
Director for Abels

Abels Moving Services provides a discreet service to the country's most exclusive addresses.

The company's state-of-the-art eco-friendly fleet of immaculate cornflower blue pantechnicons has proudly carried the Royal Warrant to HM The Queen for removal and storage services since 1989. It is the highest recognition of the superior quality service provided by staff with a passion to be the best there is.

Here UK Services Managing Director offers some tips on how to make one of life's most stressful events as worry-free as it is possible to be.

Choose your removal company carefully

Simply relying on impressive-sounding claims made in advertisements may not be a wise choice. They may not be all that they claim. Your chosen move partner should have a proven track record and be assessed by a recognised standards organisation.

Resist the temptation to obtain multiple quotes – a critical selection of three reputable companies should be enough. Beware of low prices from a company you have never heard of... you're inviting them into your home for a close-up look at all your valuables. Recommendations of trusted friends or colleagues are worth their weight in gold.

Plan early

Begin your research into removals companies as soon as you decide to move. A professional removal company will want to make a visit to assess what is required. If possible avoid peak moving periods – usually the school holidays.

Before the removals surveyor arrives, prepare notes which contain all the important information you want them to know and questions you may wish to ask. Each company's surveyor should be briefed by the same person – or at the very least from the same briefing document – so they all quote for exactly the same thing.

If you had to remove windows or doors to get any of your furniture into your house, the surveyor will need to know.

Avoid packing pitfalls

You can do it yourself, but packing is best left to the experts. Experienced crews who work for the best firms will have the skills, training and an array of specialist materials to deal with all aspects of packing. Your antiques, paintings and fragiles will be in the very best of hands.

Make sure you have adequate insurance. You need to know what level of cover is offered in the policy you or your moving company is using. Beware of undervaluation. Don't be afraid to question a removals company about their claims record.

Moving day preparations

Ensure any gas and electrical items you plan to take with you are disconnected by qualified tradesmen. Some other things you may need to think about are securing the drum of your washing machine with a stabiliser bar and locking hi-fi turntables with transit screws. Free fitted carpets from grips and tacks so that they are ready to roll. Unless previously agreed you will need to disassemble wardrobes, cabin beds, garden sheds and greenhouses. Have refrigerators and freezers empty, defrosted, clean and dry.

Find out what's in store

If you need to use storage facilities, visit them unannounced. Make sure they are secure, clean, dry and well ordered – not some barn or dilapidated warehouse.

At the other end

Your belongings will come off the furniture van fast – so have a plan of where you want

items placed. If the access to your new home is restricted, the removals company may need to provide a smaller van to act as a shuttle between the large pantechnicon and your property.

Alternatively, you can leave it all to an expert

The best firms will appoint a dedicated move manager to oversee your move from beginning to end and mould their company's service to meet your specific needs.

The move manager's role is all about providing solutions and making your move as stress-free as possible. They can organise anything from renovating and refurbishing a new home to sourcing furniture and stocking up with toiletries and food. They can provide a complete unpacking and installation service, set up your new home just as you or an interior designer specifies and organise maids, specialist cleaning services, landscapers, gardeners, or TV and IT engineers.

You get what you pay for!

You may be tempted by a low quote. But will you sleep easily knowing you have put your cherished belongings into potentially the wrong hands?

Employing a company running a fleet of modern, state-of-the-art pantechnicons, with air ride suspension, manned by highly trained crews and covered by comprehensive insurance will give the greatest peace of mind!