

Reflecting the times...

I AM DELIGHTED TO LET YOU know that Jon Love, a former dairy farmer, who has been training with us for the last two years has now qualified as a solicitor and is staying with us, concentrating on agricultural matters.

This has caused me to reflect on my own time as a solicitor which is now clocking up well over a quarter of a century. **Has the job changed?** Of course it has, not least because of governments of whichever political hue passing ever more rafts of new (and often seemingly unnecessary) legislation. But fundamentally the job is still the same: we are problem solvers and here to help you – our clients – through often difficult situations or to flag up problems

“ Fundamentally the job is still the same: we are problem solvers and here to help you – our clients – through often difficult situations or to **flag up problems** which you might not have foreseen, and so **help you avoid them.** ”



which you might not have foreseen, and so help you avoid them. I hope that these newsletters in particular help with that latter function.

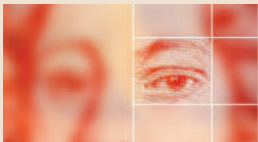
For those of you reasonably local to us, we shall be at the Blakesley Show on Saturday 2 August. If you are going to be there, do please call in to say hello and

we shall be pleased to offer you some refreshment.



Mike Thomson

mt@arnoldthomson.com
t: 01327 355783



Anti-Money laundering regulations

T HE RECENT CHANGES TO THE anti-money laundering regulations (“the Regulations”) have arguably been the most significant legislation imposed upon solicitors in recent years.

The Regulations effectively require all solicitors to take appropriate measures to guard against possible money laundering activities. Money laundering is the process by which criminals introduce their funds, known as “**dirty money**”, into a banking system in an attempt to make it “clean” and therefore harder to detect.

As a result of the changes to the Regulations we are required to obtain documentary evidence of your identity (photographic evidence such as a passport or a driving licence and also evidence of your current address such as a recent utility bill) and this applies

“ As a result of the changes to the Regulations we are required to obtain **documentary evidence** of your identity (photographic evidence such as a passport or a driving licence) and also evidence of your current address ”

to not only new clients but also existing clients when undertaking a new matter for them (although the latter is subject to guidelines as to how often we are required to do so). It is therefore standard procedure for the firm to ask for such documentation to be produced prior to us entering into a business relationship with you (*therefore it is important that we receive the documentation from you as soon after the initial contact as practicable*).

The Regulations also state that

not only must evidence of identity be obtained but it must also be verified. Therefore we do require to see clients in person or at the very least request that another solicitor certifies copies of the documentation to confirm it has been verified. A further requirement imposed upon us is to carry out detailed client due diligence at the outset when acting for clients on any matter. This will involve the acting solicitor completing a brief form with you. This will serve not only to

Continued on page 2

increase our knowledge of the background to your instructions but also enable us to deal at the outset with queries we may have at a later date.

Whilst the above requirements are

the service we can provide to you or your business.

I know from experience when opening a bank account the red tape at the outset can seem over the top and cause

urge you to bear with us when we ask you for proof of identity at the outset and also during additional matters of due diligence as appropriate. These procedures ensure that we as solicitors

are complying with the law and also that we are undertaking all measures to make sure we protect our clients. If you have any queries about any aspects of the



“there is a **positive** to take from the processes we have adopted. We, as your solicitors, will have the opportunity to **develop a greater understanding** of you or your business from the very outset.”

further signs of the increased regulatory framework we work in, I do believe there is a positive to take from the processes we have adopted. We, as your solicitors, will have the opportunity to develop a greater understanding of you or your business from the very outset. This can only serve to further enhance

frustration. However, failure by solicitors to stringently follow the legislation set out in the Regulations can lead to severe penalties and ultimately that of imprisonment. Compliance with the Regulations will also ultimately protect not only my colleagues and I but also the firm’s clients. I would therefore

Regulations please do not hesitate to contact me.



Matt Hawkins
matt@arnoldthomson.com
t:01327 355788

Energy Performance Certificate



The **requirement for an EPC** in respect of non-dwellings is being rolled out over the current year but there are **still many uncertainties** as to how the regulations are to be implemented...

DEVELOPERS, OWNERS, OCCUPIERS and managers of commercial premises need to be aware of the current roll out of recently introduced regulations (“regulations”) requiring most non-dwellings to have an Energy Performance Certificate (“EPC”). The requirement for an EPC in respect of non-dwellings is being rolled out over the current year in accordance with the timetable overleaf.

Energy assessors

An EPC and the report must be prepared by a suitably qualified energy assessor. There is currently a lack of trained energy assessors and an energy assessor who may be qualified to issue an EPC in respect of one building may not be qualified to issue an EPC in respect of other more complex buildings. When appointing an energy assessor to prepare an EPC for you, you need to check that they are a member of a scheme approved by the Government and you need to check their level of accreditation. The energy assessor will be responsible for registering the EPC and the report with the appropriate Government department which will be maintaining a register of EPC’s and reports.

Generally, an EPC will be valid for 10 years from the date on which it was issued

but a valid EPC will be revoked if a new EPC is issued for the building.

When is an EPC required?

An EPC is required when a non-dwelling is constructed, sold or rented out. A developer is required to produce an EPC when a building is erected or converted into fewer or more units.

When a building is to be sold or rented out the seller or landlord must provide any prospective buyer or tenant with a valid EPC and the report, free of charge, at the earliest opportunity. Sellers and landlords should therefore ensure that the EPC and report are available prior to marketing.

“Selling” includes the assignment of an existing lease, in which case it is the assignor’s responsibility to provide an EPC to the proposed assignee. “Renting out”

What is an EPC?

An EPC is a certificate containing information about the energy efficiency of a building, the aim being to enable tenants and buyers to be aware of and to consider the energy efficiency of the building they are intending to acquire or occupy. The EPC must include certain specified information and must be accompanied by a recommendation report (“the report”), prepared by the energy assessor who issues the EPC, containing suggestions for the improvement of the energy performance of the building. There are still many uncertainties as to how the regulations are to be implemented. The Government has issued some guidance but the guidance does not provide all the answers.

“When a (commercial) building is to be sold or rented out **the seller or landlord must provide** any prospective buyer or tenant with a valid EPC and the report, free of charge, at the earliest opportunity”





“ When appointing an **energy assessor** to prepare an EPC for you, you need to check that they are a member of a scheme **approved by the Government** and you need to check their level of accreditation. ”

includes the grant of a sub-lease. When considering granting a sub-lease of property forming part of a larger building, the tenant granting the sub-lease needs to decide whether it will provide an EPC for the part being sub-let or whether to approach the landlord of the building with a view to getting the landlord to obtain an EPC for the whole building which can be done provided there is a common heating system.

The Government-issued guidance provides that lease renewals, lease extensions and surrenders are not considered to be selling or renting out and the requirement to provide an EPC and report does not currently apply in those circumstances.

Transitional Arrangements

Special provisions apply where a building was already being marketed as at the date that the regulations would otherwise have meant that an EPC should be made

Exclusions

Certain non-dwellings are excluded from the requirement to provide an EPC and provided certain conditions are met the obligation to provide an EPC does not apply to buildings that are to be demolished.

A few of the exceptions are:

- **Temporary buildings with a planned time of use of two years or less**
- **Non-residential agricultural buildings with low energy demand**
- **Places of worship**
- **Stand-alone buildings with a total useful floor area of less than 50m²**
- **Industrial sites and workshops with low energy demand**

Penalties for non-compliance

Enforcement of the regulations is the responsibility of Trading Standards. They

Key dates

6 April 2008: EPCs are required on the construction, sale and rental of non-dwellings of more than 10,000m²

1 July 2008: EPCs are required on the construction, sale and rental of non-dwellings of more than 2,500m²

1 October 2008: EPCs are required on the construction, sale and rental of all other non-dwellings.

4 January 2009: Deadline by which first inspection report for existing air conditioning systems of more than 250kW to be obtained

4 January 2011: Deadline by which first inspection report for existing air conditioning systems of more than 12kW to be obtained

Conclusions

There is still much uncertainty as to how the regulations are meant to be implemented and the possible effect of the regulations. For instance, if a building is being modified, how much a building needs to be modified before an EPC is required is not clear. It is not clear at what point an EPC must be provided where an

“ What does seem clear is that those with an interest in and **involvement with commercial premises** now have further items to add to their checklist of statutory requirements. ”

available. For buildings (or parts) over 10,000m² which were already being marketed (and marketing sustained to a reasonable extent) as at 5th April 2008, or for buildings (or parts) over 2,500m² which were already being marketed (and marketing sustained to a reasonable extent) as at 30th June 2008, the seller or landlord must request an EPC and report from a qualified energy assessor once contracts for the disposal are exchanged. The seller or landlord must make reasonable efforts to obtain them at their own cost as soon as practicable and in any event by 1st October 2008

have powers to issue notices in respect of breaches of the regulations with the maximum penalty being **£5,000.00**. The actual level of the penalty to be imposed will depend on the rateable value of the building (subject to the maximum).

Air Conditioning Systems

The regulations also include a requirement to have some air conditioning systems inspected by an energy assessor within specified time periods and thereafter at regular intervals. Please contact us if you require detailed information.

option is being granted. Consideration needs to be made as to what amendments should be made to leases as a consequence of the regulations. What does seem clear is that those with an interest in and involvement with commercial premises now have further items to add to their checklist of statutory requirements that must be adhered to when dealing with developments, sales and lettings.

Jacqueline Hibbett

jh@arnoldthomson.com

t:01327 350266

E-mail version also available...



IF YOU WOULD PREFER TO RECEIVE THE FIELD LEADER BY EMAIL IN FUTURE

please send your full name/s and e-mail address to enquiries@arnoldthomson.com or if any of your details are incorrect, please send us your changes by email or by post to our office address, which is 205 Watling Street West, Towcester, Northants, NN12 6BX.

www.arnoldthomson.com



Inherit the Earth...Tax free?

If you own farmland, can you be sure of full Inheritance Tax relief?

THERE IS A COMMON MISCONCEPTION THAT ALL farming property qualifies for 100% tax relief and so can pass from one generation to the next free of any charge to Inheritance Tax (IHT).

There are two situations in particular where careful planning can reduce the IHT bill.

Do you own farmland subject to an older tenancy?

Did you know that the Agricultural Property Relief (APR) on any property subject to a tenancy granted before 1st September 1995 is limited to 50%? It is then the case that the freehold value would be reduced by the existence of the tenancy, but if your estate is going to be chargeable to IHT, then every one of these tenanted acres will increase the tax IHT bill for the family.

There is however a potential way around the problem by virtue of legislation introduced in the autumn of 2006. It is now possible to effect a "surrender and re-grant" of any affected tenancy and thus increase the APR from 50% to 100%.

You will need the co-operation of your tenant but his position as tenant will not be affected by the re-grant – he will have exactly the same protection as he enjoyed previously under the Agricultural Holdings Act 1986. It may also be an opportunity to

update the tenancy – for example to take account of the Single Payment or other environmental schemes.

If you think this could be of benefit to you and your family, or you would like to discuss the matter further, please contact us.

Can you obtain 100% relief on your other rented land?

Where land carries a value over and above its basic agricultural value – for example because it has the hope of future development – the added value can obtain 100% relief from IHT but only if it satisfies the requirements of the Business Property Relief rules.

A recent Northern Ireland tax case shows how important it can be to be able to demonstrate to H M Revenue & Customs that any such land is genuinely being used in your farming business and not just held as an investment for its rental income.

Whenever some third party is involved in or assisting with the farming of such land, it is essential to structure the arrangement carefully to demonstrate active involvement in the farming of the land and so maximize the BPR relief.



Mike Thomson

mt@arnoldthomson.com

t: 01327 355783

The Super (complex) Powers of Attorney



THE NEW RÉGIME FOR POWERS of Attorney came into force on 1 October 2007, and already considerable problems have been widely reported.

While the Lasting Power of Attorney was designed with the best of intentions, to try to curb abuses alleged to have happened with Enduring Powers of Attorney, there is little evidence so far of any enthusiasm for the replacement, either from solicitors or clients.

Why do I write such a dismal comment?

The Lasting Power of Attorney is a very much longer and more complex document than the old Enduring Power of Attorney. Inevitably that increases the time spent in drafting one, and explaining its provisions to the client. This has to be reflected in the cost.

The Lasting Power of Attorney has to be "certified" by an independent person who can confirm that the person signing the document understands what he or she is doing, knows and approves the contents, and is not acting under any form of duress. If a solicitor is asked to do this, he or she is taking on a considerable professional responsibility, and must be entitled to charge for the professional skill and knowledge

which has to be brought into the process.

The Lasting Power of Attorney **cannot be used at all until it is registered with the Court of Protection**. This process can take up to five months. This is simply the result of administrative problems at the Court's offices, but it is a most unsatisfactory situation, and is causing deep disquiet.

As a result of these problems, very few Lasting Powers of Attorney have been made.

What is the consequence? We find that elderly people are giving their children signing rights on bank accounts, which is bound to increase the instances of abuse. People are simply walking away from what they perceive as the complex and expensive system of Lasting Powers of Attorney.

At a recent conference I attended of solicitors and medical consultants, all concerned about the failings of the new régime, there was widespread agreement that a simple form of General Power of Attorney should be prepared alongside a Lasting Power of Attorney and this might well prove sufficient to enable an elderly person's affairs to be dealt with on a temporary basis, under the supervision of a solicitor, until the lasting Power of Attorney could be registered with the Court.

Further, a General Power of Attorney

might well remain valid as long as the elderly person had capacity to make decisions on some of his or her affairs, because the **Mental Capacity Act** states that each individual act needs to be looked at, and it is no longer correct to say that a person has "lost mental capacity" and leave it at that. People can have capacity to make some decisions and not others.

What advice can be given? Lasting Powers of Attorney do have their advantages but they are cumbersome and expensive to prepare and complete. General Powers of Attorney may be used but they are not free of risk and might not always be acceptable to banks and other institutions if it were thought the person making them was losing mental capacity. If someone is gradually losing capacity then a time will come when someone will have to apply to be appointed as a Deputy by the Court of Protection and this will be a lengthy process and depend on medical evidence.



Maurice Alton Honeywell

kmsah@arnoldthomson.com

t: 01327 355781