



RURAL BUSINESS PRACTICE BRIEF

LEGAL UPDATES FOR THE RURAL COMMUNITY

Welcome to our Rural Business Practice Brief, covering the latest legal updates and issues currently facing the rural community. In this issue we address:

- ||| **Rural Property** - The benefits of Voluntary Land Registration
- ||| **Family Law** - Reasons for considering a Pre nuptial Agreement
- ||| **Tax Planning** - The availability of Business Property Relief for Let Properties
- ||| **Equine and Bloodstock** - An update on Horse Passports
- ||| **Sustainability** - An introduction to the CRC Energy Efficiency scheme

As you will see this Brief covers a diverse range of topics from some of the teams forming part of our Rural Business Practice. We hope you find it useful and informative, and we welcome your feedback on the topics covered, or any you would like to see included in future issues.

If you would like a copy of our Rural Business Practice Guide contact me or click [here](#).

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Rural Property: Voluntary Land Registration

Often farms and estates remain in the same family for generations and so remain unregistered at the Land Registry. However the Land Registry, supported by the National Farmers Union, has been attending various markets and other venues encouraging farmers and landowners to consider applying voluntarily to have their land registered. Quentin Butler a partner in our Landed Estates team, wholly endorses this as a sensible thing to consider doing for various reasons:-

- ||| The exact extent of your land would be checked, marked on a modern map, and given, in effect, a Government title guarantee.
- ||| Whilst there is a degree of work involved in preparing the application, it should lead to cost savings on future dealings and by applying voluntarily discounted Land Registry fees are payable.
- ||| If there are any discrepancies about boundaries or about access rights, then these can be tackled without the urgency of a transaction being underway, as evidence often needs to

be gathered and recorded in statutory declarations from historic personal knowledge. Tackling them now will prevent, or at least reduce, difficulties arising later for landowners or their children.

- ||| As part of the preparation of an application, a check of the register of land charges (essentially third party rights) will be carried out. This can throw up long forgotten or discharged matters (such as reference to old mortgages or lapsed options) and these will need to be cleared up before your property can be sold or charged and it is sensible to do this whilst time is available.
- ||| If you have bought your land in different pieces at different times, you will have different sets of title deeds, which might in turn be kept in different places. If any of these should get lost or mislaid, then it could be difficult to



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recreate evidence of the ownership. Once land is registered, the title is the Land Registry's computer record which cannot be lost or mislaid and it is recorded on an up to date Ordnance Survey plan.

- Another key benefit is that it is much more difficult for squatters to gain ownership of registered land based on long adverse possession.

For all these reasons we believe that most land owners will more than get their money's worth, if they make a voluntary Land Registry application.

You can access the specific electronic Guide for Farmers issued by the Land Registry by clicking [here](#).

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STOP PRESS:

Members of the Rural Business Practice will be participating in the CLA Renewables Conference on Tuesday 24 November 2009 at Cranmore Park, West Midlands.

[Find out more](#)

Family Law: Pre-Nuptial/Civil Partnership Agreements

For those about to embark on the adventure of marriage, considering what would happen if it all goes wrong may seem like a curious thing to do. None the less where material assets are concerned, it is essential at least to consider entering into a pre-nuptial/civil partnership agreement in order to have a

degree of certainty about the outcome of any financial settlement upon separation or divorce. These are agreements aimed at wealth preservation and preventing the sale or appropriation of assets or an estate which may have been in a family for generations. The risk of assets or land holdings having to be broken up and distributed can arise even following the shortest of marriages, since the Courts have evolved a very wide discretion as matrimonial law has developed and as we have all read in the newspaper headlines. Pre-nuptial agreements can prevent people being ousted from their homes, even for a temporary period as was the case only this autumn in the proceedings between Anthony Arbuthnot Watkin Grubb and his wife when Mr Grubb was ousted from his ancestral family home in Sussex, until such time as the divorce proceedings are resolved. The proceedings could take several months to conclude. In the meantime Mr Grubb is not allowed to return to the estate, part of which he farms.

The dangers of not having such an agreement were highlighted again this year in the Court of Appeal case of Radmacher -v- Granatino when an heiress managed to safeguard her fortune, thought to be worth an estimated £100 million. In this case the Court of Appeal upheld an agreement entered into by the parties in 1988.

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You can see a more detailed discussion in latest Private Client Brief by clicking [here](#).

Tax Planning - Business Property Relief: The Earl of Balfour Case

Preserving assets and estates often involves ensuring that all appropriate tax reliefs are obtained. In the recent Scottish tax tribunal case of the Earl of Balfour, the extent to which Business Property Relief ("BPR") for Inheritance Tax ("IHT") may be available to



relieve let property on a farm from a charge to IHT, where farming and letting businesses are run as one, was explored.

At the tribunal case, an earlier case from 1999 called the Farmer case was reviewed in which the deceased ran one business comprising both a farm and let properties. No BPR would be available if the Revenue could show that the business was one which was wholly or mainly holding investments. The Commissioners in the Farmer case said that in assessing whether a business was one which was wholly or mainly holding investments, the business had to be considered "in the round", taking into account the overall context of the business, the capital employed, the time spent by the employees, the turnover, and the profit, and they decided this was a farming business, the letting of properties being a subsidiary function.

In the Earl of Balfour case, the estate was described as a traditional Scottish landed estate and consisted of a blend of agriculture (in hand and let farms), woodland, and let cottages.

Again, the Revenue contended that BPR should not be available on the let properties but the Judge decided that Lord Balfour ran the estate as “a single composite business”, and that “it is necessary to establish what the preponderance of business activity is. This can be looked at from the point of view of a variety of relevant factors [these] include turnover, profit, expenditure and time spent by everyone involved in the carrying on of the various business activities.” As the letting side was ancillary to the farming, BPR was available on those assets within the business which did not otherwise qualify for agricultural property relief.

The Earl of Balfour case is currently being appealed by the Revenue, but what is clear from these two cases is that where let property is included within a farming business it is necessary regularly to review the business activities to ensure that BPR may be available.

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Equine and Bloodstock - Update on Horse Passports

For horse owners across the country, please remember that the new Horse Passport Regulations came into force on 1 July 2009. The key changes under these regulations are:

- ||| Horses must now be accompanied by their passport at all times. There are limited exceptions where, for example, a horse is being moved between grazing fields or is being hacked out, providing the passport can be made available within 3 hours;

- ||| Although it is the responsibility of the horse owner to obtain a passport, a ‘keeper’ of the horse must ensure that any horse they look after is correctly identified. It is now an offence to ‘keep’ a horse without a passport;
- ||| The ‘keeper’ means a person who is not the owner of a horse but is appointed by the owner to have the day-to-day responsibility for the horse, e.g on full a livery basis;
- ||| Owners of horses over six months old who do not have a passport must apply for a passport before 31 December 2009 and the horse must be signed out of the food chain;
- ||| If a passport is not available or the horse’s food status is not known to the vet, certain veterinary medicines may not be administered or prescribed;
- ||| It is also now mandatory for all foals born after 1st July 2009 to be microchipped before a passport can be issued;
- ||| Failure to comply with the regulations is punishable by a fine of up to £5,000.

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You can access the most recent Equine Law Brief by clicking [here](#).

You can also subscribe to our Equine Law Brief by clicking [here](#).

STOP PRESS: WE’RE NUMBER ONE!

Our highly-regarded Private Capital and Agricultural Teams, which form a core part of our Rural Business Practice, were both ranked number one in the latest Chambers & Partners and Legal 500 legal directories.

Described as “a main player; everyone aspires to its reputation” (Chambers & Partners 2009), the rankings reflect not only the teams’ broad depth of expertise and experience in these practice areas - but also demonstrate our ongoing commitment to working with the rural community.

Read what they said about us by visiting - [Legal 500 2009](#) and [Chambers & Partners 2009](#).





Sustainability: Committed to Carbon Reduction?

There are headlines almost daily dealing with climate change issues. April 2010 is going to see the CRC Energy Efficiency scheme (until recently the Carbon Reduction Commitment) take effect under which larger users of electricity and other fuels will have to buy allowances in respect of the greenhouse gas emissions which they (or their group of companies) emit. Essentially, this will impact on individuals or companies (or groups of companies) which used more than 6,000 MWh of electricity (approximately £500,000 worth) in 2008 through half hourly meters.

These new mandatory rules are going to involve recording and reporting on the consumption of all fuels, - not just electricity, calculating the tonnage of carbon dioxide emitted; and potentially significant sums in purchasing the allowances to match those emissions. To start with allowances will cost £12 per tonne but from 2013 the Government will begin to cap the number of allowances available for purchase and the price will be set by market demand. The intention behind the new rules is to encourage reductions in energy consumption and in the emission of greenhouse gases.

For those using more than 1,000 MWh of electricity in 2008, there are likely to be obligations to report on their energy consumption.

Even though the regulations are for now only going to apply fully to relatively large energy users, they are likely to affect many others organisations, directly in terms of having to record and report on energy usage; and indirectly, as their landlords look to pass on associated costs or to encourage reductions in energy consumption.

2011 will be the next qualification year, when it will be decided who will be caught in the next phase, and it is anticipated that the threshold for being caught by the scheme will be dropped significantly from the 6,000 MWh of 2008 bringing many more organisations into its scope.

We see these regulations having significant effects on the way landlords and tenants have to relate to one another and as a result affecting the future form of leases.

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For our previous CRC bulletins please click [here](#).

What's on - the latest rural & agriculture events in your region

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Energy Works - CLA Renewable Energy Event
 Tuesday 24 November 2009
 Cranmore Park, West Midlands
[Find out more](#)
- 
Royal Welsh Agricultural Winter Fair
 Monday 30 November & Tuesday 1 December 2009
 Royal Welsh Showground
[Find out more](#)
- 
South of England Festive Food & Drink Fayre
 Saturday 5 & Sunday 6 December
 The South of England Centre
[Find out more](#)
- 
National Holstein Show
 Tuesday 16 February to Wednesday 17 February 2010
 Stoneleigh Park, Warwickshire
[Find out more](#)
- 
The Festival - Cheltenham
 16 - 19 March 2010
 Cheltenham Racecourse, Gloucestershire
[Find out more](#)

The articles in this brief are intended to raise awareness of the issues mentioned but are not intended to be a substitute for legal advice.

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