

### Legal New Year's Resolutions

#### 1. Make a Will

What can we say? This is always top of the New Year's things-to-do list. Making a will can save inheritance tax, appoint guardians for young children, ensure seamless business succession and prevent (or if you prefer, really stir up) family arguments.

#### 2. Review your title deeds.

It's amazing how often quirks in title deeds come to light when there is some pressing legal matter at hand – a development offer, a sale of farm land, an adverse possession claim or tax query. Take action before there is an issue and save stress and legal expense. Our property team can review title deeds at any time to identify danger areas for the landowner, particularly for land not yet registered at HM Land Registry.

#### 3. If your business is a partnership, draw up a partnership agreement.

Did you know that in the absence of an express partnership agreement, a partnership will automatically end on the death of a partner? Take steps now to ensure smooth succession for your business. A partnership agreement can create a secure partnership structure for dealing with the death of a partner. An agreement can also include provision for the retirement and addition of partners, profit sharing, the day to day running of the business and more. Our corporate team can advise on all aspects of creating or amending a partnership agreement.

#### 4. Documents, documents, documents.

Ask any lawyer a legal question and the first thing he or she will say is 'I need to see the documents'. Our top tip for saving time and expense is to gather all your legal documents together – wills, powers of attorney, business contracts, title deeds – and put them in a single, secure location. The best bit – you don't even need a lawyer for this!

### The Localism Bill – coming soon to all our back yards...

The long awaited Localism Bill was introduced to Parliament on 13 December 2010. As part of the Coalition's "Big Society" agenda, it proposes far reaching reforms to give greater powers to local government and communities, revolutionise the planning system and give communities control over housing decisions.

The Bill will give local authorities, and some parish councils, very wide powers enabling them to be more flexible (and arguably less accountable) in the future.

Residents will have the power to call local (non-binding) referendums on any local issue, and the power to veto excessive council tax increases through a referendum.

Local people and voluntary and community groups will be given a new right to bid to take over local state-run services and buy assets such as libraries, pubs and shops. The Big Society in human form.

Radical reform of the planning system will mean that:-

- Regional Spatial Strategies will be abolished.
- "Neighbourhood plans" will enable communities to decide where new shops, offices or homes should be built, what green spaces to protect and to define developments which should have automatic planning permission, if a local majority is in favour.
- A Community Right to Build will enable local communities to propose development which can then be built without planning

permission if it meets safeguards and gets 50% of support in a local referendum.

- Large developments will require early consultation with local people.
- Councillors will be free to support or oppose developments without being challenged for inflexibility or bias.
- The Infrastructure Planning Commission will be scrapped and instead ministers will take decisions on big planning projects such as airports and wind farms.
- The Community Infrastructure Levy will come in but be partially ringfenced for local expenditure.

There will also be reforms to social housing. Local authorities will be allowed to grant discretionary business rate discounts and small business tax breaks will be made easier to claim.

It remains to be seen whether localism will enable better, more coherent development as a result of local input and knowledge. The alternative view is that the planning system will be even more treacherous and divisive.

The second reading of the Bill will be held in Parliament at a later date, yet to be announced...

For further information please contact Zoe Atkinson on 01865 781000 (zoe.atkinson@henmansllp.co.uk)

## Occupiers' liability for slips on ice and snow

The snow has arrived early this year and we look set to suffer another hard winter. In these weather conditions what are the duties of an occupier of premises to prevent slips on ice and snow?

Your duty to visitors to your premises, under section 2 of the Occupiers' Liability Act 1957, is to do what is reasonable in all the circumstances to see that your visitor will be reasonably safe in using your premises. When assessing your duty you should therefore first consider your circumstances and then what is reasonable in those circumstances.

Has snow or ice been forecast? If so, you are on notice of probable harm to visitors and should consider taking action. However, if the snow or ice formed suddenly and without warning and an accident occurred shortly thereafter then it is unlikely that it would be considered reasonable to have treated the ice or snow in a short space of time.

What steps are usually taken by occupiers of premises similar to yours when snow or ice forms? Many landowners do not take any steps until after the snow or ice has formed therefore it is arguably reasonable not to clear snow or spread grit or salt beforehand but you should consider taking steps once it has occurred to prevent harm to any visitors.

If you run a rural business you will have many more visitors to your land than a domestic homeowner, as well as staff, attending your premises. In these circumstances it becomes more important to take action early. It is likely to be considered reasonable for you to monitor the weather forecast and have a system in place for spreading grit and clearing snow.

The size of your premises may also be a relevant consideration, along with the cost of taking steps to prevent harm, although a court would probably consider the cost of gritting low, against the high risk of slipping without it and the resulting harm to visitors.

It is difficult to give specific advice to all occupiers on the steps to take in ice and snow as each situation is different. However, it is always advisable to do as much as you reasonably can to make your premises safe for visitors. If you can show that you have done everything you can to keep visitors as safe as reasonably possible then, even if an accident occurs, you may be able to prove that you have not breached your duty to your visitors and therefore will not be liable.

For further information please contact Joanne Eden on 01865 781000 (joanne.eden@henmansllp.co.uk)

## The Horse Box

**For more information on any of the subjects raised in The Horse Box please contact Esther by email (esther.stirling@henmansllp.co.uk)**

We are often instructed to advise landowners whose occupiers are in breach of the terms on which they occupy, including owners of livery yards whose liveryes have fallen behind with payments. A landowner will naturally want to replace a problematic livery with another.

Commonly, grazing land and associated buildings are occupied on an informal basis, with no written agreement in place. All circumstances, including the parties' dealings and intentions, will need to be examined to establish what terms govern the parties' relationship. The other party's recollection of the agreed terms often differs!

If a landowner wants to recover possession, the first question to be addressed will be whether the occupier is a licensee or tenant.

A tenant must have "exclusive possession", in essence the right to occupy the land without interruption from the landowner. Without that, they will be a licensee.

A licence can be terminated by giving reasonable notice. What is reasonable will depend on:

- i. any written agreement; and
- ii. surrounding circumstances such as length of occupation and how often payments are due.

If, on the other hand, a tenancy has been created, any written agreement will usually provide what notice is required. If there is no written agreement, the occupier may be a periodic tenant. If rent is paid monthly, for example, they may have a monthly periodic tenancy. In the absence of a written notice provision, you will need to look at the parties' dealings to determine what notice to quit must be given.

As well as retaking possession, landowners need to consider their exposure to financial loss if an occupier is in difficulties. We recently advised a landowner whose tenant of equestrian facilities, under a periodic tenancy, had been declared bankrupt. A bankrupt's assets pass to their trustee in bankruptcy. Our client could negotiate with the trustee in bankruptcy to re-take possession, but the prospect of recovering rent arrears was, post-bankruptcy, now reduced.

We would always recommend that terms for occupation of land are recorded in writing, giving the parties certainty in the event of a dispute. Landowners should also try to maintain good communication with their occupiers, in order to spot issues before they become problematic.