



in brief

Land registration - don't wait!

Registration of property at the Land Registry was introduced by the Land Registration Act 1925 and, gradually since then, titles to properties throughout England and Wales have become registered. It has been a slow process with registration becoming compulsory on purchases (but not other dispositions) in different regions at different times. More recently, compulsory registration has been extended to all dispositions of property, including gifts and mortgages as well as purchases.

Over the past ten years, the Land Registry has been promoting voluntary registration actively to farmers and landowners as part of its aim to have all property in England and Wales registered at some point in the future; we have been involved in assisting our clients in this process. The Land Registry offers a 25% discount on its standard registration fees for voluntary registration as an incentive to those considering registration.

Registration has many attractions, not least to establish the boundaries of those properties that are registered on the Land Registry's master plan, and increasingly we find that the property market expects title to be registered before property is offered for sale. When planning the sale of farmland in advance, we work closely with landowners and their agents to prepare a comprehensive 'bible' in order to make the sale as smooth as possible, once a buyer has been found, and invariably we are instructed to apply for voluntary registration if title remains unregistered in the expectation that the buyer's solicitors will require us to do this in any event.

More often than not the registration process reveals problems with the title being registered, frequently discovering that neighbouring registered titles don't quite match our clients' unregistered title deeds, but, by being instructed in advance of a sale, we have time to try to resolve these problems with the Land Registry and/or the

neighbouring landowners so that, by the time a buyer is found, we are able to present the buyer's solicitors with clean title to the boundaries as they are on the ground.

Our strong recommendation to all of our farming and landowning clients is that they should voluntarily register their titles in advance of a sale but we also advise clients to register their unregistered titles even if they are not planning to sell as, with more and more of the neighbouring properties registered, it is far better to ensure that one's boundaries are established on the Land Registry's master plan to minimise the scope for conflict with neighbours and to pre-empt any problems that might otherwise arise at a time when the owner is looking to sell, gift or mortgage the land.

Annabelle Savage

As you may have heard, Annabelle Savage leaves us in July to pursue her career with another law firm in East Anglia. We wish Annabelle well in her future career and thank her sincerely for her part in the development of Birkett Long's Rural Business Team since she joined us in September 2008.

Rural Business is an integral part of Birkett Long's practice and we will recruit a replacement in order to strengthen the team following Annabelle's departure and to assist us in advising our farming and landowning clients in Essex, Suffolk and beyond.



David Wybar
01206 217312
david.wybar@birkettlong.co.uk



Rural Business Law

NEWS AND ADVICE FROM BIRKETT LONG

Holiday lets - victory for the Revenue...for now



In the last newsletter, I wrote about the case of Pawson deceased v HMRC. You may recall that the First-Tier Tribunal found for the taxpayer, and therefore against the Revenue, when deciding as to whether Business Property Relief (BPR) would be available on a holiday let.

As a reminder, Mrs Pawson owned a one quarter share in a holiday let in Thorpeness. By the time of her death, Mrs Pawson did not personally attend to the upkeep of the property but a cleaner and gardener were employed. The property was fully furnished and other items such as a telephone and bed linen were provided. The family did use the property for approximately three weeks per year but paid rent for doing so. The Revenue argued that the holiday let was an investment and therefore should not qualify for BPR,

which is only available for trading businesses and not investments. The first-tier tribunal decided differently: "an intelligent businessman would not regard the ownership of a holiday letting property as an investment as such and would regard it as involving far too active an operation for it to come under that heading."

It therefore appeared that executors would be able to claim BPR on holiday lets, whereas previously relief had been denied. Unfortunately, the upper-tier

tribunal has allowed HMRC's appeal and has held that BPR would not be available in this particular case.

The upper-tier tribunal found that the services provided were relatively standard and the aim of the business was to maximise income for the family. It therefore concluded that the business was primarily of an investment nature and BPR would not be available.

The executors are set to head to the Court of Appeal, so watch this space, but for now the availability of BPR for holiday lets looks to be increasingly difficult to obtain. Our advice to clients remains the same; be as involved as you can with the holiday lets and provide as many services as possible to give your executors the best chance of claiming that the holiday let is a trading business and not just an investment.



Vicky Raynes
01206 217611
vicky.raynes@birkettlong.co.uk

BIRKETT LONG LLP

PHOENIX HOUSE
CHRISTOPHER MARTIN ROAD
BASILDON SS14 3EX
T 01268 244144

ESSEX HOUSE, 42 CROUCH STREET
COLCHESTER CO3 3HH
T 01206 217300

NUMBER ONE, LEGG STREET
CHELMSFORD CM1 1JS
T 01245 453800

E RURALBUSINESS@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK

Birkett Long LLP is authorised and regulated by the Solicitors Regulation Authority (Number: 488404)
Birkett Long LLP is authorised and regulated by the Financial Services Authority (Number: 481245)

Whilst every care and attention has been taken to ensure the accuracy of this publication, the information is intended for general guidance only. Reference should be made to the appropriate adviser on any specific matters.
© Birkett Long LLP 2013 We hope you find this newsletter of interest, but if you would prefer not to receive it or wish to receive a copy via email, please contact the Business Development and Marketing Team on 01206 217334.

Reference: NEWS/RURALBUSINESS05/2013

Get off my land!

The value of agricultural land continues to soar. Therefore, protecting land boundaries has never been more important. This trend seems set to continue with expectations that the global population will double by 2050, causing further demands for increased agricultural production. Couple this with volatile unseasonal meteorological activity and further land being required to resolve the apparent housing shortfall, and the importance of robust boundary protection is clear.

Boundary disputes are infamously expensive and challenging for solicitors whose clients often argue it is a matter of principle, while courts famously castigate parties for incurring disproportionate legal costs. Accordingly there is increasing pressure to adopt creative and/or commercial approaches, which resolve boundary disputes quickly and cost effectively.

Unfortunately, these practises are not widely adopted, for example, six residential boundary disputes were determined by the Court of Appeal between November 2011 and March 2012. Birkett Long's commercial approach has enabled us to successfully negotiate compromise in a wide range of boundary disputes where the value of land does not justify conclusion at contested trials.



Aside from litigation, relevant dispute resolution mechanisms can be:

- 1 Instruction of an independent joint expert to assess the history of the land boundary and offer a binding opinion;
- 2 A mediator can seek to negotiate a compromise between the parties;
- 3 The parties can agree on a compromise boundary, which is brought into effect with submission of a surveyor's scale plan to the Land Registry; and
- 4 A decision can be sought from The Land Registry Adjudicator; although this procedure is similar to litigation with the attendant costs.

Recent Decisions

The leading case for boundary disputes establishes principles for determination:

- 1 The court must interpret the conveyance that describes the relevant land;
- 2 A plan that is described as being 'for identification only' is not sufficient proof;
- 3 Precise delineation can be drawn by reference to physical features existing at the time of the relevant conveyance;
- 4 There is no reason to prefer OS map evidence to any other relevant evidence; and
- 5 The process of interpreting the relevant conveyance and plan requires reference to all the surrounding circumstances, particularly the physical condition of the

land at the relevant date and an understanding of the land at the present time.

As ever the 'devil is in the detail' and a recent case reinforced the points above, where the Court of Appeal overruled a judge who had refused to consider additional evidence as the original conveyance plan was allegedly sufficiently clear. Effectively, the courts take the wise and pragmatic view that no matter how clear a plan may appear, actually standing on the land in person could cause you to draw a different interpretation.

Our view regarding creative solutions for boundary disputes is corroborated in part by a Private Members' Bill presented by Charlie Elphicke MP in Parliament on 25 June 2012. He sought to apply the Dispute Resolution Mechanism set out under the Party Walls etc Act 1996 to boundary disputes. Sadly, this Bill has been withdrawn and will not progress any further.

Our rural business and real estate teams have extensive experience with boundary disputes and will be pleased to assist on any of the issues raised.



Mark Wrinch
01206 217383
mark.wrinch@birkettlong.co.uk

Bare essentials

Growing your opportunities in today's climate

We held a successful free Rural Workshop jointly with Bidwells on 12 February in our Chelmsford Office. It was an informal gathering over coffee and bacon rolls where we had the opportunity to discuss various rural issues on an individual basis at various stations around the room. Some of the issues raised could be dealt with there and then, but others required us to look into them and advise further.

The experienced professionals discussed many topics but particularly succession planning,

disputes resolution and planning applications.

If you would like to discuss any rural topic with us please do get in touch.

Future events that may interest you

We look forward to seeing you at these events:

- 29 May 2013: Green Breakfast
- Summer 2013: Long term care seminar (details to be confirmed)

Meet the team

Vicky Raynes

Vicky is an associate solicitor in the wills, personal tax, trusts and probate team, Vicky specialises in wills, powers of attorney, court of protection and mental capacity issues, as well as administration of estates and trusts. She is a full member of STEP (the Society of Trust and Estate Practitioners). Vicky's role as a member of the rural business team means that she specialises in the above issues for agricultural clients.

Vicky joined Birkett Long in 2005 and became an associate on 1 June 2011.

She went to Chelmsford County High School for Girls where she did 11.5 GCSEs; as Vicky explains: "the half being a very important half a GCSE in technology!" She went on to achieve 4 A levels in english, history, french and general studies, before completing a law degree at Warwick University. Vicky did her Legal Practice Course at Nottingham Law School and joined Birkett Long as a graduate trainee. She qualified as a solicitor in September 2007 and has been with the firm since that time.



Vicky Raynes
01206 217611
vicky.raynes@birkettlong.co.uk