

Estate Agency Fees Require More than Introduction

Estate agents must do more for their money than simply show a potential purchaser around a property, following a recent decision of the Court of Appeal.

When a Mrs Bicknell signed a standard sole-agency agreement with Foxtons Ltd. to sell her £1.4 million home, she agreed, among other things, to pay the agency 2.5 per cent of the sale price if contracts were exchanged 'with a purchaser introduced by us [Foxtons]'.

In June 2005, Foxtons showed a Mr and Mrs Low around the house three times but, after initially showing interest in the property, the couple took no further action. In July, Mrs Bicknell ended the sole agency arrangement and agreed a multiple agency deal with Foxtons at 3 per cent commission. She then appointed a second firm, Hamptons International, at a

2.25 per cent commission rate. In October, Hamptons spoke to the Lows and persuaded them to view the house again, eventually securing an offer of £1.15 million for the property. The offer was accepted and the purchase was completed in January 2006.



Hamptons duly submitted an invoice for their commission and received payment. When Foxtons learned of the sale, however, they also sought to be paid a commission. When payment was refused, they commenced court proceedings. The lower court decided in favour of Foxtons on the basis that the Lows

were a purchaser introduced by Foxtons and this alone was sufficient to secure their right to a commission. On appeal, the question of the meaning of 'a purchaser introduced by us' was again raised. The Court of Appeal held that Mrs Bicknell was not required to pay Foxtons for their initial, unsuccessful introduction. In order to charge commission, an agent must be the effective cause of the sale. Simply introducing a property to a person who eventually becomes the purchaser is not sufficient. Had the reverse been true, Mrs Bicknell would have been in the unusual position of having to pay two agencies a commission for the same sale.

If you are buying, selling or letting a property, we can assist you to make sure the necessary legal work is carried out promptly, professionally and economically.

HIP Temporary Provisions Extended

The Government has announced that it is extending the temporary provisions for first day marketing whereby a property can be put on the market without a Home Information Pack (HIP) provided one has been commissioned and paid for

and is expected to be in place within 28 days.

Originally, the dispensation was to end for properties marketed after 31 May 2008 but the date has now been postponed to 31 December 2008.

The temporary dispensation that applies to leasehold properties, whereby the only compulsory document in the HIP is a copy of the lease, will also continue until the end of the year.

Easements and Covenants – Changes to the Law Proposed



The law relating to covenants, easements and 'profits à prendre' over land is a relatively complex area given that such rights are common – the Land Registry has suggested that nearly two thirds of properties have some sort of easement over them and nearly 80 per cent have a covenant of some sort.

An easement is a right enjoyed by one landowner over the land of another. A positive easement (such as a right of way) is a right to go onto or make use of something in or on a neighbour's land. A negative easement is essentially a right to receive something (such as light or support) from the land of another without obstruction or interference.

Covenants are promises made with regard to land (i.e. not to allow it to be used for stated purposes).

Profits à prendre allow the holder the right to remove products of natural growth from another's land. Shooting and fishing rights come under this category.

The Law Commission has stepped in to reform the current system by proposing a simpler system for dealing with covenants and easements. It has issued a consultation paper which aims to remove anomalies and complications in the law. However, the proposed changes are limited to private law rights and will not deal with rights available to the public at large or with covenants between landlords and their tenants.

In Case They Don't Live Happily Ever After..

If you have family wealth that you wish to protect, the joy at the prospect of one of your children getting married or entering into a civil partnership may be tempered somewhat by a touch of trepidation in case the relationship doesn't last, particularly if a large settlement of assets is to be made on the happy couple.

- has he or she been properly advised as to its terms?

- was pressure exerted by one party to make the other sign?

- was there full disclosure of the relevant assets?

- does the order preclude the payment of any periodical payment for maintenance and if so, would it be unjust to hold the parties to that agreement?

- are there grounds for believing that upholding the agreement would be unjust?

In such circumstances, the use of a pre-nuptial agreement ('pre-nup') is likely to make a great deal of sense. Legally speaking, such agreements are still rather a grey area. However, the judge in a leading case on the subject has most helpfully suggested a number of criteria which would assist the courts in deciding whether or not a pre-nup should be regarded as enforceable.

- was pressure exerted by anyone else to make them sign?

- was the agreement signed willingly?

- did one party exploit a dominant position?

- was the agreement entered into in the knowledge that there would be a child?

For a pre-nup to achieve the desired object, it must be properly drafted and put into place in the correct circumstances. In particular, both parties to it should have the benefit of independent legal advice.

If you are concerned that a relationship might not have a happy ending, we can assist you to help protect your family's assets from the depredations of an ex-spouse or civil partner.

The most important of these from the perspective of the parties to a pre-nup are:

- does the party being asked to sign the pre-nup understand it?

- has any unforeseen circumstance arisen which would make enforcing the pre-nup unjust?

Shared Intentions Determine Ownership

The danger of cohabiting without making an express agreement as to how the title to property is to be held has again been underlined by a recent case.

It concerned a woman who had lived with a man for several years in a house which was registered in their joint names and financed by a mortgage. However, there was no document recording the couple's respective shares in the ownership of the property. The man had paid the deposit on the house from his own funds and also paid the mortgage repayments. He also paid other costs relating to the property, such as rates and utility bills. The couple had children and the woman, who worked, spent the majority of her income on them and the maintenance of the family. The couple drew up wills leaving their estates to one another.

When their relationship broke down, the man argued that whilst he intended that his partner should

inherit the property on his death, he had not intended it to be owned in equal shares. In court the judge decided that ownership of the house should be apportioned by the respective contributions of each party to its purchase. Since the woman had made no contribution, her share was nil. She appealed to the Court of Appeal, asserting that a beneficial joint tenancy had been created with her rightful share being 50 per cent. The man argued that his intention had been only that she would inherit the property if he predeceased her and they were still a couple on his death.

The Court of Appeal found that the judge in the lower court had erred in considering the couple's respective contributions to the cost of the property as representing their intentions with regard to its ownership. The fact that the property was jointly owned justified the assumption that both were beneficial owners. The ownership split had to be determined by the intentions of each party and the

important issue was that the relevant intention was the intention understood by the other party. Furthermore, the respective contributions of each party could not be conclusive. The man's intentions were not made clear. His argument that his partner's share should be a lesser sum did not rest on logic and he could not demonstrate that the couple had shared the common intention that her share should be other than a half of the total.

In this case, had there been documentation created when the property was purchased to show how it should be owned, there would have been little room for dispute. The fact that there was no evidence of any such agreement made it possible for the case to go all the way to the Court of Appeal.

If you buy a property with someone else, having the agreed basis of ownership documented is inexpensive and easy to do.

Boy Injured on Bouncy Castle to Receive Sizeable Settlement

A boy who suffered brain damage after he was kicked in the head while playing on a bouncy castle has been awarded compensation that could amount to £1 million, a ruling that will cause parents to stop and think.

Sam Harris, who was 11 years old at the time of the accident, had been playing on a bouncy castle set up in a field behind the home of Catherine and Timothy Perry. The Perrys had hired the bouncy castle for their triplets' birthday party. Sam, who was passing with his father, asked Catherine Perry if he could join in.

Whilst on the bouncy castle Sam was kicked in the head by a 15-year-old boy doing a somersault. Sam's skull was fractured and he suffered a very serious and

traumatic brain injury. As a result, he now has severe behavioural problems and requires round the clock care.



In court the judge decided that the accident had been caused because the Perrys had not supervised properly the children playing on the bouncy castle. There should have been someone there to prevent the older boy from using it at the same

time as the younger children and to ensure that dangerous play was prevented. The hire contract for the castle also stipulated that it should be under constant supervision whilst in use. At the time of the accident, however, Mrs Perry had her back turned away from the castle while attending to another child.

The judge dismissed the defence's claim that Sam's father should have provided better supervision.

The total compensation payable could be as much as £1 million.

The Perrys have been given permission to appeal against the decision although the judge rated their chances of succeeding as 'poor'.

No You Cock-a-Doodle Don't

Noise nuisance is regrettably an increasing feature of modern life, but one normally expects problems with noise to be associated with city living, not the countryside. Recently, however, a man from Shepton Mallet in Somerset was given an Anti-Social Behaviour Order (ASBO) and ordered to pay fines and costs totalling £7,500 after he defied a noise abatement order. The reason? – his flock of 80 chickens, which was the cause of a sustained series of complaints about noise from his neighbours.

On a test visit in 2006, investigations carried out by an independent environmental health officer, sent by South Somerset

Council, recorded 800 'crowings' between 5 am and 7 am. Neighbours also complained of the smell caused by the birds. An order was made requiring the man to eliminate the nuisance to his neighbours, but he failed to comply with it.



The magistrates were unimpressed with the man's lack of cooperation and issued the ASBO. They also banned him from replacing the chickens with other animals.

Problem neighbours can be the blight of anyone's life and the ASBO legislation does at least provide one possible method of reducing or eliminating problems of anti-social behaviour. If you have problems with noisy or anti-social neighbours, or problems arising from late-night noise due to pubs or clubs, we can advise you on the best course of action to take.

Tracing Lost Money

It is by no means uncommon for people to have money in accounts which they or their relatives have forgotten about and the scale of the problem is illustrated by the fact that National Savings and Investments (NS&I) says it has £435 million in dormant accounts and bonds. An extra £23 million

sits in unclaimed Premium Bond wins.

However, help is at hand. A website set up by the British Bankers' Association, the Building Societies Association and NS&I will allow the tracing of lost or

dormant accounts to be simplified.

If you think you may have a lost or dormant account you can no longer find, look at <http://www.mylostaccount.org.uk>.

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