



Rural Business Law

NEWS AND ADVICE FROM BIRKETT LONG

The farm...a family divide?



Farming is, overwhelming, a family business, a vocation and a way of life, more so than many other forms of employment or business structure.

It is unsurprising, therefore, that farming families are strongly motivated to pass on the family farm to future generations. Taxation can represent formidable hurdles despite reliefs being available to reduce the overall burden. However, perhaps of greater concern are immense family difficulties that arise where farms are asset rich and cash poor, making distribution and equality between those beneficiaries involved in the family business and those that are not, very difficult indeed.

Several cases in the High Court over the last few years serve to illustrate a rise in the number of farm ownership

and inheritance disputes, with the result that farms have been divided and separated, as well as families themselves.

It is no wonder, therefore, that we are often asked how this can be avoided. In short, there is no easy answer but it is important, however difficult, to address early on and openly. The succession of the farming business is for the benefit of future generations and it is prudent to know their aspirations so that steps can be put in place and, if necessary, the business re-designed to ensure continuity and family harmony.

Thereafter, make sure that an up to date will is in place, possibly with trust provisions incorporated. Trusts offer some degree of control whilst providing flexibility as family dynamics and circumstances change, which is inevitable in all walks of life. Trustees are able to make decisions at the date the will comes into effect whilst taking into account family circumstances, continuation of the farming business and potential taxation consequences, but most importantly ensuring your wishes are followed.

Our advice, therefore, is that once you and your family have decided what you wish the future to hold, you consult with all your advisers, including land agents, accountants and lawyers, to enable them to work with you. All these professionals have invaluable knowledge and expertise that will allow your hopes and dreams for the future to be achieved and not later destroyed in the courts, together with your family!



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The new right to rent legislation

The Home Office introduced a right to rent scheme which saw the property industry take direct responsibility for immigration checks for those seeking to rent private residential property. Many farmers have cottages let under residential tenancies or FBTs which are often managed in hand or via agents and so it is important to be aware of the new legislation and how it affects you.

What is 'right to rent'?

It means that the occupier has a right to rent a property in the UK; without this right the 'tenant' is disqualified from renting. A permanent right to rent is extended to British citizens, European EU nationals and Swiss nationals, and a limited right to rent applies to those permitted valid leave to enter/remain in the UK for a limited period of time.

What are the requirements?

Landlords or agents must check the identification of everyone who is over the age of 18 and who is expected to live in the property. Landlords can only delegate this authority to their agent as part of a written agreement. The agreement between landlord and agent must specifically refer to who is responsible for performing the

checks. If it is silent, the landlord will be responsible.

Are there any exclusions to the legislation?

There are several exclusions, but notably for the agricultural industry are agreements granting a right of occupation for tied accommodation that is provided by an employer to an employee in connection with a contract of employment and the provision of mobile homes for seasonal workers.

Farm business tenancies

It is worth remembering that when granting a FBT which includes a residential dwelling, the regime is highly likely to apply and the appropriate checks of the tenant should be undertaken.

Avoiding discrimination

It is unlawful to discriminate in the provision of rented accommodation because of race or on racial grounds. These include colour, nationality and ethnic or national origins. All prospective tenants must be treated fairly and in the same way. Landlords should not make and act upon assumptions about a person's immigration status on the basis of their colour, nationality, ethnic origins, accent or ability to speak English.



Wybar's Sidebar

EU uncertainty

It's been an interesting year with the EU referendum at the heart of any debate about the future of UK agriculture. As with other sectors, there are arguments for and against our continued membership of the European Union and lively but healthy debates have been held throughout our region hosted by local agricultural societies and national groups. With more questions than answers, we await the result of the referendum before we can understand more about the future.

In the meantime, crops are looking healthier, after a slow start, but commodity prices mean that pure farming incomes

are down on a few years ago, with cash flow particularly difficult for those having to pay tax on earlier years' profits. This isn't helped by the delays experienced by most farmers in receiving the 2015 BPS payments.

With the show season upon us, we look forward to seeing our farming clients at one or more of the shows that we support in Essex and Suffolk, and hope for a spell of good weather as you approach harvest.

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Penalties

Failure to carry out the right to rent checks or provide rental accommodation to a tenant without the right to reside in the UK could attract a penalty of £1,000 per tenant.

Conclusion

Landlords should review their current agreements. FBTs will need to be reviewed to oblige the tenant to cooperate with right to rent checks in respect of any new occupiers.

For assistance or more information please contact Emma Coke.



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Meet the team

Mark Wrinch

Mark's expertise lies in property litigation and commercial and professional negligence disputes relating to land and the rural community. He has also developed a particular niche relating to land drainage and flood damage. Mark is a member of the Property Litigation Association.

Mark's involvement with rural business often relates to leases, rent reviews, rights of way, landlord and tenant work, restrictive covenants, property related insolvency, breach of contract and misrepresentation. He is

always keen to adopt a commercial approach and defend his clients' interests without unnecessary recourse to legal proceedings, hence ensuring that a cost effective and proportionate conclusion is obtained.

Mark joined Birkett Long in September 2008 and is an associate solicitor.

“ I have to say, you are the best! I have rarely worked with someone with your clarity. ”
Client quote.



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in brief

Planning for the future

As life expectancy increases, handling financial and personal affairs later in life can become more difficult. The burden of this can be alleviated by creating a lasting power of attorney (LPA).

There are two types of LPA; one to cover your property and finances, and the other to deal with your health and welfare issues. These documents allow you to appoint people of your choosing (attorneys) to act for you during your lifetime.

The property and financial affairs LPA can be used as soon as it is registered. This means that, even whilst you still have capacity, you can have extra assistance from your attorneys should you need it as they will be able to act immediately.

The health and welfare LPA can only be used when you no longer have the capacity to make such decisions for yourself. You can, however, include guidance or restrictions within your LPA which will give your attorneys directions as to what your wishes would be.

Your attorneys have a duty to always act in your best interests. It is important, therefore, that you trust your attorneys to carry out your wishes. If you do not have anyone who you would like to appoint, you can appoint a solicitor to act as your attorney.

If you lose capacity and have not made a lasting power of attorney, an application must be made to the Court of Protection. This process is very lengthy and medical evidence will need to be provided in respect of your capacity. The Court (rather than you) will make a decision as to who would be suitable to act on your behalf. In addition, the legal fees will be far greater than those incurred in making a LPA, and there will be significant court fees to pay. Given this, it is preferable to make LPAs and appoint people that you know and trust to deal with your affairs, thus saving time, cost and potential heartache in the long term.

If you would like any further information on how to make a lasting power of attorney please contact Katie Gibson-Green.



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