

Residential Property

# E-Update

June 2017



## Welcome to Hewitsons Residential Property E-Update

"Summer is just around the corner and both our Residential Property team and the Firm have started a new financial year this month. The team can look back on the past year with much satisfaction. The team members who joined us last Spring have both bedded in well and blossomed, whilst those of us who have been around a while longer have been rejuvenated by their presence and contributions. We now look forward to future challenges with great relish.

At the end of April one of our PAs, Stephanie MacPhee, left us to follow a new career and we wish her well. We look forward to her replacement, Alison Reed, joining us in early June. It is exciting to report that Russell Wignall, who has been the team's Administration Assistant since October 2015 (and very much made the role his own), graduates to the role of trainee Legal Executive on 1st July. His replacement, Rebecca Stephenson, has already joined us part time and will become full time in early June. Russell was asked to prepare this Legal Update - a task which he took to with typical relish - so he deserves the credit for this issue.

I hope you enjoy this Update which covers quite a range of topics."

- *Tim Middleton*  
*Partner and Head of Residential Property*

## "Trusted Legal Advisors in Europe"

On Friday 12 May partners Tim Middleton and Bernadette O'Reilly attended a conference in Bologna which they had arranged for the European member firms of Law Exchange International ("LEI"). The conference was hosted by the Italian member firm, Studio Galgano, and was to consider the opportunities for referring to European member firms clients who are individuals (as opposed to corporations) and require legal services in those countries.



Tim Middleton  
Head of Residential Property

The conference was attended by the representatives of ten different firms. The Hewitsons representatives combined with Sandy Lamb of the Scottish firm, Lindsays, to act out a role play in which an English client wishing to buy a property in Scotland was referred to Lindsays. In the role play Sandy was able to demonstrate his ability to play the role of "trusted

advisor" for that Scottish transaction.

Each of the representatives of the firms attending then demonstrated their ability to be "trusted advisors" should a member firm have a client needing legal advice in their countries. This was both through their knowledge of the law in their respective legal jurisdictions but also because of the relationships which all of those attending the conference were able to build with each other.

So, if you own property or need legal advice in a European country, please let one of Tim, Bernadette or Francesca Rossi know and, if possible, they would be delighted to introduce you to a representative of the LEI member firm in that country."

### **Jointly Owned Property and Selling Land Held In Trust**

It is often not appreciated that the acquisition of land by more than one person automatically creates a trust, the terms of which need to be considered. Often this is simply a case of deciding whether equal contributors want to hold the property as joint tenants or tenants in common (see our Guide to Jointly Owned Property) but there may be more complex issues to consider. These are addressed in our new Guide to Selling Land Held In Trust.

You can see our Guide to Jointly Owned Property [here](#).

And our Guide to Selling Land Held In Trust [here](#).

Should you need any advice, one of our team will be happy to discuss with you further.

### **Why We Ask For ID**

We appreciate that asking for ID can often prove inconvenient or seem a little over the top. However, if we get this wrong the consequences are massive. The recent case of *Dreamvar v Mischon De Reya* highlights the consequences of not checking ID correctly. In this case a fraudster assumed the identity of a homeowner and managed to fraudulently sell the property, netting over £1m in the process. This fraud would probably have been



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Partner



Beverley Henderson  
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Bradley Armorgie  
Solicitor



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Residential Property Executive

detected had the ID been checked properly and the warning flags recognised. We therefore have to be sure of who we are dealing with and have a duty to try to combat fraud as far as possible.

The need to obtain ID is decreed by statute, and the Solicitors Regulation Authority, so it is not just a policy of Hewitsons'. We must keep up-to-date ID for all our clients and for anyone who is contributing money to a transaction. So, in summary, whilst we appreciate that sorting out certified ID for us can prove a bit frustrating and time consuming, it is a matter we simply have to take seriously.

We are more than happy for clients to meet us at our Cambridge Office since, apart from verifying your ID, it gives us the opportunity to discuss your transaction face to face and to provide the personal service we pride ourselves upon. We can also offer meetings at which ID can be provided in our Northampton, Milton Keynes and London offices if this is more convenient for you.

## Boundary Issues

With the arrival of summer, the inevitable gardening begins and questions as to who should fix that broken fence can arise. The problem is that it is often very difficult to know. The Land Registry does not even guarantee that the boundary shown on the title plan (or conveyance if title to a property has not yet been registered) is in the correct place. So, one cannot necessarily rely on title documents to resolve a boundary issue.

Nevertheless, the best place to start is by looking at any plans that are in the property's title. A plan will often have a 'T' on each boundary line and, the owner of the land in to which that 'T' projects will usually be responsible for that boundary. Further indication of ownership may be available in the Property Information Form (provided when you bought the property) since the first questions on the form ask the previous owner to confirm which boundaries they believe belong to the property.

However, to obtain a definite answer about who owns a particular boundary, it may be necessary to instruct a surveyor who specialises in this area or even to apply to the Lands Tribunal. But before even considering such an approach, we would advocate exploring all possible avenues to reaching an amicable solution with your neighbour - preferably over a bottle of something nice!

### Buying Property

Please click here to view our guide on Buying Residential Property.



### Selling Property

Please click here to view our guide on Selling Residential Property.



## Lawspot of the Month

Residential Property Partner Clare Martin has a regular column in the Cambridge Property News. Below is a selected Lawspot -

### Question:

I want to buy a beautiful house by the river that has its own stretch of riverbank at the bottom of the garden. It says in the brochure that the new owner will have 'riparian rights and responsibilities'. What does this mean?

### Answer:

If you own property or even land, that is situated next to a river, you are deemed a 'Riparian Landowner'. These rights are long established in English Common Law. However your rights to these have evolved in more recent years to take into account third party rights, for example the Local Authority. Although you have the benefit of these rights, you are subject to certain responsibilities. To find out what these are it would be prudent to check that the waterway is a part of your land and this can be done by checking the Deeds.

If the river is deemed to be a part of your property, or likely to have an effect on your property, you are entitled to protect your property from any flooding risk. However you will need to have these measures cleared by the Risk Management Authority. Often you also have the right to fish in your watercourse, as long as you use a legal method. Again, it is prudent to check you have this right rather than assume it.

There are also some responsibilities to consider. You must allow the water to flow unobstructed and free of pollution. Banks should be kept clear of anything that may create an obstruction and present a flood risk could be your responsible as is the maintenance of the bank. This includes clearing litter and, if necessary, animal carcasses.

There is a comprehensive guide available on the [gov.uk](http://gov.uk) website for further guidance. These rights and responsibilities should certainly be considered and evaluated before exchange of contracts, at which stage you will become contractually bound to complete the matter, and you would not then be able to withdraw from the contract.



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This Residential Property Update is produced by Hewitsons for existing clients of the firm to provide them with a useful summary of information which may on occasions include recent cases, journal reports and dates to be aware of. It is not a definitive statement of the law in any area.

Advice should be sought from a lawyer in the Residential Property Team at Hewitsons in respect of any information contained in this update that affects an individual matter with which you may be concerned. Hewitsons offers a full property service which includes expertise in property acquisition and disposal, planning, construction, environmental issues, development and property management. This bulletin will help to keep those involved in property up to date with the latest developments.

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