

## THE RISE AND RISE OF PROPERTY AUCTIONS

Over the last year or so, we have noticed how property auctions have increased in popularity. Sellers have realised that they can obtain better prices given the competition between prospective bidders who, in turn, think they may be in line for a bargain. Sellers love it because they know that when the hammer falls, the property is sold and they can plan ahead.

What makes a successful auction? Good preparation before the auction and close liaison between the solicitor and the auctioneer, we have found, are the key elements of a successful sale. In preparation for an auction we create a pack of information about the property including copies of the title deeds, special conditions



## BEWARE OF THE CURSE OF RTA

Numerous small businesses will routinely receive cold calls from agents employed by RTA Limited offering to sell their businesses. We have had a stream of complaints about the methods used by RTA. In every case RTA have over valued the business and failed to attract a buyer. Their terms of business lay a trap for the unwary leaving a potential liability for commission when the business is sold by another agent. In a recent case RTA claimed commission of £20,000 on the sale of a pub in Essex even though our client

of sale, relevant searches and copies of any planning permissions, building regulation control certificates and any guarantees. This is called the Legal Pack.

When prospective purchasers telephone for the Legal Pack, we can engage them to assess whether they are seriously interested or just window shoppers and report the level of interest to the auctioneer before the final reserve price (being the price below which the property cannot be sold) is set.

In turn, prospective bidders are well advised to call us prior to the auction to check the Legal Pack. Remember that the auction house can be the sale of last resort of a dodgy property. A bidder who has not done his homework could land up with a house suffering from subsidence, be on contaminated land, have squatters or sitting tenants or even have a potentially fatal defect in the title. The old maxim holds good "let the buyer be aware".

If you are thinking of either selling or buying at auction, please give us a ring.

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had paid a £1,000 fee for cancelling the agency. The Court threw out RTA's claim on the ground that they had done nothing to introduce the purchaser. RTA were ordered to pay our clients costs of over £3,000. The Office of Fair Trading is currently investigating RTA's terms of business. We strongly recommend clients not to sign up to RTA's standard contract terms.

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## SAWSTON STEAMS AHEAD

As we passed the first anniversary in November 2009 of our acquisition of Webb & Partners in Sawston we could reflect on a surprisingly good performance in a difficult legal market. We have increased fee income and new business in all areas despite the struggling property market and general economic downturn.



For this we have to thank our excellent staff in Sawston in particular Ginny Richmond (Conveyancing), Christine Gee (Wills and Probate) and Anthony Marris (Commercial Property). Sue Lawton also deserves special mention for her all round work supporting the fee earners and exploring practice development initiatives. Michelle has joined the secretarial staff from Hewitsons and has attracted glowing reports from clients and colleagues alike.

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**Adams**  
**HARRISON**

The final sections of the Companies Act 2006 were brought into force on the 1st October 2009. All 1,300 sections and 16 Schedules of the Act are now fully in force. The Act has made some significant changes to the law relating to companies. Here are but a few.

## Directors' service addresses

Changes to the information about directors required to be filed at Companies House took effect on the 1st October 2009.

Selected changes are as follows:-

Each director must file a service address and his usual residential address with Companies House. Unless they are the same address, only the service address will be open to public inspection. The usual residential address will still need to be filed (and updated as before) but this will be filed on a separate confidential register and will be disclosed only to certain public authorities and other agencies.

Directors must be aware however that existing residential addresses will remain on the register. Such addresses can only be removed if:

They were placed on the register after 2002; and

It can be shown that due to the activities of the companies concerned the publication of the residential address will expose the director or someone else at that address to a serious risk of being the subject of violence or intimidation. (The Huntingdon Life Sciences scenario).

The company must also maintain two registers of directors, one of which contains the service addresses, which is open to public inspection, and the other containing the directors' usual residential addresses which must be kept confidential. A company (if it has a Secretary) must keep the Secretary's register separate from the Register of Directors. The usual residential address of a Company Secretary need no longer be disclosed.

## Single Person Companies

Single Member (Shareholder) companies have been with us for some time but until April 2008 when the requirement that a company had to have a Company Secretary was removed a company had to have two officers, one Director and the Company Secretary. After 1st April 2008 the position of Company Secretary became optional for private companies. If your company wishes to abolish the Company Secretary but was incorporated before the 1st April 2008 you will need to change the company Articles.

## One person companies – requirement for agreement in writing

One person companies in which the sole shareholder is also the only director, need to be aware that all agreements between that sole director and the company must be in writing. Failure to comply is a criminal offence. This applies to all contracts between that director and the company, other than those in the ordinary course of business of the company, for example, if the company was a grocery store the director could buy his groceries from the company without that particular agreement having to be in writing.

## Codification of Directors' Duties

For the first time the various duties which are owed by a company director to a company are set down in one place. The Companies Act 2006 identifies seven separate duties. The Act also makes it clear that these duties are owed to the company and only to the company.

A director's seven duties are:-

- to act within his powers
- to promote the success of the company
- to exercise independent judgment
- to exercise reasonable skill, care and diligence.
- to avoid conflicts of interest
- not to accept benefits from third parties
- to declare interests in proposed transactions.

The new rights given to individual shareholders to bring claims against directors in the name of the company increases the likelihood of claims being made. Liquidators of an insolvent company can also bring claims in misfeasance for breach of the above duties. The directors therefore need to be more aware of their duties and how they are likely to be applied.

If you are a company director or shareholder and you want more information about how directors' duties are applied in practice we can assist.

## New Shareholder Rights

If you are a shareholder in a new company and are dissatisfied with the way in which the directors are running the company you may be able to make a claim against the directors. This is a new right arising from the Companies Act 2006 and gives to shareholders the right to take action against directors in the name of the company where the company fails to do so.

If as a shareholder you feel that a wrong has been done to you or the shareholders rather than to the company as a whole you also have a right to bring proceedings known as "unfair prejudice proceedings".

If you require further information about any of the issues arising from the above please contact me at Adams Harrison:

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Be aware of Will Writing firms who tell you that your Will is invalid because it is not signed and witnessed on each page with the pages being numbered. The claim is that the Probate Registry will object to any Wills that do not meet these criteria.

This is a false warning. The Probate Registry confirm that no such ruling has been made.

Tony Hetherington, "The Readers' Champion" wrote in the Mail on Sunday on the 20th December 2009, "are they all in danger of being rejected? Will millions of people die intestate? Will they heck. Legacy and Laws' letter is false, irresponsible, rubbish and can only have been issued in an

attempt to squeeze more cash out of the firm's existing, often elderly, customers. It is quite simply untrue".

We have seen Wills made by Will Writing firms who have simply got the terms of the Will wrong before charging a higher fee than advertised. The Will has then had to be corrected by a solicitor at further cost.

The moral of the story: get proper legal advice from solicitors who are members of The Society of Trust and Estate Practitioners and who know how best to achieve what you want in a Will at a fair and reasonable cost.

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## SAFFRON SCREEN GOING DIGITAL

Adams Harrison has signed a sponsorship deal with Saffron Screen. Saffron Screen was launched in May 2006 and receives audiences for all types of films played on film projection. The cinema needs to up date its technology as soon all films will be released in digital format.

Saffron Screen is a professional cinema based at the County High School in Saffron Walden. It has charitable status and is run mostly by volunteers as a not for profit independent cinema.

Digital technology will allow Saffron Screen to screen high definition films but also access the live content of opera,



sporting events, ballet, comedy and theatre. We look forward to seeing what Saffron Screen can do and hope the community will enjoy what we have helped to fund.

For more information and details of screenings go to [www.saffronscreen.com](http://www.saffronscreen.com).

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## LISTED BUILDINGS – WHERE ARE WE NOW?

In this part of the country we are blessed with a number of wonderful historic buildings. Clients are particularly attracted to buy them but in doing so sometimes have little understanding of their legal responsibilities.

Firstly, it is important to remember that the current owner is usually obliged to reinstate the property notwithstanding the fact that a previous owner carried out unauthorised alterations some years previously. It is important therefore to have a listed building properly surveyed by someone who can spot recent alterations and check them with the paperwork at the local council's office. Help is at hand in that English Heritage (which has to be consulted on any applications to alter Grade I or II\*, but not Grade II

buildings) have now set up a website [www.imagesofengland.org.uk](http://www.imagesofengland.org.uk) which lists all such buildings and the key features which have been the reason for listing. This together with information which quite often is on the local council's website is a useful starting point for research on the building you may be looking to buy.

Finally, do remember that in addition to putting right unauthorised alterations, the local councils have been known to prosecute householders who deliberately flout the rules. We don't want our property clients also becoming our criminal clients!

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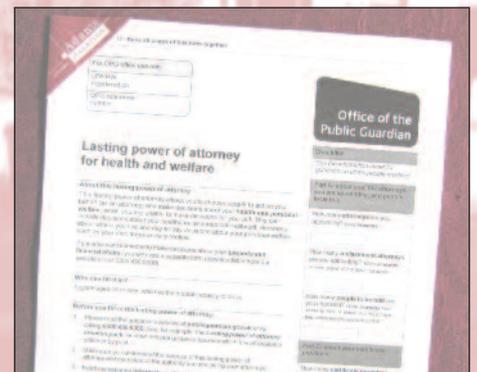
## LIVING WILLS

The subject of Living Wills is a grey area in the UK as they are still not legally recognised by the law.

Ordinary Wills deal with a person's estate but do not cover personal welfare and health. Whilst funeral wishes can be inserted in a Will, these are only wishes and there is no legal obligation on your executors to carry out these wishes. This is because a Will may not be read until after a funeral or the wishes may not be practical.

Some charities do prepare Living Wills, for example Age Concern or the Terence Higgins Trust and details can be found on their respective websites. Once prepared the document can be placed with your ordinary Will and a copy can be kept with your GP if he or she agrees.

However, another way of dealing with this aspect is to execute a Lasting Power of Attorney for Personal Welfare. By this document, your appointed Attorney(s) can consent or refuse medical treatment on your behalf provided you have agreed to this in the document. This means that, should you become incapacitated and unable to make yourself heard, your Attorney(s) could do it for you.



Like an ordinary Will, by also having a Lasting Power of Attorney for Personal Welfare, you will have peace of mind knowing that your ultimate wishes will be carried out.

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## THE 2010 COMMERCIAL RATES REVALUATION – HOW WILL IT AFFECT YOUR BUSINESS?

Despite all the turmoil in the world, it's good to think that there is still some certainty in life. Every five years commercial rateable values are revised and this will be happening with effect from 1st April 2010.

You can now view the proposed assessment for your commercial property on the Valuation Office website [www.voa.gov.uk](http://www.voa.gov.uk). This website is useful in that it also shows how your premises have been measured and valued for rateable value purposes. We do urge our clients to take expert advice usually from a chartered surveyor and to appeal any rateable value which is excessive or has been wrongly calculated. Even a small reduction in the rateable value could over a five year period result in a substantial savings in business rates payable.

One scam, however, to be very aware of are the unqualified touts who quote you a fee on the basis of the rates saved. What they do not tell you is that these figures are calculated over the whole five year period and so you quite often land up paying more

in the first year than had you not appealed in the first place! A professional chartered surveyor will always quote a percentage of the saving in the rateable value itself or in more complex cases at an hourly rate.

We, as solicitors, quite often find ourselves picking up the pieces after the scam has been perpetrated having to deal with unsavoury individuals who are insistent on being paid but will not refer the matter to court because they know they will not win there.

So be warned!

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## HARRY JAMES HUTCHINGS

Welcome to Harry James Hutchings who arrived on the scene on 11th January 2010 a few weeks ahead of schedule and weighed in at 6lbs and 6 oz. Congratulations to mum Julia and dad Scott.

## NO RIGHT OF WAY

Traditionally many landowners, usually farmers, have prevented the creation of a public right of way over their land by closing off access for one day every year. Others prefer to put up signs under the Highways Act 1980. A better method both cheaper and more effective is to deposit with the County Council a brief statement and map showing the existing rights of way and confirming by statutory declaration that the owner has no intention of creating or "dedicating" any other rights of way over his land. This is permitted under S.31 (6) of the Highways Act.

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Harry Hutchings

## SENIOR PARTNER HAS TROUBLE WITH THE LAW

There was bewilderment on 4th December 2004 as police arrived in force at the Haverhill office, clapped handcuffs on senior partner, Tom Harrison, and led him away like a common criminal to be kept under lock and key.

To add to their consternation the office staff were then asked to help raise bail money for his release. Despite protests from some members of staff who have asked to remain anonymous, the required bail money was

raised and he was released back into the community at 12.45 pm and allowed to return to work.

Thanks to the generosity of his clients, contacts and the office Tom was able to donate his bail money of £2283 to St.Nicholas Hospice in Bury St.Edmunds. A total in excess of £9000 was raised by Tom and his fellow 'criminals'.

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Our Senior Partner is under arrest!