



## No Big Deal?

Belinda Walkinshaw says **"Beware, a deal done on the shake of a hand or the back of an envelope can have disastrous consequences."**

Despite the current economic climate, recent research shows that business confidence remains positive, particular in the southeast. Those concerned about downturn in trade are developing a variety of strategies to bolster their businesses including developing new products and services and expanding into new markets. Often such strategies will involve the purchase of existing businesses either by way of a share purchase or a purchase of assets and goodwill. These arrangements may seem to be straightforward but there can be considerable pitfalls and it is essential that adequate warranties are obtained from the seller as to the financial position of the business, the adequacies of its assets, any potential claims and the accuracy of the information supplied as part of the due diligence process. These types of transaction often involve 'intangible' assets such as trading names and brands, customer and supplier lists, phone numbers, domain names and websites which all form part of the goodwill of the business. This may be particularly relevant, for example, in businesses which provide goods and services to other businesses. It is

important to establish exactly what assets of this nature actually exist and that the ownership of all assets is properly transferred to the buyer.

Before proceeding on what can be a time consuming and costly investigation into the target business. The purchaser may want the assurance that he has the exclusive right to negotiate and the seller will almost certainly want confirmation that any information disclosed during this due diligence process will be kept confidential and not be used for any purpose other than the proposed transaction. Both of these provisions can be usefully included in a signed 'Heads of Agreement' setting out the main terms and assumptions on which the parties have agreed to move forward to the next stage. The validity of exclusivity or 'lock out' agreements has been brought into question through the courts and as a result it is clear that to be enforceable a lock out requires careful drafting and if such provisions are to be incorporated into any "pre-contractual" documentation

*For advice on business sales and purchases please contact Belinda Walkinshaw*

## Marry in haste Repent at leisure...

Many couples are now getting married for the second or third time or after previous long term relationships. Many will have accumulated significant assets which they would not want to lose should their proposed marriage end in divorce. In these circumstances, consideration should be given to entering into a Pre-Nuptial, even a Post-Nuptial agreement.

A properly drawn up legal Pre-Nuptial agreement is now more of an investment than ever before. Pre-Nuptial agreements may become legally binding in this Country within the next few years. In the meantime, obtaining a Pre-Nuptial or Post-Nuptial agreement is the best way to protect personal assets and to attempt to determine financial affairs on divorce.

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EDITOR: SHEILA MCENTEE



# Property Co-Ownership Explained

When buying a property with another person, there are two ways in which the property can be held – either as Joint Tenants or Tenants in Common. Both forms of co-ownership apply to either freehold or leasehold properties and have nothing to do with tenancies or leases as the names suggest. In addition, there can be up to four legal owners of a property.

If a property is held by the legal owners as Joint Tenants, this means that the property is owned equally between them, but no distinct shares are held. A simple example to explain joint tenancy is to imagine all of the bricks forming the house together with both owning half but not being able to distinguish which specific bricks belong to each.

Where there is a Joint Tenancy, if one of the owners dies, the property automatically passes to the surviving owner(s). For example, if four people buy a property which they hold as Joint Tenants, they each own a 1/4 share of the property. The share of the deceased owner will pass to the surviving three owners, who will then own a 1/3 share of the property each. In this example, if the deceased owner left a Will which stated that their share of the property was to pass to someone who is not one of the remaining owners, then this gift would fail as there is no distinct share.

If, however, a property is held by the legal owners as Tenants in Common, this means that each has a distinct share of the property. The shares do not have to be equal. Using the example above, Tenants in Common collectively own all of the bricks forming the house, but they each know which bricks they own and in what proportion.

When a Tenant in Common dies, they can leave their share in the property to whomever they wish through their Will – it does not pass to the surviving owners. If a person dies without a Will (i.e. they die intestate) their share of the property will instead pass under the rules of intestacy. If a property is held by Tenants in Common, it is advisable to ensure a Declaration of Trust is entered into to set out the contributions of each owner to the purchase price and how the net proceeds of sale will be divided when the property is eventually sold. When a property is purchased it is advisable to consider whether an existing will should be changed. If there is, as yet no will in place a will should be made in order to ensure that any property share passes to the intended beneficiary if that person is not the next of kin who would otherwise benefit on intestacy.

How you choose to hold your property depends entirely on your personal circumstances. Most married couples hold their property as Joint Tenants, where their intention is that if one were to die, the property would automatically pass to their spouse. It is common for unmarried couples, brothers and sisters, friends, business partners, etc. to hold property as Tenants in Common in equal or unequal shares, often supported by a Declaration of Trust, where it is preferable to own distinct shares and to dispose of the share on death in accordance with a Will.

*For more information concerning property ownership, please contact any member of the Property team. For advice on making a will please contact Kate McNamee or June Yap.*



## Eye Injuries

Our eyesight is precious, so when an injury or negligent treatment leaves it impaired in any way, the affected person will want to ensure that proper treatment and compensation are received.

At Pickworths, we deal with a range of claims which involve serious injuries to the eye. For example we have handled a claim for a detached retina which was triggered as a result of a tripping accident, and a claim for the total loss of eye sight in one eye, as a result of a direct impact to the eye.

We have relationships with excellent Ophthalmic Surgeons who we refer our clients, to ensure we receive the best

possible medical evidence, including diagnosis and details of future treatment required.

We also deal with claims in which the eyes or eyesight has been affected, that may have resulted from the negligence of members of the medical profession.

We can often deal with claims on a 'No Win No Fee' basis, meaning that your legal fees can be recovered from the Defendant in most cases.

*If you would like further information, or for an initial assessment of your claim, please contact Linsey Carroll or Martin White.*

## Given the Choice

We are regularly asked to take over the handling of claims for damages for personal injury from other solicitors when the client realises that they have made the wrong choice.

This particularly happens when a client has gone to a solicitor advertised in the media (these are actually very often marketing companies who then sell the cases to solicitors), or lawyers to whom they have been referred by their legal expenses insurers (often for a large referral fee) – usually motor or contents insurers.

Such solicitors are frequently at the other end of the country who will never meet with the client and who have claims

handlers rather than qualified lawyers doing the work.

The levels of damages that clients are advised to agree are presumably for a quick turn around of cases for the solicitors and they tend to be low by the standards we apply. We often obtain awards and settlements 2, 3 and 4 times the levels originally proposed.

Clients do not realise that they can change solicitors and indeed following a recent European ruling cannot be forced to go to their insurance company's panel solicitor but have total freedom of choice.

We will not automatically suggest we should take over a case where we think that the current solicitor is doing a good job or where there is just a misunderstanding



between them but if the client has completely lost faith in the lawyer concerned we will be happy to accept instructions to proceed.

*If you wish to discuss this issue as it might apply to you please call Martin White or Linsey Carroll.*

## Are You Meeting Your Trustee Obligations?

If you are a Trustee do you know that Trustees are required by law to diversify their investments to:

- spread risks
- consider the "suitability" of investments

The Trustee Act 2000 coincided with the burst of the dot com bubble which was the fiercest decline in the Stock Market value since the early 1970s. The Act correctly identified the importance of diversification as a means of reducing risk. Not only did the decline expose the vulnerability of individual equities but it also recognised

the importance of diversifying investments between the asset classes rather than sticking solely with the fixed interest and equity assets. This obviously has had a profound effect on the construction of Investment Portfolios. To satisfy this diversification requirement, Trustees need to be careful, and consider the advice of reputable independent financial advisors.

To satisfy the other main requirement of the Act, namely suitability, Trustees need to seek to minimise Income Tax by selecting investments whose treatment of Income Tax is appropriate to the type of trust concerned. The Income Tax treatment between the different types of Trust varies greatly and Trustees need to obtain correct advice from an expert so the Income Tax consequence of their individual trust is understood and appreciated before investment decisions are taken.

In addition to requiring the diversification and suitability of investments the Trustee Act 2000 also requires Trustees, who do not themselves possess the necessary expertise, to seek professional independent advice, to review the Trust investments on a regular basis, and take advantage of each year's Capital Gains Tax exemption and test portfolios for risk, cost efficiency and tax efficiency.

*If you are a Trustee with concerns about meeting your trustee obligations, please contact Kate McNamee for further advice.*



## Glenda's Glorious Garden

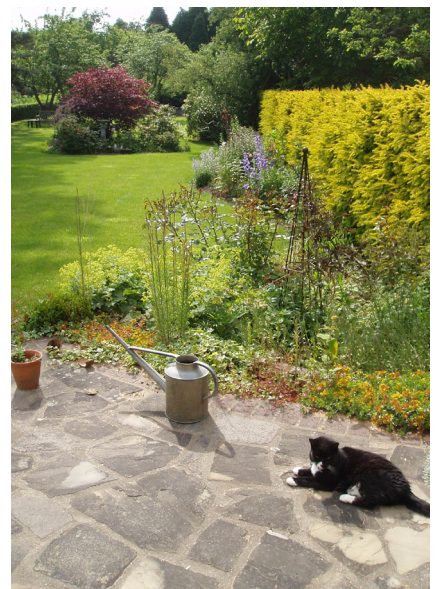
Pickworths partner Glenda Ferneyhough and her husband Rob spend a lot of their leisure time tending to their beautiful garden and open it to the public during 'Potten End Open Day'. The open day runs every other year and this year will be the 3rd time they have opened their garden. Glenda says "There are always lots of activities during Open Day with gardens being just a part. Depending on the weather we get an average of a 100 people visiting our garden".

Rob spends every weekend and summer evenings when he can tending to the garden, with azaleas, camellias and rhododendrons doing well in the acid soil particularly under trees. Rob also likes growing all sorts of vegetables and soft fruit which Glenda then processes, either making jam or freezing for future use.

Glenda and Rob have found that using the manure from their chickens improve the soil. However they do have problems with wild life, particularly from badgers, muntjac deer and wood pigeons.

This year Glenda and 3 friends from a local orchestra thought it would be fun to play in the garden as the Open Day committee are encouraging more musical activity. She says "we are called the Oakwood Clarinet Quartet as we met at rehearsals we attend for an orchestra in Oakwood Drive, St Albans".

Potten End Open Day is on Sunday 26th June 2011 from 11am to 5pm. All funds raised go to Holy Trinity Church and local charities. For more information visit: [www.pottenendopenday.org.uk](http://www.pottenendopenday.org.uk)



# SPOTLIGHT ON...

## Belinda Walkinshaw

Company & Commercial, Property and Equestrian Law Specialist.

Belinda qualified as a solicitor in 1989 and joined the firm in September 1997 becoming a partner in April 2000. Born in London and then raised on the Isle of Wight, Belinda studied for her BSc in Human Sciences at University College London before deciding to become a lawyer.

With many years of experience dealing with commercial litigation and business disputes, Belinda advises on business, company and corporate matters and

drafting all forms of business contracts and also acts for clients in commercial transactions. She has developed a special interest in long residential leases and has conducted complex litigation both in Leasehold valuation tribunals and through the courts regarding leasehold enfranchisement, service charges and other issues relating to leasehold property. Some highlights in her career are assisting the lessees who owned the freehold of 'Embassy Court' on Brighton seafront to achieve a significant victory in the Court of Appeal which led to them being able to carry out a major refurbishment of this grade 2\* listed block and the more recent appeal decision in the case of Roadside Group Ltd - v - Zara Commercial Limited where Belinda successfully represented the long leaseholders of a petrol filling station, car showroom and workshop who were faced with a claim for forfeiture of their



valuable lease.

Belinda's passion for horses has led to the development of the firm's Equestrian Department, one of only a few in the country. Using her specialist knowledge of riding, owning, breeding and training horses, Belinda provides advice to clients as a professional who understands their particular needs and problems.

In her spare time Belinda trains her own Team Chase horses for the team 'Relentless FTB' who are reigning National Team Chase Champions.

## Legal Eagles support the Hospice of St Francis

Pickworths staff will be taking to the skies this summer to support the Hospice of St Francis.

Senior Partner Ian Tottman, Wills & Probate Solicitor June Yap and the Practice Administrator Sheila McEntee will carry out the sky dives in July with Skydive Weston in Oxford. Ian Tottman who previously did a tandem jump 2 years ago for the hospice has decided to take 2 of his daredevil colleagues with him this time!

Ian says "It was such a great experience but

I was very nervous and was not sure what to expect. This time I hope to be more relaxed and really enjoy the scenery.

As a firm Pickworths have supported the Hospice for many years with donations. They have also participated in 'Walk with the stars' several times as well as sponsoring the T-Shirts for the walk in 2009.

*If you would like to sponsor the Pickworths Skydivers check out our website or go to [www.justgiving.com/PickworthsLegalEagles](http://www.justgiving.com/PickworthsLegalEagles)*

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The widely reported case of wealthy heiress Radmacher (formerly Granatino) v Granatino does not make Pre-Nuptial agreements dealing with parties financial affairs automatically legally binding on divorce. Nevertheless, it means that far greater weight should be given to them in court proceedings and many more are likely to be upheld.

The Supreme Court of Justice propose that in the case of both Pre-Nuptial and Post-Nuptial agreements that "the Court should give effect to a Nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement."

Where an agreement of this type is being considered it is advisable to obtain independent legal advice and disclosure of financial assets, as to do so will ensure that each party understands the implications of the agreement and thus this will give greater weight to the agreement itself should either party subsequently issue court proceedings because they do not want to be held to the agreement.

*For more information on Pre and Post-nuptial agreements contact Jane Leadbeater*



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