

AT Arnold · Thomson the field leader

**Nemo Dat
Quod Non
Habet**
Legal Idioms

**Going Going
Gone!**
Property Auction

**Lasting Powers
of Attorney**
Do I Need It?

AT Arnold · Thomson

- The information in this newsletter is not intended to be exhaustive of the topics covered. Specific advice should be sought on the application of the law in any particular case.
- If we do not have your correct details please also inform us of any changes so that we may update our records.



Towcester 205 Watling Street West, Towcester,
Northants, NN12 6BX

T: 01327 350266

Market Harborough Harborough Innovation Centre,
Airfield Business Park, Leicester Road, Market
Harborough, Leicestershire LE16 7WB

T: 01858 414233

E: enquiries@arnoldthomson.com

www.arnoldthomson.com



arnoldthomson.com

Director's Welcome

Welcome to this year's edition of the Field Leader. I hope you will find the articles that follow of interest. It never ceases to amaze us all how quickly time passes by and yet again here we are heading into the second half of the year. Again, like last year, it has been challenging for many as a result of rising costs, interest rates and still some level of uncertainty as to how much longer such gloomy headlines will last. The general consensus, in this region in particular, is that there is still a great deal of activity and opportunities despite it all.

With the expertise of our staff here, we have been fortunate to see an overall increase in instructions both from our existing as well as new clients. We have also been privileged to see the same increase in the number of recommendations from fellow professionals. These are all signs of what we collectively hope will continue to be a more positive market. One only has to look at the changing landscape around us all, particularly to the immediate areas where both our Market Harborough and Towcester offices are situated, to see evidence of a marked increase in property transactions. Such transactions often in turn trigger other changes: to Wills, appointment of attorneys, partnership agreements and succession planning, amongst others. As I mentioned previously, it has been a time for many to "take stock". There

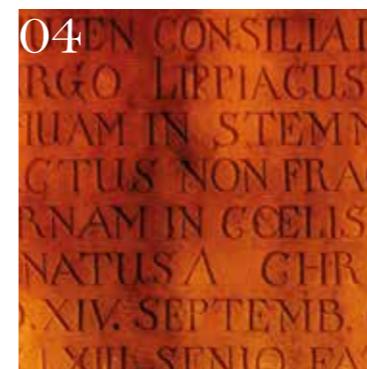
is no doubt that for many of our clients, that process is still under review – mind you, how quickly have the last 12 months passed?!

As is our custom, we shall again be at the Blakesley Show this summer, and we hope this year's show is as successful as last year – it was a remarkable attendance and such a well-supported show. You will note an article in this edition regarding "Len's Light" which I know is something close to many of you who will read this. Proceeds from our usual show raffle will go towards supporting the campaign which Lynda and Andy are raising awareness for, and in the process, such valuable funds for the charities. Please do therefore make sure you purchase raffle tickets on the day so we can raise as much as possible.

I hope you enjoy this edition, and as ever, my colleagues and I are here to answer any points you may have from the articles specifically, or other points generally. We continue to value our relationships with you, our clients and also our fellow professionals. I know that one of the articles in this edition highlights the benefits of those working relationships – ultimately to serve our clients' best interests.



Matt Hawkins – Director
matt.hawkins@arnoldthomson.com



Contents

ARNOLD THOMSON

- 04 Nemo Dat Quod Non Habet**
Remi Stumpfenhusen
- 10 Q and A**
Samantha Priestman, Ben Currie,
Paula Annetts, Emma Scott
- 20 Did You Know That...**
Rhiannon Beswick
- 22 Nominated Charities**
Paula Annetts

PROPERTY

- 06 Going Going Gone!**
Rhiannon Beswick
- 08 It Takes a Team**
Kate Austin
- 12 Title Plan**
Angela Guess
- 14 Property Fraud and
Property Alert Services**
Ben Currie
- 18 Joint Ownership of a Property**
Alberta Reid

PRIVATE CLIENT

- 16 Lasting Power of Attorney (LPA)**
Rosamund Bennett

For expert legal opinions on current matters, visit the latest news section on our website from your phone, tablet or PC: arnoldthomson.com



16



18



06

Nemo Dat Quod Non Habet

I started my first degree in Nigeria back in the early 1990s. At the time, one of the prerequisites for admission into Law School was some knowledge of Latin. This, I imagine, was probably owing to the fact that there are several maxims, particularly in the Law of Tort and Equity, where the meaning is best conveyed in Latin. Unsurprisingly, some of these idioms have stayed with me, even after a few decades since Law School, and I sometimes find myself unconsciously inserting them into correspondence.

The more common phrases, all of which serve as some kind of warning or guidance, include the frequently used principle of *caveat emptor*, which simply means, let the buyer beware. There is also *res ipsa loquitur*, loosely translated to mean the thing speaks for itself or better known in colloquial and everyday language as, evidently. Another Latin expression I sometimes favour is *ceteris paribus*, meaning all things being equal, or all other circumstances aligning as they should. *Ex turpi causa non oritur actio* is another one, and it basically means that he who comes to equity (the law) must come with clean hands. However, by far my favourite of all the Latin phrases we were required to learn in Law 101, remains *nemo dat quod non habet*; as much a legal doctrine as it is philosophical, it means that no person can give what he/she does not have.

As someone who can fittingly be described as a History geek (although, I've been told that I hide it well), I am often astonished at the fact that several centuries, perhaps much longer, after these phrases were first coined, they continue to bear relevance, not only within the legal profession, but in general everyday life. Examining, for instance, the widely known Contract Law principle of *Caveat Emptor* (Let the Buyer Beware) – this is a principle

we apply and encourage our clients to apply in practically every transaction. As my colleague, Angela, goes on to mention on page 12, we very rarely have the opportunity to see the properties being purchased by our clients. What we do have on all such matters, are the plans which are expected to clearly map out the property being purchased, any rights of way, boundaries, and all other pertinent details. We forward this plan, together with the necessary paperwork to our clients and specifically ask them to ensure that the property, as it stands on the ground, is accurately reflected on the title plan, so that they can be certain that what is being advertised for sale is exactly what they are buying. That is just one example of the application of *caveat emptor*. Another related and applicable instance can be found in my colleague, Benjamin's article regarding Property Fraud on page 14. We, on behalf of our clients, must apply every available measure to determine that any property they are proposing to purchase, legitimately belongs to the person offering to sell. With the alarming increase in property fraud, scams and misrepresentation, the caution for buyers to be vigilant has never been more relevant than it is in today's society.

Most intriguing of all for me though, is *nemo dat quod non habet*. It is a principle that I

“Do we at Arnold Thomson have what we promise to give to our clients: quality of service, value for money, attention to detail, and looking after their best interests? It fills me with pride to be able to confidently answer that question most affirmatively.”



instinctively apply, especially in decision making processes like choosing service providers. Our Accounts & IT Manager, Mark, was lamenting to me the other day about the irony of a certain telecommunications company being particularly inept at communicating. I hid my smile in the face of his frustration. My favoured idiom ran through my mind: if they do not have it, how could they possibly give it? As is often the case (occupational hazard), it soon turned into a reflective question in my mind: do we at Arnold Thomson have what we promise to give to our clients: quality of service, value for money, attention to detail, and looking after their best interests? It fills me with pride to be able to confidently answer that question most affirmatively. You see, as part of our risk management, quality control and monitoring procedures, we conduct, for want of a better analogy, monthly health checks on many of our files. The process entails the random selection of files, which are then thoroughly audited before they are returned to the relevant lawyers. Although this exercise is conducted internally by the Firm's Directors, it is a very detailed review, nonetheless. The report on the level of client care and how dedicated we are to our clients, is consistently impressive. And even if it could be somehow argued that our internal inspections

may not entirely be unbiased (they are though, I can attest), we also have an annual independent and even far more vigorous inspection conducted by the Law Society into every area of our practice, with primary focus on how well we look after our clients' matters. This is an inspection we elect to undertake every year as part of our quality standard. As with our monthly internal reviews, the report of the independent inspection is equally consistently favourable.

These are the reasons that I am able to confidently respond to the age-old Latin idiom that, yes indeed, we at Arnold Thomson are fully committed to the maintenance of quality and high standards of client care and that as such, we are expertly placed to extend the same to you, our clients. That is, of course, when all associated circumstances remain as they should – *ceteris paribus*, and unanticipated and/or extraordinary circumstances beyond our control (such as the 2020 pandemic, for instance), do not affect our ability to provide the best possible service to you, our clients. Our ethos at Arnold Thomson remains as solid as ever – we are here to look after you best interests.



Remi Stumpenhusen – Director
remi.stumpenhusen@arnoldthomson.com

Going Going Gone!



A sale or purchase of property by auction is a unique transaction in English property law. It offers the parties a swifter route to completion, with greater certainty.

Ahead of the day of the auction, the seller prepares a legal pack, which should be as comprehensive as possible, to give potential purchasers the confidence to place a bid. The pack would contain a contract, often incorporating the standard form common auction conditions, as well as any special conditions which are specifically applicable to the property or transaction. Evidence of the title to the property and the seller's right to sell it would also be enclosed,



together with up to date results of the general property searches and any other relevant information about the property.

A potential purchaser should carefully review the legal pack with their appointed legal representative, prior to the date of the auction as, once a bid has been accepted at the auction, the purchaser is legally bound to complete or to suffer financial consequences if they subsequently withdraw from the transaction. Following the acceptance of the bid, the seller is under no obligation to answer any further questions raised by the buyer and it is therefore essential that any issues are addressed prior to the purchaser placing a bid at auction.

As with exchange of contracts in a standard property transaction, the purchaser is required to pay a 10% deposit. This is payable at the auction, or within a specified amount of time following the auction. The purchaser should ensure they have sufficient funds to pay the deposit as well as the balance within the time required for completion to take place: this is generally by or within 21 days after the auction. It is usually not advisable to rely upon mortgage funds to assist in financing the purchase of a property at auction. This is owing primarily to time constraint, as it may not be possible to satisfy the lender's requirements, and draw down the mortgage advance for completion within the stipulated 21 days. Secondly, a good number of properties sold at auction are not acceptable security for high street mortgage lenders, due to the fact that they are more often than not in a dilapidated state, lacking the necessities of residential accommodation or subject to adverse legal matters.

When reviewing the legal pack, the purchaser and/or their legal representative should naturally check the guide price, to ensure

that it is within their budget. It is also always worthy of note that if there is significant competition to acquire the property, the sale price could exceed the guide price. In addition, the contract should be carefully reviewed to check for any additional fees payable. It is common for the seller to require the purchaser to reimburse them for the cost of the property searches. Auctioneers can also set a fee payable by the purchaser, to cover their administrative costs, rather than this cost being paid by the seller, as would ordinarily be the case in a standard sale/purchase transaction. On occasion, the seller may also require the purchaser to pay their legal fees. Any fees which the seller requires payment of from the purchaser must be clearly set out within the contract for the obligation to be binding.

Traditionally, auctions would be held in person, with the auctioneer making the legal pack available to interested parties for review at the last minute, before introducing the property being sold. In line with the progress into the modern technical world, it is

now more frequently the case that property auctions are also held online, and it is possible for potential purchasers to either appoint an agent to bid on their behalf at an in person auction, or over the telephone. An undisclosed reserve price would be agreed between the seller and the auctioneer, with the auctioneer inviting bidding to commence just under that amount. Interested parties in the room would then place their bids by raising their hand or a pre-registered numbered paddle. Once the reserve price has been met and all interested parties have submitted their bids, the auctioneer would knock his gavel to confirm a bid has been accepted. At that stage the seller is bound to sell, and the purchaser bound to purchase the property on the terms set out in the contract.

Following the successful bid, the solicitor for the seller and the buyer would liaise and agree the form of transfer deed required to transfer the legal title to the purchaser on the day of completion. The purchaser's solicitor prepares a completion statement which, as the title suggests, itemises the fees

and the sum total required to complete the transaction, and for post completion formalities such as stamp Duty and Land Registration fees. As both parties are legally bound from the date of the auction, it is not unusual for the transaction to be finalised within 4 weeks; a much quicker turnaround in comparison with the 6-10 week average timescale on a standard transfer.

If you are considering buying or selling a property at auction, our team of experts here at Arnold Thomson will be happy to assist and to skilfully guide you through the legal process.



Rhiannon Beswick
Associate, Commercial Property Lawyer
rhiannon.beswick@arnoldthomson.com

It Takes a Team

When an agricultural property client comes to one of my colleagues or myself for advice; whether it be on a property/land transaction, promotion/option agreement, partnership matter or Will/succession planning, one of the first questions we always ask is confirmation of who the client's accountant and land agent are.

Obtaining input from all other professionals who also provide our clients with advice within their respective areas of expertise, is crucial to getting the right outcome on any matter. A client's accountant and land agent will usually see the client more regularly than us, for annual accounts meetings, and to review the client's farming and other business operations. I often say to my clients that I only become involved when there is something positive or challenging happening in their lives and/or businesses, rather than the undoubtedly more regular basis on which they see their other professional advisers.

At Arnold Thomson, when we are instructed by our clients to assist on the legal aspects of any of their matters, ranging from property or land transaction to succession planning, secured borrowing, putting a new partnership agreement in place, or varying the terms of an existing one to reflect any changes in circumstances, it is always important for us to involve all key professionals from the outset. This enables us to ensure that any course of action that we put together will be tailored to our client's specific needs from a tax, legal and business perspective. Working together as a team on a mutual client's behalf with other

experts in associated fields, many of whom are known to us, means that what works for them from our legal standpoint, will more than likely also be the most tax efficient option, from their accountant or financial adviser's view. Similarly, the land agent involved will be familiar with how the business works in practice, and any potential effect on agricultural subsidies as well as other grants currently claimed or available in the future.

Our standard advice, especially to our farming clients, therefore, is that although it may seem like a costly exercise to bring all your professional advisers for a 'team meeting', as it were, the cost will certainly be outweighed by the long term benefit of the bespoke advice which will be received to get the best outcome. I also find it very beneficial, where possible, to have such meetings at the client's farm, as this provides the opportunity to gain a greater understanding of their business and landholding on site. For the aforementioned reasons, it is important that you keep all your professional advisors updated with all relevant plans or issues so that they are armed with the right advice from the outset. As I often say to my colleagues and other professionals I work with regularly – team work makes the dream work!



“ although it may seem like a costly exercise to bring all your professional advisers for a ‘team meeting’, the cost will certainly be outweighed by the long term benefit of the bespoke advice received to get the best outcome”



Kate Austin – Director
kate.austin@arnoldthomson.com

Q & A



Samantha Priestman
Chartered Legal Executive
samantha.priestman@arnoldthomson.com

What is your favourite quote?
Live life to the full.

What really makes you angry?
Cancer.

Source of motivation for hard work?
My family.

Highlight of your career?
Becoming a Fellow Chartered Legal Executive.

What are you most proud of?
My children.

Your favourite book /author?
Room by Emma Donoghue.

What makes you laugh the most?
My husband.

If you could choose to do anything for a day, what would it be?
Work at a zoo.

Favourite sport, if any?
Zumba and tap dancing.

If you could only eat one meal for the rest of your life, what would it be?
My Mum's homemade Cornish pasty.



Ben Currie
Paralegal
ben.currie@arnoldthomson.com

What is your favourite quote?
You can always become better. *Tiger Woods*.

What really makes you angry?
Liverpool FC or shanking a golf shot.

Source of motivation for hard work?
Results and success.

Favourite movie and why?
It is hard to say just one film, I would lean towards Star Wars: Episode 3 – Revenge of the Sith or any of the Star Wars prequels or originals really – they are generational films!

What are you most proud of?
My Family.

Your favourite book /author?
Julia Donaldson (Dad Life).

What is your biggest fear?
Snakes, I even stay out of the reptile centre at the Zoo!

If you could choose to do anything for a day, what would it be?
Play for Manchester United.

Favourite sport, if any?
Football is No 1, but Golf, F1, Cricket... the list is endless!

If you could only eat one meal for the rest of your life, what would it be?
Indian cuisine.



Paula Annetts
Office Manager
paula.annetts@arnoldthomson.com

What is your favourite quote?
"That'll do pig, that'll do". *Babe the Movie*.

What really makes you angry?
The deer eating my plants in my garden!

Source of motivation for hard work?
Seeing the end result after doing a great job, particularly after an event.

Highlight of your career?
21 years of working at AT has produced many highlights! I was very proud to see one of my junior assistants pass her law degree, all her exams and qualify as a Solicitor. She definitely rose through the ranks.

What are you most proud of? My family.

Your favourite book /author?
I read "Where the Crawdads Sing" by Delia Owens in lockdown and I can honestly say it provided pure escapism.

What makes you laugh the most?
My Dad's jokes – we share the same sense of humour!

If you could choose to do anything for a day, what would it be?
Space travel with my family – I'd love to see the earth from space.

Favourite sport, if any?
This is a difficult one as I'm not very sporty but I've enjoyed Wimbledon this year.

If you could only eat one meal for the rest of your life, what would it be?
Jacket potato and salad, simple but delicious!



Emma Scott
Secretary to Rhiannon Beswick
emma.scott@arnoldthomson.com

What is your favourite quote?
I would challenge you to a battle of wits, but I see you are unarmed.

What really makes you angry?
When you walk through a doorway and end up stuck because your pockets have caught on the door handle! Instantly rage inducing.

Source of motivation for hard work?
Wanting to achieve my goal of qualifying as a CILEX lawyer and progress my career with AT.

Highlight of your career?
Being hired by AT, obviously!

What are you most proud of?
My children. On a personal level I am proud of myself for getting back into studying and achieving excellent results whilst also juggling working and raising a family.

Your favourite book /author?
As a self-certified bookworm, impossible to choose! A book that I find myself coming back to time and time again though is Jane Austen's *Pride and Prejudice*.

What makes you laugh the most?
Lots of things, I have a dry sense of humour, so all manner of things make me laugh.

If you could choose to do anything for a day, what would it be?
Travel somewhere new and exciting, although a day is probably not long enough to see the sights and explore.

Favourite sport, if any? I don't have one.

If you could only eat one meal for the rest of your life, what would it be?
My Mum's homemade lasagne.



Title Plan

A plan is a key part of a property transaction. Its main purpose is to show the location, and the extent of any legal estates and interests.

Whilst legal advisors are on hand to assist in a property transaction, hardly are they ever on ground to physically inspect the property, its boundaries, accesses and all other such important details. We would always recommend that our clients (whether they be the seller, purchaser, a landlord or a tenant) consider the title plans they are provided with and to let us know if they notice any discrepancy. This will allow us to investigate and query any inconsistencies in the drawings on the plan and the physical property, prior to exchange and completion; therefore, seeking to address any issues, before a legally binding contract is entered into.

Listed below are some of the points to consider when reviewing title plans in relation to any property transaction:

- 📍 Does the plan show the correct property?
- 📍 Does the extent of the property, on the plan, match the physical extent on the ground?
- 📍 Are any rights of access clearly marked on the plan?
- 📍 Are any communal areas, such as bin stores, kitchens, WCs etc clearly marked on the plan?

When a property – freehold or leasehold, is registered with the Land Registry, a plan is produced along with the title, which is based on the current Ordnance Survey (OS) Map. This shows the location of the property in the wider context of the area, so that it can be located. The extent of the property is also clearly marked or drawn by reference, generally, to red edging. Any rights of access or areas that are subject to any covenants, or matters referred to within the registers of title, are then highlighted with different colouring.

When documents containing a plan are registered with the Land Registry, their requirements must be complied with. As lawyers, we cannot prepare a plan for you. We are however able to refer you to professionals, such

as architects and surveyors, who can assist. When preparing plans for a property transaction, below are some of the important points to note:

- 📍 Does the plan show sufficient background detail to locate the property?
- 📍 Is the plan based on the current OS Map?
- 📍 Does the plan show an accurate north mark?
- 📍 Has the plan been prepared to an accurate and appropriate scale?
- 📍 Does the plan correctly show the location and extent of the property and any associated rights?

Further details of the Land Registry requirements can be located within the Land Registry Practice Guide 40: www.gov.uk/government/organisations/land-registry



Angela Guess
Solicitor & Head of Commercial Property
angela.guess@arnoldthomson.com

Property Fraud and Property Alert Services

We have recently been contacted by some of our clients in relation to the 'Lord of the Manor' of a local village. 'The Lord of the Manor' appears to be applying for registration of unregistered land in and around the area, as well as applying for the rights of the subsoil along public highways. Although most individuals do not need to worry about the Lord of the Manor, it nonetheless highlighted an important problem that has been on the increase in recent times: potential property fraud. Regrettably, this happens with alarming frequency around the country. The good news is that, as a land and/or property owner, you can certainly put measures in place to ensure that you do not fall victim.



Properties are valuable assets and are therefore particularly targeted by criminals. As a consequence, the process of selling and buying properties can sometimes attract a lot of attention from unscrupulous individuals and even organised crime outfits.

Conveyancing is such a high paced area of law, with pressures from all directions. Fraudsters and scammers quite often see this as a useful distraction to capitalise on and take advantage of. It is important therefore to remain conscious of and be ever vigilant to the many threats associated with property ownership, and particularly, the establishment and documentation of said ownership.

There are a number of ways in which property fraud is committed. For instance, it is not uncommon for a fraudster to impersonate registered owners/proprietors, unregistered owners, buyers, sellers or even borrowers. By obtaining information from public sources, using forged or stolen identity or false property documents, an offender can commit title fraud and potentially sell or re-mortgage a property without the owner's knowledge or consent.

Properties which are particularly susceptible to fraud include:

- Unoccupied properties which are left empty for prolonged periods of time;
- Tenanted (buy-to-let) properties;

- Unregistered land – i.e., not yet registered with HM Land Registry;
- Properties undergoing redevelopment;
- Properties owned by vulnerable individuals – for example, people who may have already been the victims of identity fraud;
- High value properties without a legal charge being registered against the title, or with a mortgage in favour of an individual living overseas;
- Properties where the registered owner lives abroad.

With scammers and fraudsters becoming more sophisticated and appearing to discover more ways in which to target the unsuspecting public, we have seen a marked increase in the number of enquiries from clients wishing to know how we can assist. Our strong recommendation is simple, practical, and most effective in protecting your property: registration.

Register Your Property

Without a shadow of doubt, this is by far the most important step to take in ensuring that your property is protected from fraudsters. Unregistered land/properties means that the Land Registry has no record of the owner of the property. The title deeds are the only evidence of ownership, and physical deeds can easily be stolen, lost/misplaced, and forged. Once

an application to register your property has been submitted to, and completed by the Land Registry, your ownership of the property in question becomes an official record. The title deeds are no longer required to establish or prove ownership. This immediately reduces the risk your property and the deeds falling into the wrong hands.

Holding original deeds to an unregistered property is an unnecessary and avoidable risk. If the deeds go missing, or get accidentally damaged, what would otherwise have been a relatively straight forward application to the Land Registry then becomes a rather complex process in an attempt to establish ownership. Even where such an application is successful, it cannot be guaranteed that the Land Registry will confer absolute title to the land/property. Our expert legal advice is therefore very simple – register your unregistered property. Once your property is registered, the risk of property fraud is dramatically reduced, and you will also enjoy peace of mind and confidence in the knowledge that the Land Registry hold all the important information regarding your property and ownership thereof.

Additional Recommendations

Avoid openly discussing the details of your property transaction on social media.

Check if that email requesting completion funds is really from your lawyer! Hackers are constantly developing more

sophisticated methods and are now adept at intercepting emails. There are however, thankfully, always things to look out for, such as any modification to the email address, an unusual tone to the email or the manner in which the sender addresses the recipient. If you are ever in doubt as to the origin of an email you receive regarding funds to or from you on a transaction, please call us to confirm. - Sign up to the Land Registry's free Property Alert Service for properties registered in England and Wales. This is a great tool, and we highly recommend that all homeowners should sign up to use the service. It monitors, and as the title suggests, will alert you to any activity on your property. Regrettably however, this is only possible where your property is already registered.

For more information on how to protect your property, or if you like us to assist with the registration of your land/property, please contact our Residential Property Team.



Ben Currie
Paralegal

ben.currie@arnoldthomson.com



Lasting Power Of Attorney (LPA) Do I Need It?

The potential loss of mental capacity is not a topic many of us typically spend time thinking about. Yet, it is one that we encounter quite often in our line of work. In some cases, we see clients who wisely chose to have LPAs in place long before the possibility of losing mental capacity arose.

This generally enables their loved ones to take the utmost care of their health, general affairs, and finances without having to jump through legal hoops and roadblocks. In other cases, where an individual loses mental capacity without the benefit of an existing LPA, it may sometimes be difficult and time consuming for their loved ones to put the necessary measures and legal process in place. This is why we encourage our clients to give careful consideration to having LPAs in place, regardless of your age or current status in life.

It is easy to think of mental incapacity as something that only affects the elderly. The reality of life, however, is that an illness or accident could result in anyone losing their mental capacity and becoming unable to look after themselves. Some of the pertinent questions to consider, particularly if you are a sole trader or in a partnership, include whether there are provisions for a trusted family member, loved one or friend to step in and make sure that the company remains in business. Sadly, since the Covid pandemic, we have seen

an increase in cases where a person becomes ill and they're unable to make their own decisions, but no one has been appointed to act on their behalf. It's commonly assumed that the next of kin, a spouse or family member will be able to step in automatically, but that may not always be possible. Usually, Court authority is required to empower someone else to make such decisions. This authority is known as a Deputyship Order.

A Deputyship Order is a Court Order that appoints a person (the Deputy) to act on behalf of someone who has lost mental capacity. The Order sets out the Deputy's powers and may relate (but is not limited) to a person's finances – including a business, property, or accommodation (such as where they live or whether they go into care), their medical treatment, and personal welfare. Applications are made directly to and decided by the Court. It can be a rather lengthy and much more expensive process than an LPA. The Court will require information relating to both the incapacitated person and the proposed Deputy,



“ we encourage our clients to give careful consideration to having LPAs in place, regardless of your age or current status in life ”

a capacity assessment and confirmation of notification to specific parties. This is ordinarily a long process, but it has become even more so in recent times, with some applications now taking up to 18 months for a Deputyship Order to be issued. While the application is pending, regrettably, family members and loved ones will be unable to act and/or make decisions on behalf of the affected person.

This lengthy process and the ensuing stress attached to it for all parties concerned can be avoided where a Lasting Power of Attorney is put in place while one still has the requisite mental capacity. LPAs are documents that allow a person (the Donor) to nominate a trusted person or persons (Attorney/s) to look after their affairs, should they no longer be able to do so themselves. LPAs are not dissimilar to an insurance policy; one hopes to never need it, but it's handy to have just in case! There are two kinds of LPA: Donor Property and Financial Affairs, and Donor Health and Welfare. These are separate documents and one can be made without the other. A Donor may also elect to appoint different Attorneys for each LPA. It is even possible to have a separate LPA for business matters, allowing specific persons to step in and make sure the business keeps running in the event that the Donor is no longer able to do so.

LPAs allow a wide amount of flexibility on how Attorneys are authorised to act, and this is decided by the Donor, not the Court. If there is more than one Attorney, the Donor can choose whether the Attorneys need to make decisions together or act separately. In addition, specific instructions or guidance can be provided to the Attorneys

on how they are required to act. Whereas the Health and Welfare LPA can only be used if the Donor is unable to make their own decisions, with the Financial Affairs LPA, the Donor can specify whether they would like the Attorneys to be able to use the document as soon as it is registered. This can be especially handy if there is physical incapacity and difficulty in getting to the bank.

Although the registration process for LPAs can take up to 5 months, this is still significantly shorter than Deputyship Order applications. Unfortunately, as the Donor must have mental capacity to put an LPA in place, we occasionally see cases where it may have been left too late, and an application to the Court becomes the only option. It is therefore far more advisable to have an LPA in place long before it is required, if ever. If you would like more information on the benefits and importance of LPAs, please speak to any member of our Private Client Team, who will be happy to answer your questions.



Rosamund Bennett
Private Client Solicitor
roz.bennett@arnoldthomson.com

Joint Ownership of a Property

Tenants in Common or Joint Tenants?

When 2 or more people own or purchase a property together, they will typically hold the property either as Joint Tenants or as Tenants in Common. One of the questions which often arises when we assist our clients with property transactions, is the format in which a co-owned property is held: as Joint Tenants or as Tenants in Common. Each form of ownership has significant legal implications which are distinctly different from the other. It is therefore very important to know for certain that a co-owned property is held in the appropriate format by the proprietors (owners).



Alberta Reid
Director
alberta.reid@arnoldthomson.com

Joint Tenants

Where proprietors hold a property as joint tenants, this means that they are all equally entitled to the whole of the property, and do not have individual shares. When a sale of the property has completed, each joint tenant is entitled to an equal share of the proceeds.

A key feature of Joint tenancy is the right of survivorship, and any changes to the ownership of the property upon the demise of one or more of the proprietors. For instance, if a property is held by 3 people as joint tenants, and one of them dies, the deceased's interest is automatically passed to the 2 remaining Joint tenants. Upon the demise of another proprietor, the last remaining joint tenant will become the sole owner of the property.

Tenants in Common

Unlike Joint Tenants, where 2 or more proprietors hold a property as Tenants in common, this means that each of them owns a separate and distinct share of the property. The right of survivorship is not a feature, and as such, if one of the owners is deceased, their share of the property does not automatically pass to the others, instead, it is dealt with in accordance with their Will or intestacy if they die without a Will.

Additionally, tenants in common can either hold equal or unequal shares in the property. In other words, each of the proprietors could own equal shares of 50%, where there are only 2 parties, or 25% each where there are 4. Each party owning an equal share of the property. Tenants in Common in unequal shares

follows the same principles as Tenants in Common in equal shares, however, as the title suggests, the percentage of the property owned by each party may differ slightly or significantly. It is not uncommon, for instance, for a property in this form of ownership to be held in a 70:30% split, or indeed a 20:80%. To ensure that the rights of all the proprietors are adequately protected, we always advise our clients to ensure that they execute a Declaration of Trust which clearly defines how the property is held between them.

Joint Tenants v Tenants in Common:

Deciding on the appropriate type of ownership when buying a property with others may sometimes seem confusing. However, the pertinent facts

to bear in mind in making that decision should be how you want your share in the property to be treated; either on the sale of the property, or in the case of one of the proprietor's demise. You should generally consider Tenants in Common if you wish to gift your share of the property to someone other than the people/person you own the property with. It would also be more fitting if you hold the property in unequal shares.

If, on the other hand, the property is held in equal shares, and it is your wish that the surviving owners inherit your share, then Joint Tenancy would be the right form of ownership.

Even where it is determined that the property is held in the right manner, it is our strong recommendation to all our clients to ensure that their Will

is up to date at all times. While the right of survivorship may not apply to Tenants in Common, in the absence of a Will, your share of the property would be dealt with under Intestacy rules. There are also other benefits (such as Life Interest Trust) and legal implications associated with each form of joint ownership. Please do not hesitate to contact us for further information or if you are uncertain about how a property you own with others is currently held, and/or whether the form of ownership aligns with your wishes. Our Private Client Team will also be happy to assist with any enquiries relating to your Will.



Did you Know that...



Asbestos Reports

Asbestos reports are required for commercial premises in the UK. They are also often required for any communal areas within residential blocks.

Stamp Duty:

Stamp Duty Land Tax (SDLT) can be payable on the acquisition of a lease, as well as on the purchase of a residential or commercial property.

Landlord and Tenant Act 1954:

When taking a lease of a commercial premises, tenants should consider whether they require the protection of security of tenure under the Landlord and Tenant Act 1954. This gives the tenant a statutory right to request that a new lease should be granted, after the expiry of the initial fixed term. This should be discussed with the landlord, or it's agent at the outset.

Why are Searches Important:

Carrying out a broad spectrum of searches, as well as raising both standard and property specific due diligence enquiries is essential, when either purchasing, or taking a lease of a property, to ensure anything affecting the property is highlighted before exchange of contracts.

Changes to your Status & Details:

Following a marriage, divorce or change of address, don't forget to update the Land Registry to ensure they hold your correct details. It is also strongly recommended that you update your Will, as changes to your marital status may invalidate an existing Will.

Voluntary First Registration:

If you purchased your property prior to 1990, and the legal title is unregistered, did you know that you are able to apply for voluntary first registration? This will ensure your ownership is recorded electronically and has the security of registration at the Land Registry, thus protecting against any third parties seeking to register rights to your property without your knowledge.



Rhiannon Beswick
Associate, Commercial Property Lawyer
rhiannon.beswick@arnoldthomson.com



Let's Keep in Touch

Please join us at Blakesley Show Saturday 5th August 2023

We are all looking forward to the Blakesley Show on Saturday 5th August. Here's hoping that we are blessed with great weather as we invite you to join us for refreshments and a chat with our colleagues. We hope to be joined by Andy and Lynda Eadon who are raising money for Len's Light. Our raffle this year will be in aid of both Len's Light and Age UK Northamptonshire. There's an opportunity to win one of three prizes: a Magnum of Champagne, a signed England Rugby shirt, and a signed Saints shirt. For more information on these two worthy charities, please see overleaf.



LEN'S LIGHT

We hope that you have enjoyed this edition of the Field Leader and that you wish to continue to receive it. Please also let us know if you have any feedback for us.

Please let us know if you would like to join or stay on our mailing list by 'opting in'. You can do this by:

- 1) E-mailing us at paula.annetts@arnoldthomson.com
- 2) Indicating your preference on our Terms of Business, which you will receive when we open a new matter for you; or
- 3) On our feedback forms at the end of your transaction.



Paula Annetts – Office Manager
paula.annetts@arnoldthomson.com



Love Later Life

As we grow older we face new challenges, and maybe even illness, loneliness or, in some cases, poverty. But that doesn't stop us from being ourselves. We still want to laugh, love and be needed. We want to stay independent and keep doing the things we love. We all want a fulfilling later life. That's why we're here. To support those who need us, stand up and speak for all those who have reached later life, and protect the long-term interests of future generations. We believe that living longer should be celebrated, and everything we do is designed to change the way we age for the better, and enable everyone to be part of the solution.

Love later life is the essence of what we are all about. It is the heart of the cause that unites us in a common purpose, so we want to put it at the heart of all that we do. With our Love later life strategy we can engage more people in our cause; different generations and wider audiences who may be overlooking or denying ageing as an issue for themselves, their friends, families and communities.

Age UK Northamptonshire is many things to many people: a source of advice, information, companionship and support.

We help people living in Northamptonshire make the best of later life and have a secure and dignified old age.

We provide a wide range of services to a growing number of older people, improving their quality of life, promoting their independence and preventing them from experiencing frailty, poverty and loneliness.

We are a local independent charity, proud to be a member of the Age UK partnership of around 130 local charities.

We can provide free, independent and confidential advice on matters that affect older people and their families, including regular or one-off help that enables older people to be independent and enjoy life.

**Call Age UK Northamptonshire
01604 611200**

Arnold Thomson are proud to support Age UK as one of our nominated charities this year. Please help us to support them. If you would like to donate please follow this link www.justgiving.com/ageuknorthamptonshire

Thank you

Registered Charity No. 1059995.



Lynda and Andy Eadon tragically lost their son, Len, to suicide at 22 years of age. 'Len's Light' is their vision to launch a national awareness campaign on the mental health issues that affect people in the rural community.

The couple want Len's Light to encourage conversations about mental health and break down the stigma which is attached to suicide. Lynda says: "it is so important that everyone talks openly about how they are really feeling and to reach out for help when it is needed. People need to be willing to really listen to these conversations and to pick up on any concerns."



"no one in the rural community should feel isolated or alone"

Len's Light is a tribute and legacy for Len Eadon who, in his short life, touched the hearts of so many. The farming community reached out and offered support when Lynda and Andy most needed it. It continues to do so as the couple try to come to terms with the loss of their son. They feel they need to give something back in return and that Len's Light will provide that focus.

Helping to raise awareness and funds through len.eadon.muchloved.com for 3 registered charities:

- Farming Community Network
- Farm Safety Foundation (Yellow Wellies)
- Papyrus

Since Len's death in January 2022, over £100,000 has been raised for the charities in his



name. Len's parents have also launched 5 a day campaign to help people keep safe. Over 18,000 wallet sized cards showing the 5 point challenge and emergency contact details are being distributed to Young Farmers and others in the rural community.

Andy and Linda have recently completed the Len's Light Tractor Relay from John O'Groats to Lands End, over 2000 miles. They called in at livestock markets along the way to relay their important message.

**Arnold Thomson are proud to support Len's Light
To donate please go to leneadon.muchloved.com**

