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THE NEWSLETTER OF NAPTHENS' RURAL DEPARTMENT

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Reap the benefits of working together

Share farming: it's better together

Share farming is a means of allowing a farmer to retain his land and buildings and still take an active interest in how the farm is run, while relinquishing a large degree of control of his business and withdrawing from the day-to-day farm work.

This means that someone with years of experience of farming the land in question can enter into a joint venture with someone with agricultural training and expertise who wishes to farm on their own account but does not own or rent land.

Share farming is a method which is not frequently used, and some may find it quite a daunting concept to consider. However, there are no right or wrong rules when it comes to share farming – the most important thing is to find the right person to work with.

It is not a partnership and it is not a landlord and tenant situation. There is no joint bank account, each party takes care of their own finances.

A typical share farming agreement involves the owner or tenant of farmland (the landowner) and a working farmer (the share farmer), who enter into a contract to jointly farm the same land.

Share farming contracts can be written to suit the particular circumstances and often involve:

- The landowner providing the farmland and buildings, fixed equipment and machinery and being responsible for major maintenance of the buildings
- The share farmer providing labour, field and mobile machinery and expertise
- The sharing of costs such as fertilisers and feed
- The ownership of livestock being shared on the basis that each party owns a share in each animal
- Each party being responsible for their own tax and VAT returns and the production of their own accounts

Share farming arrangements ensure that the landowner will still be considered to be running a farming business in the eyes of HMRC and can continue to benefit from the various tax advantages of being treated as a farmer.

However, the landowner must be able to show that he has some involvement in the day-to-day management of the business to meet the rules on genuine share farming agreements.

"...the most important thing is to find the right person to work with."

Contact:

Andrew.Holden@napthens.co.uk
01254 686216

Considering all the options: See page 2

Welcome

Andrew Holden

Welcome to another edition of Rural Law, and Happy New Year to our readers.

Despite the talk of volatility in the marketplace, let's hope that 2015 is a prosperous year for us all. I am sure you are already ahead of the game with your Basic Payment applications and greening!

In this edition we provide an update on recent changes to the intestacy rules and offer advice on licences, tenancies and options.

We have also given an insight into Contract Farming arrangements. These are a potentially useful tool for succession planning and enable the next generation to get onto the ladder, so they should not be dismissed.

As always we are happy to come out to meet you at your farm or office to discuss any issue on a no obligation basis, so do feel free to get in touch.

Contact:
Andrew.Holden@napthens.co.uk
01254 686216

Considering all the options

Over the last 2-3 years, we have seen an increasing number of developers approach landowners seeking to apply for planning, either for renewable energy projects or residential development.

Increasing numbers of landowners are being approached by developers

Developers will often seek an 'option agreement' from the landowner, giving the developer the option to buy the land within a fixed period of time for an agreed price.

Whilst the majority of developers are keen to reach a suitable agreement with a landowner, there are always areas which need to be considered carefully:

How long is the option period and is it extendable?

Although options are usually for an initial 3-5 years, they often have various provisions allowing the time frame to be extended if the developer still has an ongoing planning application.

A landowner must consider whether an extended timeframe would tie in with future plans for the farm? Is there an obligation on the developer to pursue applications and use their best endeavours to obtain a planning permission?

How is the purchase price calculated?

Are there any deductions? Is any open space or road footprint excluded from the calculation of the area in question? An option over 20 acres of land does not always equate to payment for all 20 acres. If the price is calculated by a percentage, what is it a percentage of?

Is the option to purchase the whole or can the developer purchase in stages?

This could impact the landowner in relation to both Capital Gains Tax, as well as the future viability of the farm. By allowing the developer to buy in stages, the landowner must ensure that the field is not split into two or more parcels that restrict its use or viability.

The landowner should retain access and services over any parcel sold, ensure that no ransom strips are created that de-value the retained land, and be certain that they are not left with unwanted areas of land such as ditches and dykes that the developer does not want the liability of maintaining and therefore never purchases.

In most cases the developer is prepared to pay reasonable legal and agent's fees for review of the option. As with all legal agreements we cannot stress enough the need to take independent legal advice before signing any papers – even the most innocent looking of documents can be formal contracts that commit a landowner to proceeding with a transaction.

The Inheritance and Trustees' Powers Act 2014

There have been some recent changes in the way an estate will be distributed should a person die without a Will. These changes have been made under the Inheritance and Trustees' Powers Act 2014.

One of the main changes to be aware of is in the instance where a person should die with a surviving spouse but no surviving children or descendants.

In this case, the whole of the deceased's estate will pass to the surviving spouse. It is important to note that this makes no provision for other members of the deceased's family, which could be of concern where there has been only a relatively short marriage. In particular, this may potentially cause complications where the deceased was involved in a family farming business.

A further change which seeks to simplify the previous law occurs where a person dies with a surviving spouse and surviving children (or descendants).

In this instance, the surviving spouse will essentially be entitled to the deceased's personal possessions (excluding any business assets), a fixed amount of £250,000 and half of the balance of the deceased's estate. The deceased's descendants will be entitled to the remaining half share of the estate.

This may not be what would have been intended by the deceased, either in relation to the share the surviving spouse inherits or that of the children. More importantly, this again makes no provision for any succession planning for a farming business, particularly in respect of inheritance tax planning or the continuation of the business.

Whilst these changes may have sought to simplify the law, making a Will remains as important as ever to ensure that your wishes are fully provided for and that succession planning for a farming business has been given consideration where appropriate.

Dying without a Will can be a minefield

Contact:
Melissa.Taylor@napthens.co.uk
01254 686226

Meet the team

Amanda Brown of the Wills & Estate Planning department

I am a paralegal in the Wills and Estate Planning department, and I specialise in estate administration.

I advise clients on the steps to take when an individual passes away. In particular, this involves handling the deceased's assets (including property, business assets, bank accounts, shares etc) and any liabilities (debts, mortgages etc).

Once I have established the needs of the individual client, I can then identify what service will be most appropriate for them. All the work I undertake is carried out on a fixed-fee basis, which I find brings reassurance during what is often a time of uncertainty.

I offer a range of services from full estate administration, to simply obtaining Grants of Probate and Letters of Administration. I regularly assist the Rural team, specifically in clarifying the existence of Business Property Relief and Agricultural Property Relief.

I have been part of the team at Napthens for the past 20 years and have always enjoyed working with families and individuals.

As a member of the Wills and Estate Planning team dealing with the bereaved, I think it essential to offer care and support to those who have lost a loved one. As my first point of contact with many clients comes at a time of emotional turmoil, I believe it is essential that I am empathetic and caring, very much a 'people person'.

I'm a true Lancashire lass, and I live with my husband and two daughters in Farington, Leyland.

Amanda Brown

Contact:
Amanda.Brown@napthens.co.uk
01254 686217

Lease or licence...?

Is there a difference? And does it matter? The short answer is yes, and the difference can matter enormously.

Both leases and licences are arrangements between a landowner and an occupier who wishes to use that land or property. However, a lease provides much greater protection for the occupier than a licence does.

In order for a lease to exist, an occupier must be granted exclusive possession of a defined area of land for a set term in exchange for rent.

Whist there are a number of factors to this definition, the key element in distinguishing a lease from a licence is the matter of 'exclusive possession'. This entitles the tenant to exclude all others – including the landowner – from the premises (subject to the terms of the lease).

Carefully consider the right agreement

By contrast, if the landowner retains overall control of the premises or reserves the right to control the occupier's use, there will be no exclusive possession and the agreement cannot be a lease.

Inevitably many landowners seek to introduce conditions into a lease to try and make it into a licence and therefore limit the security of the occupier. The court will look at the substance of an arrangement and will deem any such sham 'licences' to be a lease.

Leases are important documents – they grant the tenant considerable rights over the landowner's property and therefore it is vital to take legal advice prior to entering into an agreement.

A huge amount of legislation has been enacted over the years to regulate the balance of rights and responsibilities between landlords and tenants both in the commercial and residential markets. The grant of almost any lease, whether a commercial lease, a farm business tenancy or a residential letting is likely to be affected by one statute or another and if you fail to observe the correct procedures it is quite possible to end up with an arrangement which you neither anticipated nor wanted.

For example:

- Did you know that in commercial tenancies, the Landlord and Tenant Act 1954 contains provisions which give to the tenant security of tenure – in other words once the term of the lease has expired the tenant (subject to some exceptions) has the right to renew the lease for a further term. These provisions can be excluded but there is a procedure which has to be observed.

- Before letting a farm cottage to an agricultural worker you must give the tenant a notice stating that the letting is intended to be an assured shorthold tenancy (AST) otherwise the tenant will end up with a protected tenancy limiting the options of evicting the tenant.

It is much better to obtain legal advice at the outset to ensure the arrangement you are putting in place is the one you actually require, rather than trying to resolve the issue at a later stage and involving the cost and distress of litigation.

Contact:
Alex.Sykes@napthens.co.uk
01768 807045

Preston:
7 Winckley Square
Preston
PR1 3JD
DX 714572 Preston 14
Tel: 01772 888 444
Fax: 01772 257 805
Email: Preston@napthens.co.uk

Blackburn:
Greenbank Court, Challenge Way
Greenbank Business Park
Blackburn, Lancashire BB1 5QB
DX 745450 Blackburn 12
Tel: 01254 667 733
Fax: 01254 681 166
Email: Blackburn@napthens.co.uk

Blackpool:
Libra House, Cropper Close
Whitehills Business Park
Blackpool, FY4 5PU
DX 745260 Blackpool 20
Tel: 01253 622 305
Fax: 01253 295 591
Email: Blackpool@napthens.co.uk

Penrith:
Ground Floor Offices
Agriculture House, Cromwell Road
Penrith, Cumbria, CA11 7JW
Tel: 01768 807040
Fax: 01768 758775
E-mail: Penrith@napthens.co.uk

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