

Newsletter

Edition 3

Welcome to our newsletter. In this edition we cover the following topics:

Page 1

- **R.E.S.P.E.C.T my Will**

Page 2

- Residential Tenancies
- Battens welcomes Immigration Adviser Lee Campbell

Page 3

- First Time Buyers - When can I get the keys to my new property?

Page 4

- How to protect yourself against new Public Rights of Way

Upcoming events

Come along and say hello to us at our stands

Gillingham & Shaftesbury Show 14 August

Mid Somerset Show 18 August

R.E.S.P.E.C.T my Will

Months after soul singer Aretha Franklin died, three Wills have been located at her home. After her family thought that she had died intestate (with no Will) this should have been a welcome discovery but it's not as simple as that. We can learn three lessons from this scenario.

Firstly, two of the Wills that had been locked away were dated 2010 with another handwritten note was dated 2014. Usually a new Will revokes the previous Will but it is unlikely that the 2014 Will is valid under Michigan law as Ms Franklin's wishes are not clearly set out with amendments and alterations taking precedence over clarity. Lesson one: Do not attempt to draft your own Will. Ask a professional to listen to your instructions and let them draft your wishes so that they are clear, concise and valid.

Secondly, the time that has lapsed between the death and the locating of the Wills means that people have already started to administer the estate and make decisions over the distribution of the \$80 million estate. The combined information of the Wills has cast doubt on who should be administering the estate and how. Lesson two: don't leave finding your Will or any other wishes to chance. You can either make sure your executors (people that administer your Will) know that they are your executors and where your Will is located or use Certainty, the National Will Register, so that your Will is registered to a firm of solicitors and can be tracked down within hours.

Thirdly, the discovery of the Wills has caused upset amongst Ms Franklin's sons. Two of her sons are claiming that the 2014 is invalid but one son insists that it should be followed. Court cases are therefore being held which will not only be costly but will cause delay in the estate administration at an already sad and difficult time. Lesson three: Do try and avoid family feuds. Be clear about who you want to appoint as your executors and leave as much information as you can to assist them. Delays in the administration can sometimes lead to a decrease in the monetary value of assets which leads to tension and the estate may dwindle further due to the costs involved when beneficiaries cannot agree on what they should do with certain assets.



To make sure your wishes are clear and comprehensive contact **Sally Manning** in our Wills and Trusts team on **01963 407060** or **sally.manning@battens.co.uk** and get the RESPECT you and your loved ones deserve.

Residential Tenancies

You would be forgiven for thinking that it is simply too much trouble to be a Landlord in private rental properties these days. There have been numerous additional restrictions and obligations imposed on Landlords over the past few years making it more and more difficult to use the no-fault basis for recovering possession of your property should the need arise.

Not only could you face difficulties in getting your property back but Environmental Health, Trading Standards, the Home Office and your Tenant have been given additional rights to reprimand and obtain penalty payments from you for any deviation from your legal responsibilities.

To avoid potential pitfalls and to ensure that you are fully aware of what you should do, obtain legal advice before you start and if you adhere to that advice, you should be able to successfully navigate your way around difficult tenancies. In addition, a well drafted tenancy agreement and very detailed inventory and schedule of condition will ensure that both parties know where they stand.

Crucial areas for compliance are in relation to:

Deposits: securing them in a tenancy deposit scheme and providing prescribed information to the tenant within 30 days of receipt.

Gas safety: a valid gas safety certificate must be provided to the tenant before they move in and updated every 12 months with new certificates given.

Houses in Multiple Occupation: A valid licence must be in place for a property where there are multiple occupants (5 in some areas and 3 in others) from at least 2 households sharing facilities.

Minimum Energy Efficiency Standards: The property must have an energy rating of at least an E to rent out or be registered as an exemption.

Tenant fees: For tenancies starting on or after 1st June 2019, landlords and letting agents are severely restricted in their ability to charge tenants. There can be no demands for fees for inventories, tenancy agreements, reference checks or any other start up or end of tenancy fees. In addition, the agreement must not require the tenant to have the property professionally cleaned even where there are pets or incur any costs generally.



For advice and assistance in setting up your tenancy, contact **Jacqui Swann** in our landlord and tenant team on **01935 846254** or jacqui.swann@battens.co.uk

Battens welcomes Immigration Adviser Lee Campbell

Battens Solicitors are pleased to welcome Immigration Adviser Lee Campbell to its immigration department.

Lee is based in Battens' Bath office, but will travel or connect with clients wherever they are based, advising on all private immigration queries for both the employer and the individual. Lee's background uniquely qualifies him in immigration matters due to his previous role and experience as a Caseworker in the Home Office.

"I was previously working in the Home Office as an Immigration Caseworker" explains Lee. "During this role I would provide decisions on most in-country applications; covering such visa applications as points based applications, spouse/partner applications and long-term residency applications."

Having worked in the Private Sector for the last three years, Lee brings with him a wealth of knowledge and experience and is now skilled in further aspects of immigration law including: family and private life applications, travel documents, EEA applications, visit visa applications and naturalisation.

"Immigration law is often a daunting and complex area. Ever changing rules can often add to the stress and anxiety people and business experience in their everyday life. Let us take that stress from you. Providing up to date and qualified advice every time - we're here to help!"



You can contact **Lee Campbell** on **01225 321639** or lee.cambell@battens.co.uk

First Time Buyers - when can I get the keys to my new property?

Buying your first home can be a very daunting experience and first time buyers are not alone in this. We have encountered many clients over the years whom have not purchased a house sometimes for decades. Since we have moved further into the digital age with most documents and correspondence now being sent via e-mail, what would previously take days sending documents through the postal system can now be scanned and uploaded within a matter of seconds. We understand this at Battens Solicitors however and are keen to make the process run as quickly and efficiently as possible for our clients, which is why we are on hand to explain and advise upon each step of the conveyancing process as we move through. This is of particular importance to those who have never experienced the conveyancing procedure before and therefore this article is aimed primarily at first time buyers, but is also useful to those who have not purchased in several years.

Firstly then, you've found a lovely property you wish to buy. What needs to happen first? Purchasers will hopefully have all of their finances in place by the time they come to instruct a solicitor, be it they are using cash savings, a gift from family members or mortgage finance to fund their purchase. Most first time buyers will of course require mortgage finance and so in many cases a mortgage in principle will already have been obtained. If not, this should be done at the earliest opportunity.

Once an offer is made and accepted on a property, now is the time to instruct a solicitor! At Battens Solicitors we have a whole range of solicitors, legal executives and paralegals who can assist purchasers through the conveyancing process.



Once we receive the initial forms together with identification and fees from purchasers, we can then start to look through the legal title and contract documents which are sent to

us from the seller's solicitor. We will then raise questions or enquiries upon the legal documentation received, which, can include forms completed by the seller concerning the property, warranties and guarantees for works carried out to the property, as well as planning permissions and building regulation approvals. We would also at this stage purchase searches over the property which are required by mortgage companies and these compulsory searches include an environmental search, a water and drainage search and a search through the local authority records. Our literature sent to purchasers at the outset of a transaction discusses these searches in greater detail.

This is also the time to look to arrange a private survey since as solicitors we are not qualified to comment upon the state

and condition of the property. A survey is always highly recommended by a qualified surveyor in case this reveals defects with the property or repair works which purchasers need to be made aware of at an early stage so they can budget accordingly. The mortgage company will also instruct a valuer to carry out a valuation of the property for lending purposes.

The next stage in the process is to review the search results as they are returned to us from our search provider, as well as check the replies received from the seller's solicitor as to the enquiries raised. Once this takes place, a detailed property report is sent to clients which encloses the documents received from the sellers together with the enquiries raised and replies received. This is usually sent out together with the legal documents for signature but not always.

Alongside this, the mortgage offer is received from the mortgage company and we send out a report on the mortgage to the purchaser which includes important information such as the mortgage term, interest rate and any penalties to be charged so purchasers are aware of this.

Now we come to the stage of finally exchanging contracts! When the purchaser has returned the signed legal documentation to us, we hold deposit funds from the purchaser and they have reviewed everything and are happy to proceed, this is the time to set a completion date and proceed to exchange contracts. Exchange of contracts is when the purchaser is legally committed to the purchase by contract and cannot then withdraw without losing their deposit funds and incurring a financial penalty potentially. The completion date is then fixed in the contract by the solicitors and that is the date when the monies are sent across to the seller's solicitor and the keys are then released to the purchaser usually via the estate agent.

After completion takes place, our job is not quite over yet! We then must send an application to the Land Registry to register the purchase and transfer the names on the legal title into the name of the new purchaser. The amended title is then sent to us from the Land Registry and a copy is sent on to the purchaser for safe keeping.

The question we are asked most frequently is when can we collect the keys?! The whole process on average takes between 8-12 weeks but this is dependent upon a number of factors including whether you are purchasing a freehold or a leasehold property, whether a Management Company or Landlord is involved and whether you are in a chain of other property transactions. Whilst we can try and estimate the timescale therefore, there is no clear cut rule, but you can rest assured we shall endeavour to meet our client's timescales wherever possible.



For more information contact **Ross Siviter** in our residential property team on **01935 846092** or **ross.siviter@battens.co.uk**

How to protect yourself against new Public Rights of Way

Section 31 of the Highways Act 1980 sets out the process by which new public rights of way (PROWs) can be deemed to have been dedicated (created) as a result of long term use. If a way (be it a footpath, bridleway or highway) is used by the public for 20 years as of right, a PROW is deemed to have been dedicated – that is, unless the landowner can show that he or she had no intention to dedicate the way as a PROW.

Demonstrating that lack of intention is sometimes not as easy as one would think. Use of notices or physical barriers is not fool-proof, and countless landowners have had an unpleasant surprise when public rights of way were established despite their best efforts at warding off members of the public.

One sure way of establishing a lack of intention is the procedure set out in section 31(6) of the Highways Act 1980. This involves the landowner depositing with the Local Authority:

- A map of the property, showing any existing PROWs;
- A statement to the effect that the landowner does not intend to dedicate any further PROWs other than those shown on the map;
- A declaration, by which the landowner declares that no new PROWs have been dedicated since the statement was deposited.

The landowner must lodge his or her declaration within 20 years of the statement in order to complete the protection afforded by section 31(6). The landowner can maintain that protection by lodging a declaration at least once in every 20 years.

As well as maintaining a map of PROWs within its administrative area, the Local Authority also keeps a register of landowner deposits, which can be viewed online or on paper. A statement and declaration contained within that register is evidence against the dedication of a new PROW.



Town and Village Greens - Section 15A(1) of the Commons Act 2006

Where privately owned land is used by a significant number of local people for sports or recreation, any person may apply to register that land as a town or village green.

In order to protect against this, a landowner may deposit with the Local Authority a so-called "Landowner's Statement" in a prescribed form. The landowner states that he or she wishes to bring to an end any period in which any person has used the land for lawful sports or recreation. This restarts the clock on any period of use, but does not prevent a new period from beginning. Provided the Landowner's Statement is made every 20 years, any potential applicant will never be able to show the necessary 20 years of use required for registration as a town or village green.

Battens advises its clients to make a Landowner's Statement at the same time as a statement under section 31(6) Highways Act 1980, even if the landowner is not aware of any public use of the land. In some Local Authorities, there is no additional fee for making a Landowner's Statement if made together with the s31 Highways Act 1980 statement referenced above.



For more information contact **Emily Wilson** of Battens' agriculture and rural property team **01935 315573** or emily.wilson@battens.co.uk