

# BERWINS' PRIVATE CLIENT UNIT KEEPS ON GROWING

As 2007 finished we were delighted to be joined by Private Client specialist Gillian Minford. Gillian is currently studying for the highly-regarded Society of Trust and Estate Practitioners Diploma. She joins us from the large Leeds firm Walker Morris, and her arrival marks a tripling in the number of solicitors

working in this growing unit at Berwins, within the last year. Gillian will be working with John Barrett, Julie Jewers and probate clerk Claudette Knowles in providing wills, Lasting Powers of Attorney, and probate and trust services to Berwins' clients.'



Julie Jewers, Claudette Knowles, Gillian Minford and John Barrett

## MAKING DECISIONS: REFUSING MEDICAL TREATMENT



Advances in medical science can prolong life by artificial procedures, and this can result in unwanted medical treatment.

Living Wills (now officially called 'Advanced Decisions') enable you to set out your wishes about medical treatment. This is helpful if you are unable to communicate or no longer have capacity when receiving treatment. An Advanced Decision therefore allows you to maintain control and preserve your dignity, whilst also relieving your family from the pressure of making very difficult decisions for you.

An alternative to an Advance Decision is a Lasting Power of Attorney (LPA). This enables you to choose someone (your Attorney) to make decisions about your welfare on your behalf if you lack the capacity to do so yourself, including the power to refuse life-sustaining treatment. Once prepared, an LPA gives your Attorney the authority to confidently communicate your wishes to medical practitioners.

The advantage of LPAs over Advance decisions is that LPAs are more flexible; as Advance decisions will not be effective if circumstances occur which you had not anticipated at the time. Furthermore, LPAs deal with not just medical matters but general welfare issues too.

If you would like to discuss making a Living Will or Lasting Power of Attorney, please contact Julie Jewers or Gillian Minford in our Private Client Unit.

**Please note...** The content of this Newsbrief is provided for general information purposes only and whilst we do our utmost to achieve accuracy it is not intended to be relied upon as a comprehensive statement of law or to apply in every particular and individual set of circumstances. Please contact us directly for individual advice.



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## WELCOME

Welcome to our latest Newsbrief and to more information and events for our clients, potential clients and contacts. Many newsletters you see contain bought-in content with just this bit - the introduction - coming from the firm. We have never done this - we want you to know what we know and can do for you, so you can have confidence in the great firm Berwins strive to be. Your goal is to be the best you can be for the people whom you serve; our goal is to support you in your goals to the highest standard. We are passionate about our business, and passionate about service and performance. In 2008 we will continue to work harder, work better and share our clients' own passion.

Paul Berwin



# Newsbrief

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## EXTRA HOLIDAY - CHECK YOUR EMPLOYMENT DOCUMENTS

Businesses should be aware the Working Time (Amendment) Regulations 2007 mean that from 1 October 2007 workers are entitled to increased annual paid holiday, but have you actually checked the impact on your staff and employment documentation?

Essentially, from 1 October 2007 the statutory minimum paid holiday entitlement for workers has been increased from 4 weeks to 4.8 weeks, equating to an increase from 20 to 24 days for those who work a 5 day week. This entitlement can include bank and public holidays. Businesses should therefore review the holiday provisions in their employment contracts and handbooks, not only to check whether they still comply with the statutory minimum requirements, but also for unintended consequences - for example, if the wording indicates

"the statutory minimum holiday entitlement plus bank and public holidays", this could have the possibly unintended effect of increasing holiday entitlement to 32 days per year, that is the 24 day entitlement plus the 8 bank and public holidays.

Bear in mind that making changes to the employment contract/handbook wording may well not be straightforward because various legal issues would come into play. Accordingly, our Employment Unit would be pleased to assist and advise you.

**For advice on this please contact our Employment Unit.**



## UPCOMING EVENTS AT BERWINS

### THE STATUTORY DISMISSAL AND GRIEVANCE PROCEDURES - BACK TO SQUARE ONE?

Since 2004 businesses have been legally obliged to have grievance procedures and dismissal/disciplinary procedures for their employees. However these have proved to be being unclear and confusing - so the government is looking at repealing/reforming them.

We are therefore addressing the first of a series of HR Forums on "The Statutory Dispute Resolution Procedures - Back to Square One" - particularly for employers, HR managers and consultants. In a presentation by Justin Marks we will focus on the present statutory procedures, difficulties/issues in applying them in practice and proposals for repeal/reform, followed by an "open floor" discussion and question session enabling delegates to air their views and questions on this area. We are holding the Forum at:

The Cairn Hotel Harrogate on 5 February 2008

The Bridge, Walshford, Wetherby on 14 February 2008

For both registration is from 8 am for an 8.30 start

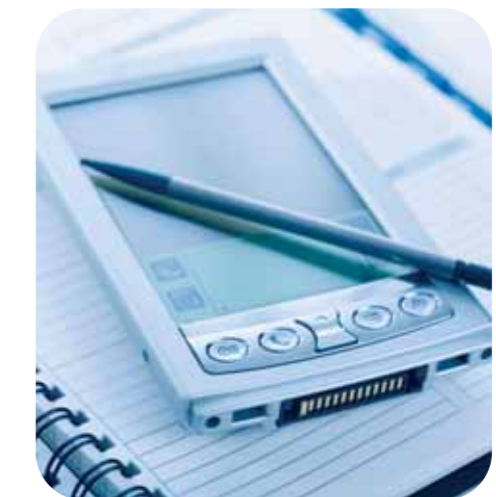
### WHAT CAN YOU PROTECT - AND HOW TO DO IT

In a joint presentation with Patent Attorneys Appleyard Lees, representing the latest in our IP Forums, we will be

looking at demystifying what Intellectual Property is all about, and how you can use patents, copyright and Trade Marks to preserve the value in your business. The presenters will be Patent and Trade Mark Attorney David Walsh, and Paul Berwin.

This will take place on Thursday 6 March at the Cedar Court Harrogate with registration from 8 am for an 8.30 start

**For these events - contact Luke Barton on 01423 542779 or e-mail [LukeBarton@berwin.co.uk](mailto:LukeBarton@berwin.co.uk)**



## RECOGNITION IN "TOP LAW FIRM" DIRECTORIES

Berwins is now recognised for the quality of its work by being recommended in four categories in the prestigious Legal 500 directory of top law firms - and is knocking on the door of recognition in other categories. The current recommended categories are:

Wills, Trusts and Probate  
Commercial Property  
Intellectual Property  
Information Technology

The firm is also recommended in Chambers and Partners directory for its work in Corporate Finance

### Berwins' Business Units are:

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To get a copy call 01423 542779 or e-mail [LukeBarton@berwin.co.uk](mailto:LukeBarton@berwin.co.uk)

# EQUITY RELEASE - A GREAT WAY TO RELEASE CAPITAL?



Equity Release is now seen as a great way to release capital which may be tied up in your home.

There are generally two safe types of equity release scheme: Lifetime Mortgages, and Home Reversion Plans.

A Lifetime Mortgage is self-explanatory. The lender will offer you a lump sum, and in return will take a mortgage over your property, which will last for the rest of your life. You will not have to make any repayments for the duration of the mortgage, and the interest will instead accrue on a cumulative basis.

A Home Reversion Plan works differently. You sell your property to the Plan Provider in return for a lump sum (which would NOT be the market value of the property). In return, the Provider will grant you a lease for life, which would be rent-free.

Both schemes will allow you to remain in your own home; however they will affect any legacy you intend to leave to your beneficiaries. A lifetime mortgage will allow you to leave your home, but by the time the mortgage and the accumulated interest has been repaid, there may be little left. A Reversion Plan means that as you no longer own your home, you cannot leave it in your will.

Before proceeding with either scheme, you should take specialist advice. Berwins can point you in the right direction, and help you to find the right scheme for you.

**For advice on this please contact our Residential Property Unit**

## EPCs - ANOTHER COST FOR COMMERCIAL PROPERTY OWNERS

As a result of all the publicity for HIPS for residential property, the forthcoming requirement for energy performance certificates (EPCs) for commercial property is in danger of being overlooked. From 6 April 2008, when a newly constructed or existing commercial building with a floor area of over 10,000 square metres is to be sold or leased, the seller or landlord must provide any prospective purchaser or tenant with a valid EPC. From 1 July 2008 this requirement applies to all such buildings with a floor area of over 2,500 square metres. From 1 October 2008 it will be extended to all commercial buildings for sale or rent.

An EPC is a certificate giving a building two ratings showing its energy efficiency and its environmental impact. It must be accompanied by a recommendation report containing suggestions to improve a building's energy performance. Both are to be produced by the same duly accredited energy assessor.

As the obligation to provide an EPC will be triggered by providing written information to a prospective buyer or tenant, the above timetable needs to be borne in mind over the next eight months or so when deciding when to start marketing a commercial unit for sale or lease.

**For advice on this please contact our Commercial Property Unit**



## DUTIES OF DIRECTORS IN THE NEW COMPANIES ACT 2006

One of the many changes in company law under the new Companies Act 2006 is to provide a statutory statement of directors' duties. The majority of the new provisions on directors' duties came into force on 1 October 2007.

The Government's aim was to make the law on directors' duties more easily understood by codifying the existing common law on directors' duties.

There are now seven statutory duties of directors:

1. to act in accordance with their powers;
2. to promote the success of the company for the benefit of members having regard to various factors;
3. to exercise independent judgement;
4. to exercise reasonable care, skill and diligence;
5. not to have outside interests which could reasonably be regarded as likely to give rise to a conflict of interest;
6. not to accept benefits from third parties; and
7. to declare interests in proposed transactions with the company.

Many of these are similar to the existing common law duties. The most significant change is the duty to promote the success of the company and has given rise to concern over its interpretation in practice.

Companies should be looking at practical steps to ensure compliance with directors' duties and to minimise the risk of directors incurring liability. Practical steps should include ensuring board members are fully briefed on their new statutory duties; reviewing indemnity provisions in the company's articles of association; reviewing board procedures and documentation relating to board decisions and D&O insurance policies.

**For advice on this please contact our Company/Commercial Unit**

## EMPTY RATES RELIEF TO CHANGE

At present most empty commercial property receives 100% relief from business rates for the first three months that it is unoccupied. Thereafter, industrial and warehouse premises continue to enjoy 100% relief until they are reoccupied whilst other commercial property has the benefit of 50% relief until reoccupation. However, this is all set to change to a system which is less favourable to property owners.

The changes brought in by the Rating (Empty Properties) Act 2007 are due to take effect on 1 April 2008. In general terms they include the ending of unlimited 100% relief for empty industrial and warehouse property. Instead, from 1 April 2008 this type of property will only have 100% relief for the first six months that it is empty and will then have to pay business rates in full. Other unoccupied commercial property will continue to enjoy 100% relief for the first three months that it is unoccupied but must then pay rates in full.

Some of the details of the changes, particularly those dealing with anti-avoidance issues, are still unknown. Property owners need to have regard to the impending changes when making plans for their empty premises.

**For advice on this please contact our Commercial Property Unit**



## WORLD WIDE ASSETS ON THE WORLD WIDE WEB



Most of us use the internet on a daily basis; for business, emails, shopping and banking. A 2007 survey found that using the internet was now the most popular pastime of pensioners.

However, it is important to keep a list of your online assets in a safe place so they can be dealt with on your death. For example, you probably won't receive

paper statements if you have an internet bank account. Would your family be aware of your online savings if no paperwork is found?

If you have money stored in any online account, keep the details somewhere safe and accessible, ideally with your original Will. And don't forget to list passwords for the accounts, as well as details of

any family history files and those family photos you've stored online. Likewise, if you've stored confidential or personal material that you want to be destroyed, make sure your intentions are known to your executor.

**For advice on this please contact our Private Client Unit**