

welcome

Although 2007-8 brought the unfolding of an accelerating global economic crisis, with 2009 not looking to provide much respite, we believe that the basic needs of our clients remain – good sound and proactive advice, excellently delivered with great service, communication and care.

In hard times the need to be able to rely on these principles is ever greater; settling for a risky second-best needs to be avoided. The challenge we have set ourselves is to raise our performance even higher, make our services more accessible, add value and the all-round care we deliver to clients. We are always asking our clients how we

are doing; the responses are nearly always positive, but we are driven by the need to do more for our clients. This drive lies behind the success of Berwins, and through this it's you, our valued clients, who will gain.




Paul Berwin

getting giving in the right place

With 2008's depressing headlines about business failure and the rise in personal bankruptcy fresh in their minds parents in a position to help their adult children may wonder how best to achieve this when contemplating lifetime gifts or gifts in Wills. A common concern in these uncertain times is that any financial gift would get swallowed up by creditors or a trustee in bankruptcy or even a spouse or partner in family proceedings.

So how do you give to your children whilst also taking measures to avoid this money being diverted? One solution is to make a discretionary trust in favour of your adult children. You can control the trust by being a trustee along with, perhaps, a professional trustee, your spouse or sibling. As no child would have a right to receive money the trust fund is unlikely to form part of your child's estate in the event they are made bankrupt, have divorce proceedings or are assessed for means-tested benefits. You would need to have a number of potential beneficiaries and to be tax efficient you and your spouse (or civil partner) would be unable to benefit. There are a number of other points to consider but if set up correctly a discretionary trust can be an effective way of giving without seeing your gift diminished.

Gareth Marland is a solicitor in Berwins' Wills Trusts and Tax and Agricultural Units and can be contacted on 01423 542770 or GarethMarland@berwin.co.uk



bank of mum
and dad set to
thrive in 2009?

A phenomenon from the last property boom was a rise in parents anxious to help their fledglings fly the nest bankrolling the purchase of their children's first house often achieved by release of equity from the family home.

Surprisingly, given the downturn in the market and the larger economy, many parents (desperate perhaps to reclaim their territory from grown up children) are continuing with this. The combination of (at the time of going to press) low interest rates, low house prices and Mum and Dad being more likely to be able to achieve a high credit rating than their i-Pod generation offspring makes this an attractive proposition in principle.

There are legal pitfalls whenever entering into property ownership with someone else. In the case of the parent-child relationship these will typically encompass issues relating to taxation, inheritance, after-acquired third party interests and liability to any mortgage lender.

Parents need to consider carefully the best way of structuring the 'deal' – are they going to buy the property in their own names and allow their child to live there, paying rent or otherwise? This gives them control but can be disadvantageous for the parents in terms of personal taxation. Are they going to make a financial contribution but allow their child to hold the property in the child's name ?

If so, are they prepared to relinquish control to such an extent that they'll let their child secure debt on the property or move a partner in who could acquire a share? And is that generous deposit a gift or a loan? (The answer may affect the parents' tax position) and if there are other children, how are things going to be evened-up between them?

With discussion and pre-planning our Residential Property and Wills, Trusts and Tax lawyers can advise parents seeking to help the next generation onto the property ladder in the most effective way by use of family trusts, simple declarations of trust and loan agreements and legal charges.

Some of our clients see it as an investment in gaining a spare room and unimpeded access to the bathroom!

Carolynn Peace is a partner and head of Property at Berwins. Contact her on 01423 543115 or CarolynnPeace@berwin.co.uk

unsettled outlook for your place in the sun?

Recent foreign property investments had a double attraction of providing excellent returns as well as a comfortable holiday or retirement home.

The better returns however were often expected because the investment was in "up and coming areas" or areas as yet undiscovered by the masses. By this, you can read that such areas were underdeveloped and lacking in what many of us would consider to be an acceptable infrastructure.

Add to this some unscrupulous property developers pushing off-plan developments in schemes not properly funded and you have the potential for some challenging foreign property litigation.

In the current economic climate many foreign property investors are finding themselves in difficult situations. Money has certainly been transferred, further payments may be due, but it is uncertain as to whether the investor holds the legal title to the land that they thought they were purchasing or whether the development is likely to be completed. Even if the land is owned, trying to obtain the necessary bureaucratic permissions to complete development can be a slow, expensive and sometimes futile process.

The first thing to do is engage professional help to resolve the situation, one way or another, in an objective manner. Often there will be other investors who are in a similar predicament and joint action makes the burden of legal fees more manageable.

We have acted for a number of different groups with such disputes in Bulgaria, Turkey and Serbia. Employing a lawyer "over here" as well as a lawyer "over there" can be expensive but the fees are often small in comparison to the level of investment already made. The main aim, as with so many cases, is to provide advice as to what can be realistically achieved and whether the cost justifies the benefit.

Hopefully, many floundering foreign property investments will come good, it just might take a while.

Christopher Newton is a partner and head of Berwins' Dispute Resolution Unit. Contact Chris on 01423 722567 or 07595 650223 or ChristopherNewton@berwin.co.uk

to buy or not to buy in 2009 – is that the question??

2008 was a roller-coaster for those involved in the property market and pundits have been gazing into crystal balls to predict what will happen in the New Year and beyond. Tales of doom and yet more gloom are widespread and it is sometimes hard to see any light at the end of the tunnel. Figures on every front page are telling us how much property prices are down on last year, what they still fail to tell us all is how much property prices are still UP compared to only 3 or 4 years ago.

For those of us at the sharp end of property transactions, we have, thankfully, seen an abrupt end to prices spiralling up and out of the reach of first time buyers. Prices have re-adjusted to more realistic levels across the board and "Sold" signs are now more in evidence once again. Sensible pricing by sellers is enabling first time buyers to get a foot on the ladder and that, in turn, is beginning to enable more movement up through the property price ranges. Lenders are still lending, but again, thankfully, on a more sensible footing than we have seen previously. Prudent financial management is back in fashion.

Now is a great time to buy – whether a first time buyer or hoping to move up the ladder, you can now get a lot more for your money and with all the bargains on the high street, kitting out your new home has never been easier!

Sue Blake is a partner with Berwins and head of the Residential Property Unit. She is a member of the Law Society Property Section. Contact Sue on 01423 543125 or SueBlake@berwin.co.uk

no court divorce

Politicians have been telling us for years that theirs is 'the better way'. A prominent high street bank is trying to persuade us that there is 'another way'. Now, even lawyers are at it!

Collaboratively trained family lawyers bring a new approach to the often messy area of relationship breakdown. Collaborative Law is a new dispute resolution model, where specially trained lawyers work with the couple through a series of meetings to try and reach their own agreements. All participants commit at the outset to avoid resorting

to Court and agree to work together respectfully, honestly and in good faith to try to find the right solutions for their particular family circumstances.

All members of the Berwins' Family Unit are Collaborative Lawyers, something unique in the locality. Sarah Smith comments, "Collaborative Law is what I have been looking for since I began practising in this area. Many people recognise that, although their relationship has failed, they need to preserve a working relationship for the future – especially if children are involved. There is often a lot of hurt and misunderstanding at the end of a relationship. Giving couples the opportunity to work through issues together and arrive at their solutions

what's in a name?

At Berwins, we recognise that how we describe ourselves should be more than just a convenient label and should say something about who we are and the service we aim to deliver.

Historically, those who dealt with the often messy area of relationship breakdown would tend to be referred to as the 'matrimonial department'. We have made a conscious decision to move away from this label because it is no longer representative of all that we do or the society in which we live. Of course, we are still first port of call for those whose marriage has broken down; to get a divorce and deal with the consequent arrangements for children and finances. However, our family unit will also be instructed by those couples who have lived together without marrying. We might also be instructed by a partner from a same sex relationship (including Civil Partnerships). We might even be approached by a grandparent who does not wish to lose contact with grandchildren following the breakdown of any of the above relationships.

Happily, we are also instructed at the outset of relationships, for advice on pre-nuptial or cohabitation agreements or how property should be owned throughout the relationship. Seeking advice at an early stage can help minimise acrimony and legal costs if things go do go wrong.

Whatever the shape of your family, the team at Berwins are here to help.

Berwins Family Unit has been recommended in the 2008-9 edition of The Legal 500 – the largest and most in depth survey of the UK legal market.

Sarah Smith is a solicitor in Berwins' Family Unit, a collaborative lawyer, and Resolution accredited specialist in the areas of Financial Provision and Children. She is a member of the Law Society's Family Panel.

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is part of the process of moving forward and minimises misunderstandings."

There is no good divorce but dealing with your relationship breakdown with Collaborative Lawyers certainly provides another way and arguably a better way.

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