

valuable advice for all of your life

issue 1 winter 2008

# Powell Callen

*Magazine*

POWELL  
CALLEN  
MAGAZINE



## **Ensuring your children have a foot on the ladder**

Building a property portfolio can provide greater returns than a pension and provide your children with a step onto the property ladder

...and much more helpful information on making more of, as well as protecting, your assets

# Welcome

**...to the first quarterly newsletter from Powell Callen Solicitors and to what I hope will be useful regular updates on the current state of the property market and the various avenues we employ to assist our clients in building their wealth.**

These last few months have seen the first downturn in property prices for some time. As you know, this is as a result of the turbulence in the US sub prime market where seriously overvalued collateralised debt mortgage books had been sold across global financial institutions.

This all tied into the investments of the big institutions and, due to the nature of these investments moving through the various financial systems, created a larger problem. Now these institutions can only offer a best guess as to their total losses. At the time of writing the overall guess was in the region of £800 billion plus, with the largest of these institutions, Citigroup, looking like it would take a £28 billion hit and the loss of some 45,000 jobs in 2008. This, it is believed, is also likely to happen on a smaller scale with other financial institutions, both large and small.

Consequently, as the banks try to maintain a liquidity state to offset their losses, they are unwilling to lend money, which will then have a knock on effect on the consumer and general market place. Without doubt, 2008 will be a tough year in the eyes of most analysts.

But the great thing about property is that, even in a downturn, you can make your money work hard for you. For the last few months, I have been treading the auction room floors, spending time

with UK auction institutions and attending their training courses about property auctioneering – all fascinating stuff and very enjoyable. With the help of various Law Society courses, I have also been doing some in depth study of auction property contracts and how to best protect and advise clients.

On top of all this, I am actively buying up quality distressed properties, in anticipation of a market upturn (late 2008 early 2009, according to most analysts) when it will hopefully be party time again.

Therefore, in this feature, I urge you to read the article on page 4 because “Low Money or No Money” deals are really back in town, folks. For example, I have just bought a £210k flat in the South for £175k with a rental income of £850 a month. My actual investment was less than £5k. I am sure you get the idea.

### Extra IFA strength

On another note, I would like to welcome Paul Payne, IFA and Anthony Collier, IFA to the Powell Callen Retirement Solutions business. Both Paul and Anthony are highly experienced lifetime retirement IFAs, and with there now being more over 55s than there are young people under 16, we see a great opportunity in retirement planning with lifetime and reversionary mortgage products,

together with retirement investment planning for our more senior clients. Collectively, Paul and Anthony have, over the years, been commended with national awards for knowledge, skill and excellence in their field and I know they will add substantial value to Powell Callen Retirement Solutions (to clarify, I should point out that this is a separate business regulated by the Financial Services Authority, not the Solicitors Regulation Authority).

### Maxed out your credit?

Finally, we recognise that, through no fault of their own, it is a sad reality that clients may well get into difficulties financially when there is a downturn in the market. There should be no shame or stigma attached to this. On various occasions throughout my life, I, too, have sailed very close to the wind. Therefore, at Powell Callen, we have teamed up with specialists that can negotiate with all manner of creditors. There is no IVA or Bankruptcy as we don't believe that one should be heart surgeon and undertaker. We do, however, offer an initial free consultation, and are committed to getting you out of financial trouble in a way that is of real benefit to you in the short and long term.

*Powell Callen are regulated by the Solicitors Regulation Authority. Please note that the opinions and comments expressed by contributors in this magazine are not necessarily those of Powell Callen. Nothing in these pages constitutes legal, financial or other professional advice and readers should obtain their own professional guidance as to the suitability of any featured products or services. Powell Callen accepts no responsibility for information contained in any of the websites referred to in this magazine and are included for general information only.*

### Auctions and Distressed property

For the opportunists amongst you, or those who have been looking at auctions, you will have noted that the sentiment on property prices is certainly down. In reality, the property market as an average over the last three months is down about 3% in real terms. Nationally, however, like any market, property deals work off sentiment and, on this note, there are many properties out there with 15-25% off their true value. This, in effect, has brought back an era of mostly “No Money In” deals.

For a greater understanding of this, have a read of the article on page 4 which explains the system in more detail.



**Andrew Callen**

LLB (Hons), MSI, CeRER

Solicitor and Executive Director

## CONTENTS: Featured inside...

### Property



**Bridge the gap and release the cash – all in one day**

Auction and bridging loan advice for the property investor **page 4**

**Mortgage blues – lender's duties**

Help with avoiding repossession **page 11**

### Financial planning



**Asset rich – cash poor?**

Equity release will give you capital to help your retirement **page 6**

### Tax advice



**How inheritance tax works**

Help is at hand to reduce your tax liability **page 9**



# Bridge the gap and release the cash – all in one day

*It is not unusual for property investors to have to wait several months to access the equity on a recently purchased, below market value property. Initially, there's a mortgage to arrange to buy the property at purchase price, followed by a remortgage on the market value to release the equity.*

**SO WHEN AN INVESTOR** is interested in buying a property at auction, this can be a frustrating situation to be in. With capital tied up, much valuable portfolio-building time is wasted. Not to mention the fees incurred for two mortgages and two sets of solicitors' fees.

Imagine what a difference it would make to be able to access equity in an investment property within 24 hours of purchase with no or low money to put down.

Through the method of closed bridging finance, an investor can secure a one day bridging loan to buy the investment property

## Top tips for buying at auction

Buying at auction can be extremely profitable but equally detrimental to your finances. To safeguard your investment, here are some key things to remember:

1. Set out an 'in principle' agreement subject to valuation with a bridging company and a mortgage lending facility with a lender who is happy with same day/next day bridging/remortgage before you even locate a property.
2. Arrange with solicitors to inspect and report quickly on the Legal Auction Property Pack and Title. They must be familiar with fast turnarounds and able to offer you a next day view on the contents. (Powell Callen Solicitors have such a system. For more information, please contact Ms Angharad Jones, Director or Mrs Rubina Mustafa, Assistant Solicitor).
3. Always ensure you carry out a physical inspection of the property and the locality yourself.
4. Ensure due diligence with local letting agents and estate agents. Check out valuations and rentals locally and make sure you're fully satisfied.
5. Have one of the main national surveying companies carry out a formal inspection. Explain to them what you are doing and that they are also likely to be instructed by the lender for remortgage purposes. (You should later ask the lender if they are happy to use these panel surveyors, as you previously used them for a survey on the property).
6. Try to negotiate a price on the property before auction. If this doesn't work, go to the auction and be prepared to bid to a preset limit, with your bridging and 10% deposit ready. The day before auction, speak to your solicitor regarding any last minute changes to the legal contract.
7. Be aware that amateurs will be at the auction and may well bid over the odds – **DO NOT GET CAUGHT UP IN THE EMOTION!**
8. If the property doesn't sell at auction (and most won't in today's economic climate), go and speak to the auctioneer at the end of the auction and re-offer the same money as before (you can always offer more later). And don't worry if there were higher bids in the actual auction.
9. If you agree the deal, then contact us for next steps. Based on the deal you've struck, we can advise on the best way to deal with the subsequent contract/completion.
10. It is then critical to speak to your bridging company and mortgage broker that same day and get the finance facility moving.
11. Contact your solicitor and ensure the time frame available is clear for them to complete.
12. Start looking for the next deal!

The closed bridging finance system allows even an investor with modest funds to seize the opportunity to build a property portfolio. It's low cost, simple to set up and use and money can be saved on every deal.

outright for cash. That same day, the investor can remortgage the property and pocket the equity (paid out by the solicitor upon completion) – a tax free cash lump sum which can then be spent on legal fees.

This is all possible providing certain criteria are met. The property must be purchased below market value and be subject to a full survey to confirm the full market value. Rentals must also match the lender's terms and conditions, usually 125% rent cover, i.e. enough rent to cover the mortgage with an extra 25% contingency.

Lenders typically charge 1% of the amount borrowed for a one day closed bridging finance facility. This is made up of a bridge fee and an admin fee, the former being paid on completion. Where an investment property is being funded with a buy to let mortgage, it is not usually necessary to provide proof of income. Generally, loan to value for lending is up to 100% of the purchase price, assuming it is purchased at no more than 85% of its full market value.

The closed bridging finance system allows even an investor with modest funds to seize the opportunity to build a property portfolio. It's low cost, simple to set up and use and money can be saved on every deal.

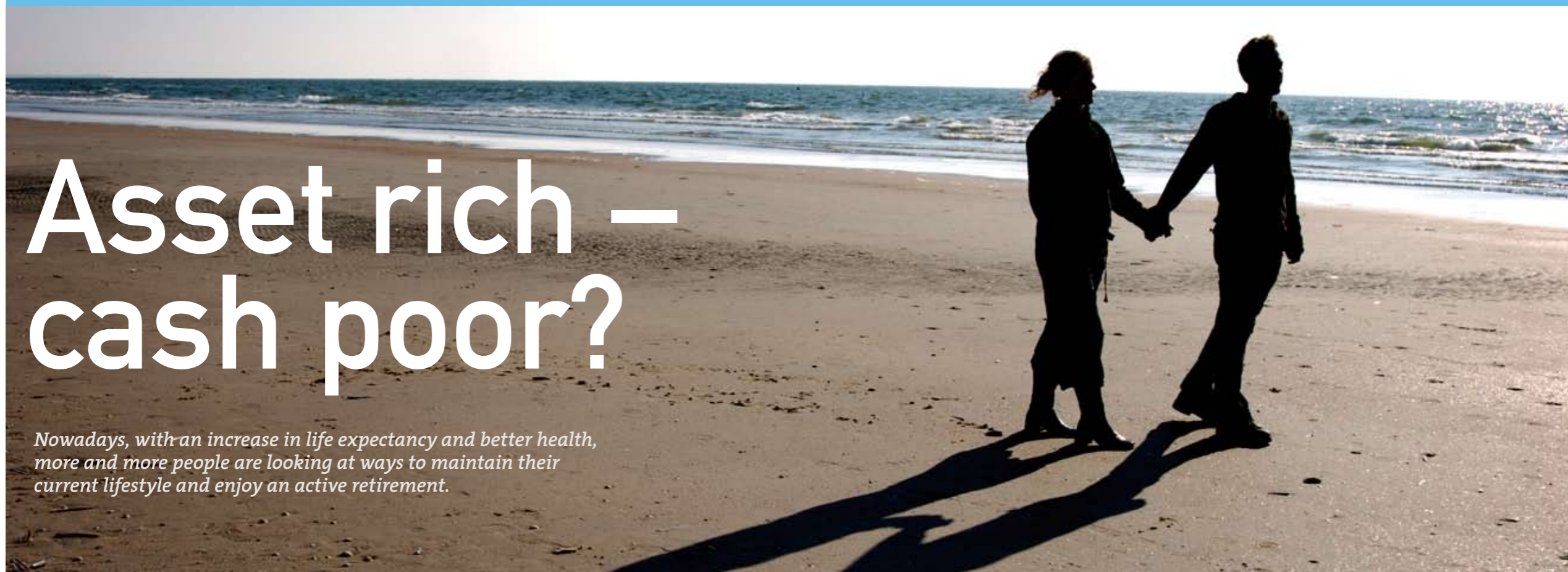
If you decide this is the option for you, we recommend that you provide the surveyor with detailed support material and comparatives to justify full market value and rents, even attending the survey in person. In addition, it is wise to consider working with a bridging company with both brokers and solicitors on its team to ensure an efficient and smooth transaction. Although time is usually of the essence, shopping around could mean essential savings in the longer term.

**PC TIPS** Arrange with solicitors to inspect and report quickly on the Legal Auction Property Pack and Title. They must be familiar with fast turnarounds and able to offer you a next day view on the contents. Powell Callen Solicitors have such a system.

For more information, please contact Angharad Jones, Director, or Rubina Mustafa, Assistant Solicitor on 020 8439 7380.

# Asset rich – cash poor?

*Nowadays, with an increase in life expectancy and better health, more and more people are looking at ways to maintain their current lifestyle and enjoy an active retirement.*



**AFTER YEARS WORKING** to build a secure financial future, it's not uncommon for people to reach retirement and feel that everything they've earned is locked up in their assets – the most substantial of these usually being the family home.

One way to release this equity would be to sell up and downsize or move away to a less desirable location. Naturally, this can be stressful – not just the move itself and the extra expense incurred, but the leaving behind of family, friends and all that's familiar.

However, there is another alternative – a lifetime mortgage – where it is possible to turn the current market value of your property into cash, without the inconvenience of moving, and ensure you enjoy a secure and comfortable retirement.

## What is a lifetime mortgage?

A lifetime mortgage is a long-term loan that provides an income, yet guarantees continued home ownership for life – and with no monthly repayments.

## Increasing numbers of people are considering using an equity release plan to help fund or improve their retirement

## How does a lifetime mortgage work?

A set amount of money is borrowed against the value of your home in the form of a mortgage. Usually this will be a tax free cash lump sum, but funds can also be drawn on an 'as-you-need-it' basis, helping to keep the interest owed at a minimum.

As long as any outstanding mortgage is settled first, you can do what you like with the cash. You continue to live in your home and have no interest to pay at all during your lifetime. Instead, compound interest is added throughout the term of your lifetime mortgage or 'rolled up' with the loan.

When the last survivor dies, or moves into long-term care, the money from the sale of the property is used to pay back the loan – and if house prices continue to rise as they have done for the last 30 years, there should still be enough equity left to pass on to any beneficiaries.

## Is it safe?

All equity release plans are regulated by the Financial Services Authority. This provides protection, security and access to official compensation schemes if ever needed.

You should only consider plans from providers who adhere to the Safe Home Income Plans (SHIP) code of practice. SHIP Ltd is a company which was set up in 1991, dedicated to the protection of consumers and promotion of safe home income and equity release plans. SHIP members must follow the following commitments;

- to provide a fair easy-to-understand and full presentation of their plans;
- to clearly state the cost of the plan to your assets and estate;
- to provide a 'no negative equity guarantee'.
- to give you the right to stay in your home for life.

You can find out more about SHIP and its members at the website [www.ship-ltd.org](http://www.ship-ltd.org).

With FSA regulation and the SHIP code of practice, consumers have more protection than ever before and so it is vital to take professional, independent advice from the experts.

## Features of typical equity release plans include:

### ONE: ONE-OFF LUMP SUM

*A single lump sum to spend as you wish – usually a minimum of £20,000. You may also be able to borrow again after a period of time has elapsed.*

### TWO: REGULAR CASH RELEASE

*Instead of a single lump sum, a regular monthly cash payment for up to 10 years. The rate of interest is fixed for the life of the loan and only charged on the amount of money that has been released to you – not on the total agreed sum.*

### THREE: FLEXIBLE CASH RELEASE

*Cash payments when you need them. A sum of money can be taken in part as a single lump sum whilst the remainder is retained in a cash reserve facility that you can access at any time.*

### FOUR: HOME REVERSION

*A lump sum or income is generated in return for selling a part or full share of your home to a reversion company. As such this is not a loan in the way that a lifetime mortgage is, since you give up ownership of your property to a certain degree.*

### FIVE: LIFETIME MORTGAGES

*The interest owed on a lifetime mortgage can build up quite significantly over the years, and could erode any remaining equity over time. Property prices cannot be guaranteed and can fall as well as rise, and if you are a younger borrower, the amount raised may be a relatively low proportion of the property's value.*

## Will it be right for you?

There are other ways in which you could release money from your home. A home reversion plan would enable you to release money by selling all, or part of your home to a reversion company, in exchange for which you would receive a lump sum or an income. You could also consider raising money by down-sizing – moving to a smaller property – or you could raise funds from other savings, or claim appropriate state benefits. Powell Callen Financial & Retirement Solutions can advise you of your options.

Increasing numbers of people are considering using an equity release plan to help fund or improve their retirement – from people who need to supplement their income, to those who wish to improve their standard of living.

**PC TIPS** *If these options are of interest to you, or a friend or relative, contact the independent financial advisors Paul Payne or Anthony Collier at Powell Callen Financial & Retirement Solutions on 0845 179 9999 and ask for a FREE personal illustration before taking out any plan.*

## Answering your questions

Before proceeding with any plan, you need to consider whether you have satisfied yourself that releasing equity from your property is the right choice for your needs. Here are the answers to some frequently asked questions:

### Q How much does it cost?

**A** With a lifetime mortgage or a home reversion plan, there are no repayments to make during your lifetime. The interest on a lifetime mortgage rolls up and is repaid, with the amount originally borrowed, at the time of your death, using the proceeds from the sale of your house. With a home reversion plan you give away all, or part of your property to the reversion company in return for a cash sum. In both cases you will have to pay charges, which typically involve solicitors fees, lenders fees and valuation fees.

### Q How much could I release?

**A** The amount you can borrow is between 15% and 50% of the value of your house, dependent on age and how much your house is worth.

### Q Will I still own my house?

**A** If you arrange a lifetime mortgage you will still own your property. If you arrange a home reversion plan you will give up ownership of part of your property as this will pass to the reversion company. The plan provider should adhere to the SHIP code of practice, which guarantees that you have the right to live in your home for life. There is also a 'no negative equity' guarantee, meaning you will not lose out should the value of your property be less than the amount you owe.

### Q What will I have left for my family to inherit?

**A** Once the loan and interest has been repaid, the remaining value of your house is available for you to leave to your beneficiaries (please bear in mind that this may end up being a relatively small amount, or even nothing). However, another consideration is that the reduced value of your estate may prove beneficial in that it would reduce or eliminate any Inheritance Tax liability; so it is important to consider discussing your plans with your family if leaving something to them is important to you.

### Q What if I want to move house or down-size?

**A** This may be possible, depending on the type of equity release scheme involved.

## Cohabitation agreements – protection for unmarried couples

*One of the most common myths in English law is that there is such a thing as a ‘common law marriage’. It simply doesn’t exist and this misapprehension has led the Law Commission to suggest proposals giving additional rights to cohabiting couples.*

**HOWEVER**, until any changes in the law are made (which could be several years away), cohabitants will continue to have few rights. When a marriage or civil partnership breaks up or one partner dies, the rights of the respective partners are relatively clear. When the relationship of a couple who have been living together breaks up or one of them dies, the difference between a legally-recognised partnership and an informal one becomes all too obvious.

A recent case involved two barristers who had lived together. When they split up, long and expensive court proceedings were necessary to decide the appropriate apportionment of the two properties they owned, both of which were held in the name of one partner.

On the death of an unmarried partner not only do the intestacy laws make no provision for the surviving partner to inherit from the estate of their partner, but also the surviving partner does not benefit from the exemption from Inheritance Tax that would apply if the deceased’s estate passed to a spouse or civil partner.

Indeed, in order to receive anything at all, the surviving partner may well have to go to court to show that they co-owned assets which in some cases may have been paid for by both partners but were owned in one name only. The surviving partner may also have to show that they qualify for financial provision to be made out of the estate under the Inheritance (Provision for Family and Dependants) Act 1975, which is designed to protect the dependants of people who die without leaving adequate financial provision for them. In any event, the surviving partner may face severe financial pressure whilst a claim is ongoing, even if it is ultimately successful.

For example, consider the recent case of a woman who had lived with her alcoholic partner for nearly three decades before moving out, shortly before he died, because she feared for her safety. He left no will. Had they been married, the situation would have been simple. However, in this case the woman was forced to go to court to prove her entitlement to financial provision, which was resisted by her late partner’s family.



### What can be done to prevent such problems?

One easy and inexpensive solution is to make a cohabitation agreement. This is a contract, between two people who live together, which sets out their agreement on the division of their combined assets. It is sensible when cohabiting with anyone, without the protection afforded by marriage or civil partnership, to enter into a cohabitation agreement so that ‘who owns what’ is clear. This is not only important if a relationship breaks down, but also if one partner dies.

### What should the agreement contain?

Like any contract, it should state who it is between, how long it is intended to last and that it is intended to be legally binding. If there are assets (e.g. your home) which are to be dealt with in a particular way, these should be specifically mentioned and details provided as to how they are to be dealt with on death or on break-up of the relationship. It is not uncommon for a couple to sell one of their properties when they move in together, with the property they live in being retained in the name of the original purchaser. In such cases, it is sensible to decide if the non-owning spouse’s contribution is to be treated, for example, as a loan or if they are entitled to a percentage of the property value.

The ownership of all significant assets – bank accounts, insurances, specific valuables etc. – should be considered. Details of income and expense sharing arrangements should be included if possible and if there is the intention that one partner should support the other, this should also be mentioned, as should any financial arrangements regarding family members.

It is obvious that a cohabitation agreement is normally best considered in tandem with your will. There are tax planning and other issues to consider – for example, you might think about writing any death in service benefits or insurances in trust for your partner.

**PC TIPS** For advice on cohabitation agreements, please contact Rubina Mustafa of Powell Callen Solicitors on 0845 179 8888.

## How inheritance tax works

*Inheritance Tax (IHT) is paid on your estate when you die and also when money is transferred into some trust funds.*

**SOME OTHER TRANSFERS** during one’s lifetime may also be subject to IHT. The first £300,000 (at 2007/8 rates) of the estate is exempt from IHT. This is called the nil rate band. The assets in the estate are valued on death, the nil rate band subtracted and the remainder of the estate is taxed at 40 per cent. IHT used to concern only the wealthy. Nowadays, however, the increase in value of residential property means that more and more people find themselves within its ambit.

There are exemptions from IHT for the following:

- property transfers between spouses or civil partners (not between unmarried partners);
- gifts to institutions such as the National Trust, charities and political parties; and
- gifts in consideration of marriage or civil partnership (within permitted limits), annual gifts to the value of £250 to anyone and gifts which are part of normal household expenditure (such as birthdays).

You are also allowed to give away up to £3,000 per annum. This allowance can be carried forward to the next year, if not used in a tax year. The carry forward is for one year only.

Gifts made ‘out of income’ are also excluded. These must be of a scale that does not affect the lifestyle of the donor and must normally be regular – an example might be school fees paid by a grandparent.

### What can be done to reduce IHT liability?

#### POTENTIALLY EXEMPT TRANSFERS (PETS)

A gift will normally cease to be part of a person’s estate if they survive seven years after making it. If they die within seven years, then the IHT to be paid will be reduced on a sliding scale depending on the time interval between the making of the gift and the death of the donor.

#### EQUITY RELEASE

An Equity Release Scheme (of which there are several types) allows money locked in freeholds to be released. This can be given away as a PET and if the donor survives more than seven years then it will not normally attract an IHT liability.

#### LIFE ASSURANCE

Policies are available which may pay all or some of your IHT liability. These can be written in such a way that they pass directly to your family and do not become part of your taxable estate.

#### HOLDING EXEMPT ASSETS

Certain assets (such as shares in AIM-listed companies and in family businesses) are wholly or partially exempt from IHT if certain conditions are met.

#### TRUST FUNDS

Setting up a trust fund used to be a common way to leave money. This can be an effective way of minimizing the impact of IHT. However, the 2006 Budget has made some of these less attractive. If you have established such a trust or are thinking of doing so, it is sensible to seek professional advice.

**PC TIPS** Says Dennis de Veuve, notary and solicitor, of Powell Callen Solicitors;

“Whatever action you do take, make sure you take good professional advice. In particular, it is essential to have a proper will drafted. We can do this and can also review your financial situation and advise you of any IHT reliefs which may be available and whether property is held in the most advantageous manner. If your family is facing a potential IHT burden, contact us for advice on the right steps to take.” For further advice speak to Dennis on 020 8439 7380.

# Private care homes and the Human Rights Act

*'A sickening blow' is how campaigners have described a landmark decision of the House of Lords on the rights of an 84-year-old care home resident with Alzheimer's disease.*

**IT WAS** a bitterly-fought case, which divided the five Law Lords 3-2 in their judgment that an elderly woman who was threatened with eviction from her privately-run care home did not enjoy the protection of the Human Rights Act (HRA), unlike residents of local authority-run care homes.

The woman had been placed in a private care home by her local council. The council threatened her with eviction from the home, because of an alleged 'irreconcilable breakdown' in relations between her family and the home's management. She argued that the eviction was a violation of her right to family life, which is guaranteed under the HRA. The Law Lords ruled, however, that a private home is not exercising a public function when it cares for

people referred to it by a council, and is therefore not bound by the Act.

Many vulnerable older people live and are cared for in homes operated by the private or voluntary sectors. Nine out of ten care homes in England and Wales are now privately run. The Law Lords' ruling means that these residents cannot bring an action under the HRA if they are deprived of their human rights. The right of residents of care homes run by local authorities to bring actions under the HRA is clearly established.

Campaigners, including Help the Aged, agree that their Lordships have thrown down a challenge to the Government to rectify the anomaly through legislation to ensure that care home residents living in establishments in both the private

and voluntary sectors enjoy the same level of protection under the HRA.

The civil rights group Liberty has also condemned the ruling, calling for urgent legislation to prevent local authorities from 'contracting out of dignity for Britain's elderly'.

The Government is said to be considering legislation to rectify the anomaly whereby protection under the HRA is dependent on the ownership status of the care home in which a person lives.

**PC NOTE** Citation: *YL v Birmingham City Council and others* [2007] UKHL 27. See: <http://www.bailii.org/uk/cases/UKHL/2007/27.html>.



# Matrimonial home not safe when ex-husband bankrupt

*It is usual for a family's biggest asset to be the family home and, in many cases, the value of the house dwarfs the value of the rest of the assets.*

**IN SUCH CASES**, when a marriage breaks up, the financial arrangements often allow one spouse to remain living in the house, with the other spouse entitled to a share of the proceeds when it is sold.

Recently, the Court of Appeal had to consider a case in which just such an arrangement had been made. After their divorce, Mr and Mrs Avis agreed a consent order under which Mrs Avis stayed in the house and owned two thirds of it. Her ex-husband's entitlement was agreed as one third of the value of the house, which he could only have when it was sold.

Mr Avis was subsequently made bankrupt and some years later his trustee in bankruptcy sought an order for the sale of the house. Mrs Avis argued that the trustee took over the rights that Mr Avis had been granted under the consent order – i.e. the right to a third of the eventual sale proceeds of the house.

The Court of Appeal could not accept Mrs Avis's argument and ruled that the trustee in bankruptcy could apply for an order to sell. Mrs Avis's right to resist a sale was qualified by the right of the other person interested in the property – in this case the trustee, who had acceded to her ex-husband's rights.

**PC NOTE** Citation: *Vivienne Joan Avis v Charles Hamilton Turner (Trustee in Bankruptcy of Charles Avis) and Charles Avis* [2007] EWCA Civ 748, 19 July 2007. *Solicitors Journal*, 27 July 2007 p986.



# Mortgage blues – lender's duties

*The news that home repossessions are rising is not welcome in any quarter. Many homeowners are facing difficulty making repayments on their mortgages and even more are facing a shock when their current fixed rate or discounted rate deals end, as tens of thousands are set to do in the next few months.*

**WHEN A MORTGAGE** lender faces serious arrears, it will seek to protect its position and recover the amount owing. This will normally involve the repossession of the property. Once the property is repossessed, the lender will exercise its power of sale. It acquires the power of sale if the legal date for the redemption of the mortgage has passed. It can exercise the power if:

- a written notice has been sent to the borrower requiring payment of any monies due and three months have passed without the outstanding sum being paid in full;
- there are more than two months' arrears; or
- the borrower has breached another term of the mortgage – for example, breaking a covenant not to sublet or run a business from the premises.

If the lender obtains an order for repossession of the property, it will then seek to sell it with vacant possession. When this course of action is taken, it becomes responsible for the maintenance of the property from the

date on which repossession is granted. The lender owes the borrower a duty of care and is accountable to them for its conduct in dealing with the sale, but that duty does not extend to obtaining the best possible price on sale – it must obtain the 'true market value' or 'proper price'. In general, as long as the lender obtains a valuation of the property and exercises reasonable judgment, and does a reasonable job in marketing the property, it will have done its duty.

If you are behind with your mortgage, credit card or other unsecured loan payments, it is essential to take professional advice. There may be ways in which you could deal with mortgage arrears or debts which would allow you to continue to live in your home. It is important to act as soon as you are aware of the problem. The longer such matters are left, the more difficult it can be to resolve them satisfactorily.

**PC TIPS** If you are having problems managing your personal finances, contact Powell Callen on 0845 179 8888.

# need to know

## Buy to let – get your tax return right!

**HM Revenue and Customs are concerned that many buy to let landlords are not paying enough tax.**

It is estimated that up to 80,000 have overstated their deductions for tax purposes by including the capital element of mortgage repayments (not allowable) as well as the interest on the sum borrowed (allowable). The key point here is that if the mortgage on your buy to let property is of the repayment type (which may not be the most tax-efficient way to finance it!), make sure the sum you claim on your tax return as a deduction for interest paid does not include the capital repayment.

The taxation of rental income is complex, with a variety of different rules applying depending on circumstances. The rules relating to the treatment of losses also vary depending on the type of rents you receive. For example, there are different rules for all of the following types of residential letting:

- *rent a room receipts for rooms let in one's own house;*
- *furnished holiday lettings;*
- *furnished lettings; and*
- *unfurnished lettings.*

It is also worth mentioning that the responsibility for asking for a tax return if you have taxable income and do not receive one lies with the taxpayer. If you are not sent a tax return and have taxable income not subject to PAYE, you should request one or face a possible penalty.

Also, there is usually considerable scope for tax planning to mitigate the effect of Capital Gains Tax on the disposal of let properties.

**PC TIPS** *It is always worth taking professional advice to make sure that investments of all kinds are managed in a tax-efficient way. An excellent book to help property investors to get to grips with tax is **Tax Avoidance for the Property Investor: Legitimate Ways to Save Tax on All Your Property Investments** by Duncan Callow (ISBN 0955207088).*

*We are often asked about Chartered Accountants and one we use is Michael Clarke (Partner, FCA) of Clarkson Hyde (London and Sutton) who specialises in clients who invest in property. Telephone 020 7022 0050.*

## Rent reviews – when time is of the essence

**A landlord who failed to observe a time limit in a lease agreement with a tenant was left to count the cost recently.**



The lease contained a provision which stipulated that in the event of a failure to request an independent surveyor's report by a set time the rent would remain frozen for seven years (i.e. until the next rent review). The landlord neglected to commission the report and because the lease was specific as to the consequences of that failure, the court accepted that the rent could not be increased. The moral in this case is that putting dates in your diary is important, but getting your drafting right in the first place is just as important.

**PC NOTE** *Commercial investors of property really need to note this case and ensure you comply with all of the lease provisions.*

*Citation: Secretary of State for Communication and Local Government v Standard Securities Ltd. [2007] All ER D 316 (June).*

## Safety Advice for Landlords

**The Health and Safety Executive has put together a web page offering safety advice for landlords who let out domestic properties with gas appliances.**

It features a Frequently Asked Questions section dealing with the main issues applying to gas safety in let properties.

**PC NOTE** *Put this site into your 'favourites' as it is updated regularly with the best and practical advice. Another excellent website is: [http://www.rla.org.uk/rla.exe/landlord/documents/gas\\_safety/gas\\_safety.htm](http://www.rla.org.uk/rla.exe/landlord/documents/gas_safety/gas_safety.htm).*

## HIPs – scope extended

**When Home Information Packs (HIPs) were introduced, on 1 August 2007, the rule was that a HIP had to be supplied when a property with four or more bedrooms was put on the market.**

Unsurprisingly, this led to a proliferation of 'three bedroom' properties being offered for sale which had an additional office, walk-in dressing room or similar. The Government reacted quickly to this trend. On 17 August, it announced that HIPs and Energy Performance Certificates (EPCs) would be compulsory for all properties with three or more bedrooms put on the market after 9 September 2007.

Currently, the Government claims that a HIP costs in the region of £250-400 and takes about five days to create. It also asserts that putting into effect the measures recommended in the EPC could save the average consumer £300 a year on their fuel bills. 'Green grants' of £100 to £300 for energy saving improvements like loft insulation are available for many homeowners.

It remains to be seen whether the result of this latest move is a glut of 'two bedroom, two office' properties. We can, however, expect to see more three bedroom houses marketed as being 'two bedroom plus home office'.



EPCs and Home Condition Reports (HCRs) are being held on a public register accessible via the Internet. This will allow potential buyers to confirm that the EPC or HCR is authentic and to verify its contents.

**PC TIPS** *On 1 October 2008 this is going to be extended to all buy to let property and all tenants will be required to be given an energy performance certificate. We can help you make sure your property purchase or sale runs as smoothly as possible from beginning to end.*