

MAY 2011

IN THIS ISSUE:

Let the sun shine! Lease Your Roof

Making the break

Land Agreements update

The Green Deal

Proposed changes to the Contaminated Land regime

FOR FURTHER INFORMATION
PLEASE CONTACT:

NEIL WRIGHT
07836 787878

CHARLES VICKERY
07790 006770

SUE BOYALL
07854 023439

Excello Law Limited is regulated by the Solicitors Regulation Authority and its registered office is at Atlantic House, Imperial Way, Reading RG2 0TD

telephone 0845 257 9449

www.excellolaw.co.uk

*c Neil Wright and Excello Law 2011
The contents of this newsletter are meant for general information only and are not intended as specific advice. No responsibility is assumed for any errors or inaccuracies contained herein or for any consequences arising out of any reliance on placed upon the contents. You should seek specific legal advice in respect of any issues upon which the contents may relate*

COMMERCIAL PROPERTY

LET THE SUN SHINE! LEASE YOUR ROOF

For many years businesses have leased roof space for the installation of telecommunications mast but a new phenomenon is emerging – photovoltaic (PV) power generation plants. In simplistic terms these are large solar panels designed to harness the power of the sun for the production of electricity. Some installations are used by the roof owners to contribute to their own electricity needs but others are leasing their roofs to investors who sell on the electricity. The investors meet the cost of installation and there is the added benefit of the roof being given additional protection by the panels that are installed.

The basic requirement is a roof over at least 250 sqm without shade. There are companies who specialise in the installation and maintenance of such systems and who can also introduce roof owners to investors. Examples of suitable roof spaces include: warehouses; factories; offices; barns and poultry sheds.

If you require further information please contact us.

MAKING THE BREAK

In the current economic climate it is more important than ever to recognise and avoid the potential pitfalls when it comes to dealing with break notices. When exercising a right to break it is crucial to ensure that the terms of the relevant clause are carefully considered and complied with. Equally, the recipient of a break notice should take care to ensure that it does nothing to prejudice its position where a notice may have been invalidly served.

The recent case of *MW Trustees Limited and others v Telular Corporation* provides a cautionary tale for landlords. Action taken by the landlord following service of an invalid notice (by way of an unwisely worded email) effectively prevented the landlord from objecting to the defects in the notice and resulted in the tenant being able to terminate its lease.

Mistakes can be expensive and we would advice tenants to take advice well in advance of a break date and landlords to take advice on receipt of a notice to ensure that problems do not arise.

LAND AGREEMENTS UPDATE

From April 2011 land agreements are no longer exempt from the UK competition law prohibition on anti-competitive agreements.

Examples of the types of provisions that could fall foul of the law include:

- Restrictive covenants
- Restrictions on use

- Agreements with landlords not to let other units in a shopping centre for purposes that would compete with a tenant's particular use

The nature and purpose of each individual provision will need to be carefully considered.

Useful guidance has been published by the Office of Fair Trading as to the types of land agreements that may infringe competition law. The OFT expects that only a minority of land agreements are likely to infringe the prohibition. The guidance can be found on the OFT website at http://www.offt.gov.uk/shared_offt/consultations/land-agreements/land-agreements-guideline.pdf

THE GREEN DEAL

The Green Deal is intended to be launched during the autumn of 2012. The Energy Bill (which is currently making its way through Parliament) sets out the framework of the scheme which has the potential to make a big impact on increasing energy efficiency within the commercial property sector.

In essence, the scheme enables the funding of energy efficient improvements to both residential and commercial properties. Instead of paying the costs of such improvements up front, the energy consumer will pay via instalments added on to energy bills which will then be passed on to the Green Deal provider by the energy supplier.

The obligation to pay will attach to the property, so that if it is sold the arrangement will bind the next bill payer. The costs of any energy saving measures are not to exceed the energy bill savings during the Green Deal period.

Assessments and proposals as to the measures, savings and payback period will be prepared by accredited Green Deal assessors. The Green Deal provider will then make an offer which the bill payer can either accept or reject.

The impact on commercial landlords and tenants is not yet clear and there are various issues that will need to be resolved for the proposals to work smoothly. Consultation on the secondary legislation (which will cover the technical details) is due to commence in autumn 2011.

PROPOSED CHANGES TO THE CONTAMINATED LAND REGIME

DEFRA's consultation on the proposed changes to the Contaminated Land Regime closed recently and a summary of the responses is expected by the end of June 2011. The indications so far are that the reaction has been a positive one. The main focus of the changes will be on the statutory guidance rather than the legislation itself, although there are no proposed changes to the existing guidance provisions on the apportionment of liability (which is perhaps surprising as this has been one of the most contentious areas).

The aim of the proposed changes is to produce a system that is clear, simpler and more effective. There is a great deal of emphasis on assisting local authorities in understanding how to use the regime and when they should designate land as contaminated.

It has been made clear, however, that the emphasis will still very much be on market based solutions (e.g. via development under the planning system) and that use of the regime will still be a last resort. On a practical level, funding, as ever, will also have an impact on enforcement action taken.

In summary, then, there is no root and branch change expected.