

Restrictive Covenants



Restrictive covenants are becoming a regular problem area when it comes to remortgaging and selling properties. A restrictive covenant is a 'promise' not to do something and can be found in most title deeds. Examples are "not to carry on any trade or business on the property" or "not to alter the external elevation or build any additional structure on the property".

A breach of covenant could result in a civil claim being made against the property owner or a subsequent buyer. As a consequence, mortgage lenders, buyers and the Solicitors acting for them are now extremely cautious to ensure that all covenants have been observed.

If there has been a breach, it may be rectified by the owner asking for retrospective consent but often the person who has the right to enforce the covenant is not known or cannot be traced. In such cases, the owner is usually

required to provide the mortgage lender or buyer with an insurance policy called a 'restrictive covenant indemnity policy', the premium being calculated on the value of the property.

Many breaches go unnoticed for many years and result in no action at all. However, if you are seeking to sell or remortgage your property or wish to alter it or change its use then it is always sensible to check your deeds to see that there are no restrictions.

In a commercial context it is even possible, in certain circumstances, to insure against a future breach. For example, where you have planning permission to carry out an extension to a property which is already being operated as a business in breach of a restrictive covenant.

For further advice or assistance please call Nick Gilson on 01934 637 913 or email gilson@powellslaw.com.

Times is good for Powells



Yes, indeed they are. Two appearances by members of staff in the leading national newspaper in the space of a few months isn't bad by any standards!

Firstly, **Russell Dean** was featured in the Times Student Law section in January, including a photograph of him on Weston beach. He was extolling the virtues of living and working in the West

Country and with Powells in particular, to quote "variety of work and quality of life are the two main attractions".

Now, not to be outdone, **Caughlin Crosby** too has featured in the Times as a result of her qualification as a Fellow of the Institute of Legal Executives.

Well done, we are proud of you both.



we keep you informed

Holiday Blues?

Did your holiday leave something to be desired...? From minor 'slipping and tripping' personal injury cases or road accident claims, to mass group actions such as food poisoning cases and coach crashes, to substandard accommodation or cancelled flights, we can help.

It is important to make your claim early, as limitation laws vary from country to country and can be as short as six months in parts of the US and the Dominican Republic.

Bear in mind also that a real causative breach of contract must be demonstrated. Judicial restraint in the courts means that frivolous cases will be dismissed, but compensation can often be achieved if there is evidence of a breach of contract.

If you need advice or assistance with regard to a substandard holiday please contact Russell Dean on 01934 637 930 or email on dean@powellslaw.com.

Broadcasting the Courts

At present in the UK, the visual recording of court proceedings is prohibited. A consultation paper 'Broadcasting Courts' has been published and discussed; but there are very real concerns about witness intimidation and invasion of personal privacy. There are no immediate proposals to change the current position and indeed, it may prove impossible to balance the benefits with the concerns.

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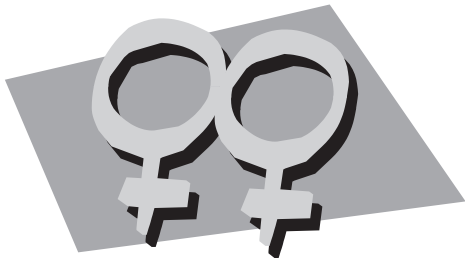
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Gay Rites

One of the most progressive pieces of recent social policy legislation raised barely a mention in the media when it passed into law on November 18th last year. The Civil Partnership Act 2004 received Royal Assent on the same day that the Commons and the Lords were locked in battle over fox hunting, which dominated the news. But when the Act comes into force late this year, lesbian and gay couples will be able to register their relationships and have them legally recognised, for the very first time in the UK.

The Deputy Minister for Women and Equalities, Jacqui Smith MP, announced that the Act will come into force on 5th December this year. This will allow the first civil partnerships to be formed on 21st December, after the 15 day waiting period has passed. The Deputy Minister said:

"I know how much this legislation means to a great many same-sex couples across the country who are eager to finally get legal recognition for their relationships. I hope this Act will help create a more equal society. It opens the way to respect, recognition and justice for those who have been denied it for too long".



Provisions in the Act include:

- a duty to provide reasonable maintenance for your civil partner and any children of the family;
- civil partners to be assessed in the same way as spouses for child support;
- equitable treatment for the purposes of life assurance;
- employment and pension benefits;
- recognition under intestacy rules;
- access to fatal accidents compensation;
- protection from domestic violence; and
- recognition for immigration and nationality purposes.

The purpose of the Act is to create equality and recognition for same sex couples. It creates a new legal status which is similar, but not identical, to marriage by permitting adult same sex couples to gain legal recognition of their relationship through a statutory civil registration procedure.

There are many similarities to marriage in terms of the rights and obligations that will arise, reflected in the fact that many of the Act's 429 pages are taken up with amendments to other statutes, revised to bring the treatment of civil partners into line with spouses.

However, some differences will remain. The act only applies to homosexual couples and not to cohabiting family members who are long-term carers (as was proposed by the House of Lords). To register their partnership, the parties must be neither married nor in another civil partnership; over 18 (or over 16 and have the consent of their parents); and not related to each other within the 'prohibited degrees'. The legal



ceremony itself will be an entirely written process in the presence of a Registrar and witnesses; and there will be no exchange of vows, considered a hallmark of marriage (a civil partnership is formed when the second civil partner signs the relevant document, whereas a civil marriage is formed when the couple exchange spoken words). Also, couples will be able to arrange a ceremony in addition to the registration procedure if they wish, but the Civil Partnership Act does not require a ceremony as part of the registration procedure. Opposite-sex couples can opt for a religious or civil marriage ceremony as they choose, whereas the formation of a civil partnership will be an exclusively civil procedure.

Once formed, a partnership can be terminated only by 'death, dissolution or annulment'. A partnership will be dissolved where it is established that there has been an 'irretrievable breakdown' of the relationship due to unreasonable behaviour, desertion, two years' separation with consent or five years' separation. Note that adultery – the legal definition of which is exclusively heterosexual – is omitted.

The provisions for financial relief for civil partners

correspond to the relief available to married couples on divorce. The courts will, for example, be able to make orders for ongoing maintenance or lump sum payments as well as pension sharing, on broadly the same basis.

The Act also includes provisions to deal with civil partners who have children. For example, a partner who is not the biological parent will be able to apply on the same basis as a step-parent for parental responsibility. Similarly, where a couple part, it will be open to a partner to apply for residence and contact orders; the Children Act is amended accordingly.

Civil partners will be able to pass on survivors' pensions in public service schemes and contracted-out pension schemes in the same way as married couples currently do. The effect of this is that a surviving civil partner will be able to access their deceased civil partner's public service pension provision or contracted-out rights to accrue a survivor's pension in respect of rights accrued from 1988.

Couples with existing wills need to know that they will be revoked upon registration. In preparing new wills, advisers will, for the first time, be able to employ the same inheritance tax planning techniques as are used between spouses.

Those couples within the social security net will also need to know that the Act makes changes to the welfare system. Partners will be assessed in the same way as spouses for child support payments and other benefits, and tax credits are similarly affected.

Please contact Sian Hopkin on 01934 637 904 or email hopkin@powellslaw.com for further information and advice.

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