

# Residential ACT NOW



A guide to residential property law from



Spring 2010

## IN BRIEF

### 'HOUSING-RELATED' BEHAVIOUR BRINGS BAN

In a recent case, a man who was banned from entering the village in which he had previously lived, after successive acts of anti-social behaviour, lost his appeal against the imposition of an anti-social behaviour injunction (ASBI). The court agreed that his behaviour was 'housing-related', so the social landlord could apply for an ASBI.

### REPOSSESSION LOOPHOLE TO BE CLOSED

The Government has published plans to legislate to counteract a loophole that permits immediate repossession without a court order when borrowers have missed only two mortgage repayments. The changes will mean that lenders will be able to repossess a property only with a court order unless the owner voluntarily hands over the keys.



## UNSUSPECTED OBLIGATION FORCES PROPERTY SALE

**A recent case has highlighted the dangers of inadequate searches being done by property buyers. After a protracted legal battle, which went all the way to the House of Lords, Powys couple Andrew and Gail Wallbank have lost their case and been forced to sell their farm in order to pay for repairs to the chancel of their local church and to cover their legal costs.**

When the couple first acquired the property, they were only vaguely aware that it was 'rectorial property', which meant that it came with a legal obligation, under the Chancel Repairs Act 1932, to maintain the local church at Aston Cantlow. They thought this a mere technicality until they were presented with a bill for £200,000 for repairs to the 13th century church. They undertook a series of legal battles contesting the Church's demands, arguing that their obligation was a limited one, not a 'full repairing' one. The arguments culminated in the decision of the House of Lords in favour of the local Diocese. Having lost their case, the couple's farm was sold at auction for £850,000, but only after a payment of £37,000 had been made to the church authorities in order to remove the legal obligation to maintain the church from future owners of the property. Unless that had been done, the property would have been virtually unsaleable. Mr Wallbank had inherited the farm from his father and had been unaware of the extent of the obligation attaching to the



property until the demand was made by the local Diocese.

In any property transaction, it is essential to be aware of and understand any obligations attaching to the property or rights others may have over it. It is also possible in many circumstances to insure against risks such as this and, for example, defects in title.

**Our residential property expertise will ensure that your property purchase does not bring with it unnecessary or unrecognised risks.**

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## CONTRACT TERMS CRUCIAL IN AGENT'S RIGHT TO COMMISSION



**A recent decision of the Court of Appeal has highlighted the fact that vendors may still be liable to agents for commission long after they have ceased to act.**

The case concerned a luxury apartment in Chelsea, which was put on the market in 2002 for more than £1 million. A firm of estate agents was granted a sole agency. The agents had arranged numerous showings but the property remained unsold and it was eventually taken off the market in 2005.

A short time after that, a man who had previously viewed the apartment contacted the porter at the development to enquire whether there were any properties for sale.

He was put in touch with the owner, who

did not know that the man had previously viewed the apartment. A private sale was agreed between them at a reduced price of £975,000.

The agents pursued the vendor for their 2.5 per cent commission under the original agreement and the Court of Appeal ruled that they were entitled to it under their terms of contract.

### IN BRIEF

#### E-CONVEYANCING BACK ON THE AGENDA

A few years ago, e-conveyancing (whereby property transfers would be done electronically) was 'the next big thing', but technical issues and worries about security meant the plans came to nothing – that is until now. Developments at the Land Registry's online portal mean that a system to transfer property electronically is now planned to be in place sometime in 2011.

## PROPERTY – SLOW IMPROVEMENT IN MARKET CONDITIONS

**Lending for residential property purchases has increased significantly in recent months – the July 2009 figure of £16 billion showing a 26 per cent rise over June. August and September both saw gross mortgage lending of about £12.5 billion.**



Whilst these figures show a considerable improvement on the beginning of the year, however, they were still well below levels seen a couple of years ago: in 2007, mortgage lending averaged over £30 billion per month.

House prices have recently shown modest increases, helped by the fact that there has been growth in demand at the lower end of the market, with more than a third of house purchases being made by first-time buyers. In addition, low interest rates attracted those with cash to spare into the property market at a time when supply was extremely low, which also helped stimulate a rise in prices. According to the Nationwide, house prices rose by a further 0.4 per cent in December 2009 and the rate of annual house price inflation increased from 2.7 per cent in November to 5.9 per cent in December.

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