

Legal Offices

10 Blackfriars Street,
Perth PH1 5NS
Tel (01738) 637311

13 Ward Road,
Dundee DD1 1LU
Tel (10382) 200000

14 Comrie Street,
Crieff PH7 4AZ
Tel (01764) 655151

Property Shops

42-44 St John Street,
Perth PH1 5SP
Tel (01738) 630222

13 Ward Road,
Dundee DD1 1LU
Tel (10382) 200301

14 Comrie Street,
Crieff PH7 4AZ
Tel (01764) 670077

Hotspots

May 2014



Break Clauses in Leases – Beware!

On 29 April 2014, Lord Malcolm at the Court of Session in Edinburgh made a decision which could potentially have huge implications for anyone planning to serve a break notice in a lease.

Scottish & Newcastle Limited was the tenant of two office premises under two leases. The lease was due to expire in 2023 but could be broken on 7 May 2013. The tenant served notice on 3 May 2012. The break clause provided that the tenants required to give 12 months' notice and not be "in breach of any of their obligations at the date of service of the notice and/or the termination date". 12 months' notice was given. The tenant admitted that, at the date the notices were served, it had not fully performed its repairing obligations under the leases. After the notices had been served, it spent over £1.3m bringing the premises into good repair, in time for the break date of 7 May 2013.

The landlord argued that as the tenant was in breach at the date of service of the notice, it was not entitled to exercise the break option. They said that if the tenant was in breach on either of the dates, then it could exercise the break option. The tenant argued that, to lose out on the right to exercise the break option, it had to be in breach on both of the dates.

Lord Malcolm decided that he agreed with the landlord's argument as this flowed from the natural meaning of the words in the lease.

This case highlights that extreme care must always be taken to ensure strict compliance with any conditions imposed on an entitlement to break and that the wording of a break clause must be carefully considered before a break notice is served.

If you are considering exercising an option to break, please contact us as soon as possible so that we can check the relevant break clause and discuss its possible ramifications with you.

Statutory Sick Pay No Longer Reclaimable

Since 6 April 2014, it has no longer been possible for employers to reclaim Statutory Sick Pay ("SSP") from the government.

Previously, employers could reclaim any amount of SSP which exceeded 13% of its national insurance contributions in the month. The rationale for the abolition is that employers previously had an incentive not to encourage long-term sick employees to return to the workplace.

Loss of Implied Rights - Deadline Approaching

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Dundee DD1 1LU
Tel (10382) 200000

14 Comrie Street,
Crieff PH7 4AZ
Tel (01764) 655151

As advised in the January edition of Hotspots, implied rights to enforce certain title conditions will be lost if a preservation notice is not registered in the prescribed form before 28 November this year.

To recap, on 28 November 2004 the feudal system in Scotland was abolished. However, the Title Conditions (Scotland) Act 2003 (the "Act"), preserved certain types of title conditions. Where land has been sub-divided and title conditions imposed on the piece of land broken-off, it is implied, by virtue of the Act, that in the absence of any express provision they will be enforceable by the owner of the land that was retained. This, however, only applies for a period of 10 years from 28 November 2004. A person having such an implied right who fails to register a preservation order in the prescribed form before the expiry of the 10 year period will therefore lose the right when the 10 years are up!

As previously advised, it is likely that thousands of properties are affected by title conditions of this sort. If you think that you may be affected, you should contact us without delay so that we may take appropriate action to protect your position before time runs out.

Licensed Premises - a Ticking Time Bomb!

Around 40,000 personal licences were issued when the current licensing regime came into force on 1 September 2009.

Personal licenses last for 10 years but training must be refreshed within 5 years of the licence being granted. As a result, a large number of personal licence holders who wish to retain their licences will require to have completed their refresher courses by 31 August this year. It is anticipated that there will be a huge demand for these refresher courses in the coming months, so if you think you will be affected you should make arrangements to book-up for a course as soon as possible.

As well as completing training within 5 years of the personal licence being granted, the appropriate certificate must also be exhibited to the relevant Licensing Board within a period of 3 months. Many licence holders will therefore have to deal with this by 30 November this year. If both criteria are not met, the Licensing Board must revoke the licence. There is no defence and no discretion on this matter. Such revocation is made all the more serious by the fact that a licence holder cannot apply for a new personal licence for a period of 5 years after having had one revoked.

For further information on these or other legal issues please contact either Alistair Duncan in our Dundee Office on (01382) 200000 or James Andrew in our Perth Office on (01738) 637311

These comments are provided for guidance only. Each situation must be looked at in its own right so you cannot rely on these points in relation to any particular matter without first taking specific advice

Miller Hendry provides a wide legal and estate agency service across Tayside and Strathearn.
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