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# rural law


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Geoff Tomlinson

## WELCOME

 A colleague of mine once suggested that my optimism and enthusiasm would get me out of as many scrapes as they would land me in. He was probably right, but I'm afraid that I just can't help being optimistic at this time of year; and I don't think I am completely alone this year.


Although there are still many obstacles ahead for UK farming, and more so in some sectors than in others, there is definitely a good deal of positivity around at the moment...even in Yorkshire!

In this issue of Rural Law we have the usual mix of what we hope are useful titbits of information: Rural expert Andrew Holden

has timely reminders about septic tanks and the benefits of land registration, whilst Wills & Estate Planning solicitor Charlotte Cooper looks at the importance of getting your affairs in order with a Lasting Power of Attorney. We hope you find this edition of interest and, as ever, if we can help you in relation to any of the matters mentioned, or indeed on any other legal issues, please do get in touch. We are always happy to have an initial 'without obligation' meeting.

Best regards, Geoff Tomlinson  
[Geoff.Tomlinson@naphthens.co.uk](mailto:Geoff.Tomlinson@naphthens.co.uk) 

## DEADLINE APPROACHES FOR REGISTERING SEPTIC TANKS

 The Environment Agency's (EA) deadline of January 1, 2012, is now less than a year away, and will mean all septic tanks in England and Wales must be registered.

Registration will be a one-off and in most cases will be free of charge. For those who operate on a septic tank or sewage treatment plan system then one of two types of application will be required: either an application for an Environmental Permit or for an Exemption Certificate.

Those with an existing Consent to Discharge will automatically qualify for an Environmental Permit – the conditions of the existing consent will continue and no new permit will be issued. However, for those without existing


consent, the type of application will be decided via the location and size of tank.

If your tank discharges to surface water (eg a river or a stream) then it must not discharge more than 5,000 litres per day and must be pre-treated in a package treatment plant to qualify for an Exemption Certificate. For a tank that drains to the ground via soakaways the discharge must not exceed 2,000 litres per day.

An average 4-bed house will discharge just over 1,000 litres per day, so most tanks will fall into the Exemption Certificate category. If the discharge volume exceeds these limits, you must apply for an Environmental Permit.

If the location of the tank's discharge is within 50 metres of a source of drinking water or is near an environmentally protected area then an Exemption Certificate is unlikely to be granted and you must apply for an Environmental Permit.

Finally, once registrations have been obtained, the tank must be emptied as often as necessary and maintained by a properly authorised contractor, with records of all works kept for a minimum of five years.

[Andrew.Holden@naphthens.co.uk](mailto:Andrew.Holden@naphthens.co.uk)  
 01772 904266 



There are many benefits to registering land at the Land Registry

## LAND REGISTRATION REMINDER

It is now some time since we last brought to your attention the benefits of having your land registered at the Land Registry.

The latest Land Registry figures show some 27 per cent of land still remains unregistered within England and Wales and the majority of that will be in rural areas – as many farms have been in the family for generations and therefore have not to date been subject to compulsory registration.

The Land Registry therefore offers a scheme of voluntary registration at a 25 per cent discount on the registration fee. There are three main benefits to registration of your land and these are as follows:

- **Reduce costs of any future transactions.** Registration means that all

title information is kept on the Land Registry's database and stored electronically. It is therefore easy to access without the need to obtain title deeds from banks, building societies and other solicitors, and therefore means that drafting contracts and legal documents is much more efficient.

- **Simplicity.** The documents are in a simple format and provide a clear and concise title plan of the land which is registered to yourself. It therefore means that any variances in the boundaries or missing land can clearly be seen and dealt with.
- **Protection.** Registration of your land gives you a much greater security of title and protection against adverse possession claims. It also means that if any claim or applications are submitted which may

affect your land you will be served notice of the same by the Land Registry and have a chance to object should you wish. It also ensures that matters are dealt with in the lifetime of the occupier who will have the best knowledge of the land, rather than after their death, leaving the executors to deal with land that they may not have seen for several years.

We can usually undertake registration work for £250 plus VAT and the registration fee which is based upon the value of the land. If you would like more information please do not hesitate to contact us.

Andrew.Holden@napthens.co.uk  
01772 904266



# LASTING POWER OF ATTORNEY: THE ESSENTIAL DOCUMENT FOR FARMERS

Farming is a high risk occupation. If an accident should occur how would the farm continue to run? Who would replace the lost labour? Who could deal with the business accounts, pay bills, or authorise orders? If a farmer does not have a Lasting Power of Attorney (an 'LPA') the answer could be no-one.

Farmers have historically been aware of the importance of making a Will to ensure land and assets remain in the family. Written Partnership Agreements are now more common but the farming community has been slow to appreciate how vital LPAs are until it is too late.

An LPA states who should deal with your affairs should you ever lose mental capacity through accident or illness. An LPA is extremely flexible and can be tailored to your exact wishes: you can appoint different attorneys for your personal and business affairs, or limit powers to the management of particular assets.

If a person loses mental capacity and does not have an LPA, the next of kin would have

to commence proceedings through the Court of Protection. This process is long winded, expensive and stressful for those involved. Your next of kin may not be the most appropriate person to undertake this responsibility: they may not have an active role in running the farming business or they may have no desire to continue farming. As an LPA can be tailored to everyone's particular circumstances, it eradicates this difficult process.

There are two types of LPA. A Property and Affairs Power of Attorney is advisable for all people working in the agricultural sector. It allows an attorney to deal with financial affairs, including closing bank accounts, selling property and discharging debts.

A Personal Welfare Power of Attorney gives your attorney authority to make decisions on your general welfare such as where and with whom you should live, who should be your doctor, dentist etc if you are unable to make these decisions yourself.

Putting an LPA in place is extremely straightforward, however once you have lost

mental capacity it is too late to execute a Power of Attorney. As farmers are reminded daily of the vagaries of farming life they should consider a Lasting Power of Attorney an essential document.

Charlotte.Cooper@naphthens.co.uk  
01772 904349



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**Preston:** 7 Winkley Square, Preston, PR1 3JD DX 714572 Preston 14 Tel: 01772 888 444 Fax: 01772 257 805 Email: [Preston@naphthens.co.uk](mailto:Preston@naphthens.co.uk)

**Blackburn:** St Andrew's House, Wellington Street (St John's), Blackburn BB1 8DB DX 17964 Blackburn 1 Tel: 01254 667 733 Fax: 01254 681 166 Email: [Blackburn@naphthens.co.uk](mailto:Blackburn@naphthens.co.uk)

**Blackpool:** 41-43 Springfield Road, Blackpool, FY1 1PZ DX 714350 Blackpool 5 Tel: 01253 622 305 Fax: 01253 295 591 Email: [Blackpool@naphthens.co.uk](mailto:Blackpool@naphthens.co.uk)

**Chorley:** 10-12 St Thomas's Road, Chorley, PR7 1HR DX 18412 Chorley Tel: 0845 260 2111 Fax: 01257 260 096 Email: [Chorley@naphthens.co.uk](mailto:Chorley@naphthens.co.uk)

Naphthens LLP, registered office: 7 Winkley Square, Preston, Lancashire PR1 3JD.

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