

Sound property advice will support refinancing

Good quality advice when acquiring property can save time and headaches with any subsequent refinancing.

Businesses need to be aware of the legal processes involved in refinancing or 'changing banks' and the importance of obtaining good quality legal advice.

Benjamin Jones, associate commercial property solicitor at Dudley-based niche corporate law firm Hawkins Hatton LLP, explains why seeking legal advice at the outset will also avoid frustrating delays when a company is keen to move on to an improved banking package.

Many corporate clients do not appreciate that refinancing will invariably involve the new bank insisting on taking a legal charge over the company's freehold or leasehold property and that the bank

will usually require a full Report on Title or Certificate of Title before doing so.

This is a document completed by a firm of solicitors acting on behalf of the bank to confirm that the company has good and marketable title to the property and reports on any adverse matters. Prior to completing the Report on Title or Certificate of Title, title to the property would be fully investigated in a similar manner to that which would be adopted if the company were acquiring the property from a third party at arms length.

Solicitors acting on behalf of the new bank will investigate title by carefully considering the registered or unregistered title(s) in order to confirm whether there are any adverse or onerous covenants, conditions, agreements, stipulations, restrictions, rights, easements, encumbrances, charges or other third party interests in the property. In the case of tenanted property this would involve a report on the occupational lease(s). Many businesses do not appreciate that if a property is owned by a holding company but occupied by a trading company, the bank will often require a commercial lease to be put in place

between the parties in order to ensure that the position is formally regularised.

The bank will also often require full searches and enquiries to be carried out in relation to the property which usually include a local search as well as searches covering environmental, water/drainage, mining and a chancel repair liability. These searches can reveal important information in relation to the property (e.g. statutory schemes and proposals) which could affect the bank's decision to lend and solicitors will be unable to give a clear Report on Title or Certificate of Title without undertaking them.

An up-to-date valuation report, in which a surveyor will make various assumptions in arriving at the final valuation, will also normally be required. It is for the solicitors to confirm whether the assumptions correctly reflect the position and whether any adverse matters need to be reported to the bank.

The bank's aim in securing a solicitors' Report on Title or Certificate of Title is to ensure that it can rely on these documents should it need to exercise its power of sale pursuant to the Legal Charge in the event of the company's default. In such circumstances the bank will usually wish to dispose of the property in order to use the proceeds of sale to recover sums due to it and the bank will wish to ensure that there are no factors which would affect its ability to do so. If there are adverse matters affecting the property which could hinder this process then the property's value for secured lending purposes will be affected.

The easiest way to ensure that any refinancing proceeds smoothly and to reduce delays is to ensure that good quality legal advice is obtained on the acquisition of the property so that the company is fully appraised of any title issues and appropriate solutions are sought at that time.

It is not unusual for adverse matters to be revealed by solicitors' due diligence involved in producing the Report on Title or Certificate of Title which were not revealed by the solicitors acting on the

original acquisition of the property. Many of these issues should have been capable of discovery at the acquisition stage and can be as serious as a discrepancy in the boundaries; the property not having a legal right of way; the property not having a valid planning permission for the existing use; or the adverse results of an environmental search.

Whilst these issues can normally be resolved by carrying out further investigations, or producing evidence in the form of one or more statutory declarations and/or indemnity insurance, they will cause delay. In contrast these matters had been dealt with on the original acquisition of the property, the company is less likely to experience the frustration of delay when a move to an improved banking package is being considered, which may be an urgent and pressing requirement of the business.

In short, by obtaining quality legal advice at the acquisition stage from solicitors who are at all times efficient and thorough in their approach, your business will be better placed to implement future strategic decisions, such as refinancing.



Benjamin Jones