

# The Brief

## Take the stress out of property buying

Our two experts give their opinions on the 'credit crunch' page 3



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# Win a fabulous stay at Dunblane Hydro Hotel

One lucky reader will be pampered with a wonderful overnight break for two, including dinner, bed and breakfast.

The warmest of Scottish welcomes awaits you at the award winning Dunblane Hydro Hotel. Each of the 206 well appointed bedrooms are serviced to the highest of standards and include all of the modern facilities required by the discerning guest.

Breakfast and dinner are served in the Hydro's Balmoral Restaurant, where you can enjoy both superb choice and mouth-watering local produce served by the hotel's friendly team.

Work up an appetite with a round of golf at one of the many local courses or a brisk workout in the Triangle Health & Fitness Club. For those seeking relaxation and pampering, have a leisurely swim and a soak in the bubble pool before indulging in one of the fabulous spa treatments provided by the beauty team.

To have a chance of winning simply answer the following question:

New legislation affecting the disposal of assets has introduced a new single rate of Capital Gains Tax. What is the new rate?

Now just complete the enclosed postcard or email [competitions@bsemple.com](mailto:competitions@bsemple.com) on or before 30 June 08.

# Pastures new for Bird Semple partner

After more than 4 happy years as a Partner with Bird Semple, Elspeth Talbot is stepping aside to take up an offer she simply couldn't refuse.

Elspeth is going to work at Rumbol Products, a family owned SME which was founded in 1988, and which services the agricultural sector internationally.

Elspeth says: "I have enjoyed my time with Bird Semple very much and whilst it will be difficult leaving the legal world behind, I must admit that I am looking forward to a completely new and different role."

Managing Partner Frank Fletcher adds: "This is a fantastic opportunity for Elspeth and her family and we wish her every success. And whilst we are extremely sorry to see her step down as Partner, Elspeth will maintain her connection with the Firm as a Consultant."



# Short listed at Scottish Legal Awards 2008



2008 started with the news that the firm was shortlisted as a Finalist at The Cuthbert Scottish Legal Awards, in the Private Client Firm of the Year category.

Frank Fletcher comments: "Whilst we were pipped at the post for the main award, we are delighted to have been nominated as Finalists at these prestigious awards. It is a testament to the hard work and dedication of all the team at Bird Semple."

The Cuthbert Scottish Legal Awards were organised in association with The Scotsman newspaper.

In 2007 at the prestigious Law Awards of Scotland, Bird Semple was voted Law Firm of the Year (under 50 fee earners).

# A helping hand...

Our staff and clients have big hearts when it comes to helping others. The firm continuously participates in charity events whether organised internally or by charities themselves.

Every month, our staff participate in a "dress-down" day with the proceeds given to causes that are close to their hearts. To date this has raised hundreds of pounds. Over and above that, the staff have kindly given their time recently, taking part in a series of events which have raised over £2,300 for charities including Red Nose Day, Enable Scotland and Children 1st.

At Easter, the team organised a 'Name the Easter Bunny', on behalf of the Christian Lewis Children's Cancer Care Charity. From the list of suggestions, Frank Fletcher, while locked in his office, picked a name at random. Gemma Shannon was the lucky winner and is seen pictured with her bunny, Ruth. This appeal raised over £70.

So, a huge thanks to everyone who has generously taken part in our fundraising efforts to date!



*Gemma Shannon*

# The housing market and the credit crunch

**W**ith all that we've been reading and hearing in the media about the housing market, Partners Karen Lang and Karen Fulton, who head up the Conveyancing department, give their views on the shape of things to come.

"Whilst there is no denying that the housing market has been affected by the 'credit crunch', the old adage 'location...location...location' remains true," notes Karen Lang. "Areas such as the West End of Glasgow and certain areas within the Southside of Glasgow appear to be retaining their value and still selling well. Across the country, however, house-hunters seem to be taking longer to make up their minds about which property they want to buy. Where once they would be instructing their solicitors to make an offer for a home which they have viewed only hours previously, many are now proceeding at their leisure, arranging second viewings and generally not being rushed into making a final decision.

"Until recently, the majority of properties sold relatively quickly however, over the coming months," says Karen Fulton, "estate agents are going to find they will have to work much harder and employ more aggressive marketing strategies to ensure that sales are completed timeously. As we work with estate agents every day, we are able to advise our clients on which particular firms have the best experience and are the more established in a given area. In doing so, we can offer an informed opinion on which estate agents might be best suited to sell individual clients' homes."

Perhaps the sector worst hit by the credit crunch in all locations is the first time buyer market. First time buyers are struggling as a result of the credit crunch to obtain mortgages as banks are reluctant to provide large mortgages that may overstretch purchasers. Properties which traditionally would be purchased by first time buyers are therefore taking longer to sell and this is having a knock on effect on second time buyers moving from their first home further up the property ladder. Second time buyers therefore, whilst they are having no difficulty in purchasing, are in certain areas finding it more of a struggle to sell and this potentially could cause difficulties further up the property ladder with second time buyers reluctant to conclude missives on purchases prior to selling. As Karen Lang explains: "The only way to avoid such a situation where pressure is put upon a buyer to conclude missives in a purchase before missives are concluded in their sale, is in fact to sell first. This is certainly something which is being considered more and more in the current climate and whilst there are risks in selling first, many prospective purchasers find this a lesser risk than being in a binding contract to buy and thereafter struggling to sell."

Caution should be the watch word for those considering certain new build properties.

Karen Lang explains: "In recent years it has almost been the norm that the valuation provided by a surveyor when inspecting a newbuild has been equal to the price being paid to the developer. However, with all the publicity surrounding values of newbuilds,



*Karen Fulton*



*Karen Lang*

particularly, to be fair, down South, surveyors and lenders are becoming more cautious when it comes to newbuilds and it is now more important than perhaps it has ever been to ensure when buying from a builder that you are getting value for money. This does present the opportunity for buyers to drive a much harder bargain with developers and the number of enticing offers being made by housebuilders at present offering cashback, part exchange or such similar incentives all point towards it being a buyer's market."

Karen Fulton adds: "One should never underestimate the importance or the knowledge of surveyors. They are best placed to ensure that purchasers pay the genuine and current market value for a property at the time of purchase and, prior to committing to any purchase, surveyors' advice should be sought.

Househunters should not be overly influenced by internet sites which give details on prices achieved for similar properties but offer no background on the properties themselves and it should be borne in mind that many of the property programmes currently on television are now dated and should be treated as such. There are dozens

of factors which influence the price achieved for a property, including simple things like time of year, the time of day and even the weather on the day that a property is viewed by a purchaser. Ultimately the best advice that should be heeded is from the experts "at the coal face" and whilst other information such as details of previous sales in the area and asking prices placed on properties by estate agents may prove to be useful guidelines, in many cases this information can, in part at least, be disregarded. Every property must be viewed individually. Again, we work with surveyors on a daily basis and we are comfortable in advising clients on the individual or firm who will be best placed to value the property they are interested in."

Karen Lang and Karen Fulton also point to legislation to be introduced at the end of the year which will bring about the single survey. However in overall terms, there is a consensus that whilst this is expected to have an impact on the market, and in the next newsletter, Karen Lang and Karen Fulton will offer an in depth insight into the legislation and its consequences. Whilst there will inevitably be ups and downs over the coming months, one thing is certain and that is that the market will settle down again, eventually.

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# Peace of mind

Nearly two out of three Scots die without making a Will, which can lead to all manner of complications. So here are ten reasons why every adult should have an up-to-date Will.



*Pamela Niven*

## 1 Peace Of Mind

Most of us worry about how those who are dearest to us would manage if we were not here to provide for them. By making a Will, you take away these worries and uncertainties. A Will gives you and your family the security of knowing everything is in order.

## 2 Children

It is not pleasant to think about what would happen if both you and your partner died in an accident. Who would look after your children? If you don't appoint a guardian or don't make a Will at all, a Court may have to decide who gets custody of your children (this may not be one of your family).

## 3 Beneficiaries

Who you remember in your Will is entirely up to you. You may want to leave money to charities or other organisations as well as relatives and friends. It may be equally important to you that someone does not benefit from your estate when you die.

## 4 Executors, Trustees and Guardians

These are the people who make sure that the wishes in your Will are carried out. In writing your Will you determine who should administer your estate and choose the powers they are to have, eg power to invest and pay money for the benefit of young children or those with disabilities or special needs. If you have your own business, the powers of your Trustees may be vital in keeping it going.

## 5 Homemade Wills

It is possible to make your own Will, but often this won't achieve what you want. This can be because legal formalities have not been complied with, or even because the person making the Will didn't express themselves clearly. Don't leave things to chance.

## 6 No Will

How often have you heard someone say 'I don't need a Will, it'll go to my spouse anyway.' Most people don't know what will happen if they don't have a Will, or if events don't turn out as they expect. The rights of stepchildren, or a second wife or husband, or the children of a first marriage also need to be taken into account. If you die without making a Will, the law of intestacy will apply. This law can be very insensitive and could mean all your belongings end up with people who you would rather did not benefit at all.

## 7 Too Much Effort

One of the biggest myths of all is that making a Will takes lots of time, energy and money. In reality, all it takes is an hour or so of your time and normally it is a fairly straight forward process.

## 8 Alterations

It is important to make a Will, but it is equally important that you look at your Will regularly to reflect changes in your own and your family's circumstances. Out of date Wills can be more dangerous than having no Will at all.

## 9 Taxes

Inheritance Tax may have to be paid at the rate of 40%. However with good advice and planning, you can cut your tax bill or even avoid paying altogether.

## 10 Law or myth

Many people have seriously misinformed views about the Law. Some people still believe that, in the absence of their husband or wife, everything will go to their eldest son. (This only ever applied to houses and land, and has not been the case since 1964.) Don't leave your loved ones at the mercy of a 'law' half remembered from newspaper articles.

If you would like help making or updating your Will, please talk to Frank Fletcher, Tom Monteith, Pamela Niven or your usual Bird Semple contact.



# Buy Or Sell First?

**H**istorically, when it comes to property, buying before selling is done almost out of habit rather than reason. Here Karen Lang, Property Partner with Bird Semple Private Client Solicitors considers the situation.

## Why Do We Buy First?

Buying is exciting and interesting, as it marks a new start. Once we have viewed our dream home, we tend to make an offer and suffer the consequences. This is simply because it would seem to be far worse to lose the dream home than suffer the often unknown risks and stress should our existing house not sell quickly or at all!

Selling is also nowhere near as exciting as buying. At first, dealing with viewers is something we can live with but rapidly it can feel as though our space is being invaded. However, we need to sell to fund the new house, so buying first may be the impetus we need to paint the living room or clear the garage and get the house on the market.

## So what are the risks involved when making our decision to buy first?

When you submit an offer to purchase, you only become contractually obliged to proceed with the purchase, once missives (the contract) are concluded. However, unless you have specifically made your offer for your new house, conditional on selling your existing property, you are not able to stall concluding a contract indefinitely. A decision therefore has to be made if you are purchasing first to conclude the contract believing that your own property will sell, and that the sale will complete on time to release the funds you require for your purchase.

## What Happens If Your House Takes Too Long To Sell?

If you have given yourself a long date of entry, you should be able to sell your property with a similar date of entry to your purchase. It may not however always be possible for these dates to match exactly, so you may have to look at alternative funding as your sale proceeds will not be available in time. Provided your own property has sold and missives are concluded, your bank should be able to provide you with a "closed" bridging loan. There is a general misconception that bridging loans are prohibitively expensive, but in many cases it is in fact a useful tool to "bridge" the gap between the two transactions.



## What If I Can't Sell My Own Property?

Thankfully, few of us find our existing house cannot be sold. However, in the worst case scenario, if missives are concluded for your purchase and your existing house hasn't sold, then there are still solutions. One option may be an "open" bridging loan, available through some banks. This is more expensive than "closed" bridging, however it can buy the extra time required. Thankfully this situation is uncommon and the exception rather than the rule.

In practice therefore, whilst there are risks in buying rather than selling first, solutions can often be found to problems that can arise in doing this.

## So, should I sell first?

This is becoming more common, because you know that, by the time you purchase, funds will be available to you to finance your acquisition and you will also have a fixed date of entry. The pressure however is then on to find a new home which, depending on the market, may or may not be your "dream home". So when the time comes to move, if there is no property on the market that inspires you, it may be an idea to continue your search whilst living in rented accommodation or with family and friends.

For some of us, the risks involved in buying first are of far more concern than the thought of living with "the in-laws" for a couple of months, but perhaps the thought of living with the in-laws for a couple of months is what spurs so many of us on to buying first!

Article compiled by: Karen Lang, Partner  
Bird Semple, Private Client Solicitors.

T 0141 304 3434. [www.bsemple.com](http://www.bsemple.com)



# Tax service for private clients

## Tax Services For Private Clients

As one of Scotland's leading Private Client Solicitor practices, we pride ourselves in offering a targeted range of services to meet our clients' needs.

Recently, Douglas Seaton, formerly with the Inland Revenue, joined the team. His role is to ensure that our clients, including those running their own businesses, achieve maximum use of tax breaks, mitigate personal taxes, maximise investment returns and protect their wealth for current and future generations.

Here are a few of the ways in which the team can help!

## HM Revenue And Customs (HMRC) Enquiry Cases

Experience tells us that the mild opening letter from HMRC, saying it wants to "enquire" into your Tax Return, can quickly turn into a nightmare. Whilst only a percentage of individuals are selected for review, if it's you, it is important to have an effective response strategy in place as quickly as possible.

We can offer an insight into how HMRC is thinking and respond effectively on your behalf. With over 30 years personal experience working for HMRC, Douglas can offer the correct advice, ensuring that:

- Only information and documents that HMRC is legally entitled to are provided.
- The HMRC Officer is working to current legislation and, more importantly, to the strict guidelines laid down by HMRC.
- HMRC can actually demonstrate that there is a risk of tax being lost.

Douglas can also advise on several other issues, such as penalties, technical issues, error or mistake relief, and the complaints procedures. Should additional liabilities arise, it is important to be aware of the options that are open to both sides and how the final settlement can be kept as low as possible.

## Tax Returns

We provide a comprehensive service to ensure tax returns are completed correctly and submitted on time every year. Our sophisticated IT system ensures this is done as efficiently as possible with Returns submitted via the HMRC online service. In addition, for clients of the practice, we can:

- Provide full Tax Calculations and advise on exactly how much tax you owe and when you need to pay it.
- Instigate claims to repayment where appropriate.
- Deal with HMRC regarding any amendments required to Self Assessment Returns.
- Deal with PAYE Notices of Coding.
- Advise on claims and elections to which one may be entitled..
- Advise on tax planning and, if possible, reduce your tax liability.

## Personal Tax Returns

Our Tax Return service is based on each individual's circumstances, so your quotation is unique to you.

We have reviewed our offering structure very carefully and it seems that, as everyone's requirements and circumstances are different, it would be impossible to set a single fee. We consider this impractical and inequitable, and have therefore opted for a system that reflects the work actually done.

Experience has shown that when it comes to self-assessment tax returns, people generally want the whole package and not simply to have it done piecemeal, which is why our service is comprehensive.

Unlike other Tax Return services, you do not have to complete several questionnaires which you then submit with the Return. Simply send in your bank statements and dividend vouchers and we will do the rest. Furthermore, you will only be invoiced once your completed tax return has been accepted and processed by HMRC.

## Capital Gains Tax Update

Legislation affecting the disposal of assets on or after 6 April 2008 has introduced a new single rate of Capital Gains Tax of 18%, regardless of whether the asset is a business asset or a non-business asset.

Other changes include:

- Withdrawal of taper relief
- Withdrawal of indexation allowance
- Simplification of the share identification rules.

Following intensive lobbying, the Chancellor amended his proposals to the effect that the first £1 million of gains realised by some entrepreneurs will continue to be taxed at 10%.

The annual exemption for 2008/09 will be £9,600 for individuals, personal representatives of deceased persons and trustees of certain settlements for the disabled. The annual exemption for most trustees will remain at 50% of that, £4,800.

**If any of the services in this article are of interest, please contact Douglas Seaton on T 0141 304 3434 or email: [ds@bsemples.com](mailto:ds@bsemples.com)**



*Douglas Seaton*