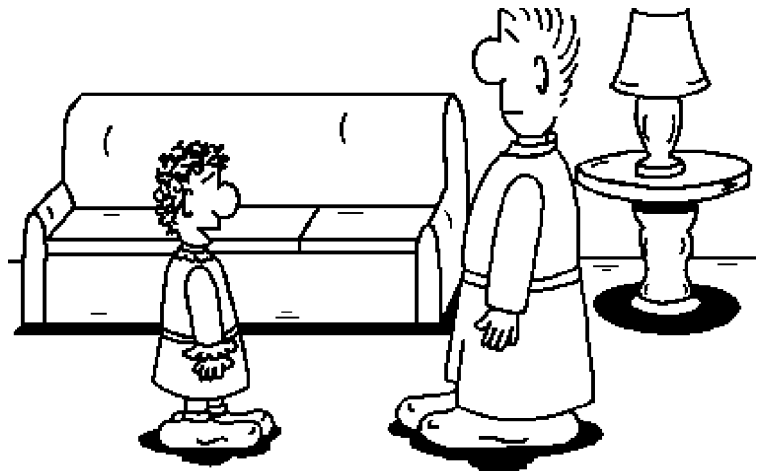


CeMAP 2/3/Bridge Revision Guide Trial Version



Guarantors and sureties

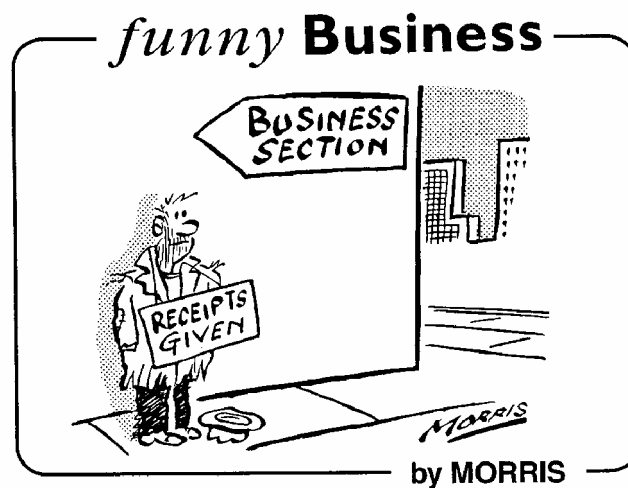
- A guarantor is someone who makes a legally enforceable contractual commitment to be responsible for paying back the loan if a principal borrower defaults.
- A surety is a guarantor who puts up something of value as collateral.



"I would probably do better in school if I had a pony."

Housing Associations

- Non-profit-making organisations that provide housing for rental or purchase (or schemes involving a combination of the two).
- Regulated by the Housing Corporation. If they are registered with these bodies, they can qualify for government grants to develop housing.
- Many Housing Associations have taken over the running of council housing
- Many financial institutions are prepared to make long-term funds available to properly constituted and well-run associations.
- In the mid 1990's a large amount of money given to Housing Associations, was quickly used to buy repossessed properties that littered private housing estates at the time



Ineligible Borrowers

Mental incapacity

- Persons of unsound mind cannot borrow in their own right
- A person of unsound mind cannot make a power of attorney.
- If such a person requires housing to be funded by a mortgage, a person appointed by the Court of Protection represents them.

Minors

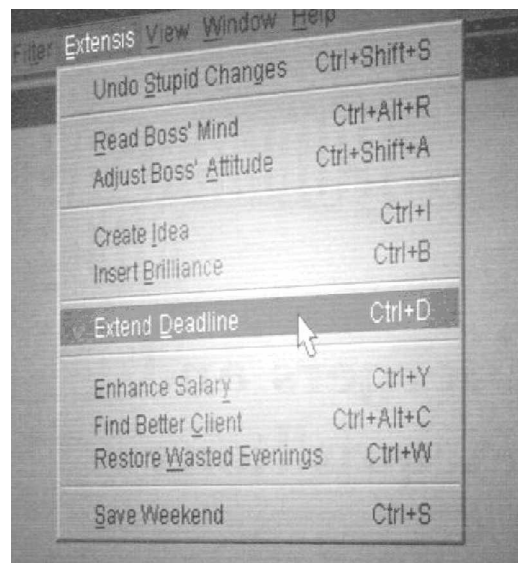
- Persons under 18 years of age.
- Law of Property Act 1925: a minor cannot hold an interest in land.
- Minor's Contracts Act 1987: a minor cannot be bound by a contract unless it is for "necessities".
- Most lenders decline to enter into contracts with minors.
- Consumer Credit Act 1974 – a minor cannot enter into an agreement regulated by this Act - if they do the contract is unenforceable.

Undischarged bankrupts

- Insolvency Act 1986: a bankrupt is any person who has been made subject to a petition for bankruptcy by the County Court.

Freehold

- Freehold, leasehold and Commonhold are the only types of land tenure in England and Wales at present. The Law of Property Act 1925 abolished all others.
- Freehold is the nearest you can get to absolute ownership.
- The crown has the overriding right to all property in its domain.
- The freeholder effectively owns the land, there may be many restrictions on what he can do with it, e.g.:
 - ∅ The title may contain restrictions.
 - ∅ The local authority may impose restrictions on use or alterations.
 - ∅ Town and country planning legislation will apply.
 - ∅ Utilities (water, electricity, etc.) may have statutory rights.
 - ∅ There are obligations to people who enter the premises.
 - ∅ There are obligations to people who pass the building.
- Flying freehold is where part of someone's freehold property hangs over someone else's land.



Leasehold

- A freeholder effectively rents out land that he owns, for a fixed period, to others who then have the use of the land, subject to the payment of an annual ground rent, for as long as the lease remains operative.
- At the end of the lease, the land and any property on it revert totally to the freeholder.
- The leaseholder is bound by the same restrictions as might affect the freeholder if he had not leased the property. In addition the freeholder may himself impose other conditions, e.g.:
 - Ø Obligations as to repairs and maintenance;
 - Ø Constraints on the use of the property;
 - Ø Restrictions on alterations;
 - Ø Duties in respect of any common areas (e.g. stairs in a block of flats).
- Lenders are interested in the terms of a lease, as a restrictive lease may reduce the resale value of a property.
- Unexpired term
 - Ø The time remaining until the end of the lease is very important, since the land will then revert to the freeholder.
 - Ø The value will fall as the lease approaches expiry date.
 - Ø Lenders typically require there to be 30 - 40 years remaining on the lease.

Forfeiture

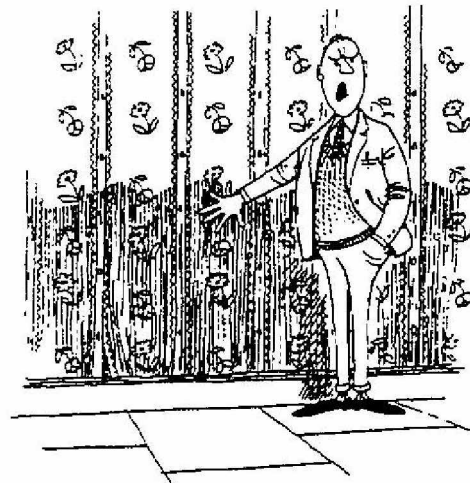
- Failure to comply with the terms of a lease can result in the lease being terminated, with the property reverting to the freeholder.
- This would be a problem for a lender, whose security would become worthless.
- Lenders therefore insist on a clause permitting them to fulfil the terms of a lease if the borrower fails to do so.
- Lenders can insure against the effects of forfeiture.

Commonhold

- The Commonhold and Leasehold Reform Act 2002 introduced a new form of tenure called Commonhold.
- Commonhold will provide a better system for the future ownership and management of blocks of flats and other interdependent buildings with shared services and common parts.
- Commonhold will be available for new developments and the Act contains provisions which will allow conversion to Commonhold.
- Commonhold is a new form of Freehold ownership which has the flexibility of Leasehold so far as the division of the property is concerned. In a block of flats the individual flats may be Commonhold, which is a freehold title and not a leasehold for a term of years. The flats will therefore not start to devalue towards the end of their leases.
- Where a development is to be Commonhold the flat owners will own their units as Common holders. The common parts of the block (roads, stairs, lobbies etc) will be owned by the Commonhold Association which will be a company limited by guarantee. The members will be the individual unit holders on the development.
- The Commonhold Association will be responsible for the running of the development and the raising of service charges (called Commonhold Assessments).
- The development can be mixed use and could consist of both houses and flats.

Leaseholders' statutory rights

- Under the Leasehold Reform, Housing and Urban Development Act 1993 and the Commonhold and Leasehold Reform Act 2002, leaseholders have the following statutory rights:
 - ∅ To buy the freehold;
 - ∅ To extend the lease by up to 90 years.
- The appropriate circumstances are
 - ∅ The lease is for residential purposes; with at least 2 flats
 - ∅ The original lease must have been set up for at least 21 years; the Commonhold and Leasehold Reform Act of 2002 insisted that only 2/3rds of leases had to be for at least 21 years
 - ∅ No more than 10% of the building's floor space must be devoted to commercial use (for example, shops on the ground floor); the Commonhold and Leasehold Reform Act of 2002 changed this to 25%



" THAT'S NOT RISING DAMP. IT'S BEEN THAT HIGH FOR YEARS. "

Covenants

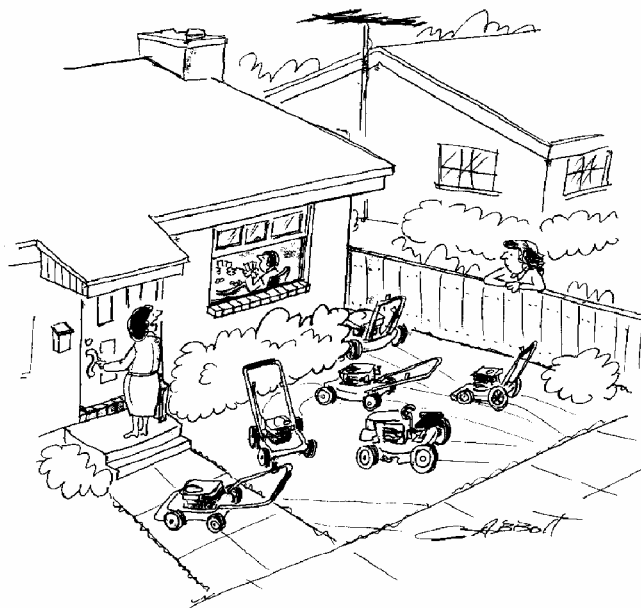
- These are conditions of title imposed by an earlier owners or builders

Positive covenant

- States what an owner/occupier must do.
- E.g. maintain a certain boundary. Usually the fences/boundaries that you must maintain are shown in the title deeds.

Restrictive covenant

- States what an owner/occupier must not do.
- E.g. conduct a business from the premises.



"I FORGOT. POKER THIS AFTERNOON."

Easements

- The right of the owner of one piece of land (the dominant tenement) over the land of another (the servient tenement), e.g.:
 - Ø Right of way
 - Ø Right to light or prospect
 - Ø Right to ventilation
 - Ø Right to hang a sign on another house
- Onerous easements will be detailed in the Charges register at the Land Registry

Land Registration

- Land registration is the process by which the State guarantees the validity of a title in a registry.
- When land is registered, it makes conveyancing easier, because a search of the register confirms the quality and nature of the title beyond doubt
 - Ø Originated in 1897.
 - Ø The main legislation is the Land Registration Act 1925.
- Since registration takes place when land is legally transferred, unregistered land will not become registered land until its next change of ownership.
- Since 1990, all properties that have been bought or sold have had to be recorded with the Land Registry. Nearly 19 million titles are registered – about 4/5 of a total of some 24 million in England and Wales. The Land Registry aims to get all titles in England and Wales registered by 2012.
- The Land Registry is now on line (www.landregisteronline.gov.uk). To find out who owns a property, enter the address and postcode of the property and its registered owners name will be given to you.



"MOTHER STILL LEAVES A LIGHT ON FOR ME."

Property register

- Title number.
- Written details.
- Plan of the property.

Proprietorship register

- Ownership and the nature of the title:
 - Ø Absolute – clear title established.
 - Ø Qualified – some conditions attach to the title.
 - Ø Possessory – if the deeds are lost
 - Ø Good leasehold – Title to the freehold is unknown although everything else is in order.

Charges register

- Details of charges over the property, e.g.:
 - Ø First mortgagees
 - Ø Rights of second mortgagees
 - Ø Spouses' interests under the Family Law Act
 - Ø Official receiver charges
- Charges can be registered at the Charges Register even if the property is not officially registered.

