

Is COVID-19 a MAC event?

With the current uncertainty in world markets and commentators predicting worsening economic and financial conditions, the need for lenders and borrowers to consider their obligations under their finance documents has become even more pressing.

Many facility agreements include a material adverse change (MAC) clause. A MAC clause is a sweeper clause intended to provide lenders with protection against unforeseen events which have, or may have, a significant detrimental effect on the borrower's business. A MAC clause is likely to contain a number of provisions based on MAC, including a representation that nothing has happened, that has or will have a material adverse effect on the borrower's business, financial condition or ability to perform its obligations. MAC clauses are rarely relied upon, generally due to their inherent imprecision and limited judicial consideration.

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COVID-19 and Charging Issues

The new normal of social distancing and working remotely have thrown up a number of unintentional consequences that affect the Charging process, a few of which we list below :

VALUATIONS

No inspections are permitted, so no new loans can be made (unless inspected before lockdown). Desktop valuations are being issued on re-financings and these are being caveated with COVID 19 wording pursuant to RICS guidance (which valuers will not exclude) , typically caveating the report as follows:

" In the current circumstances, ... less weight is attached to previous market evidence for comparison purposes, to inform opinions of value. The current response to COVID-19 means that an unprecedented set of circumstances applies on which to base a judgement. The valuation is therefore confirmed on the basis of "material valuation uncertainty" as per VPS 3 and VPGA 10 of the RICS Red Book Global..... Consequently, less certainty – and a higher degree of caution applies.....given the unknown future impact that COVID-19 might have on the real estate market, it is recommend that the funder keeps the valuation of these properties under frequent review".

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The use of Electronic Signatures

The precautions prescribed by the government to work from home are raising queries about whether it will be possible to legally execute documents by electronic signature. Electronic signatures are generally valid under English law. The Law Commission published a report in 2019 which confirmed that electronic signatures are valid under current law, including executing deeds, provided that all execution formalities are satisfied and the person signing the document intends to authenticate the document.

[Click here to read more.](#)

Housing Finance Team



PATRICIA UMUNNA
Partner
020 7593 5103
pumunna@wslaw.co.uk



JAMES DUNCAN
Partner
020 7593 5017
jduncan@wslaw.co.uk



ZOFIA KORDEK
Senior Associate
020 7593 5000
zkordek@wslaw.co.uk

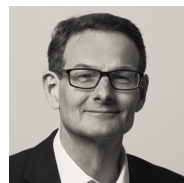


LUCY GRIMWOOD
Associate
020 7593 5168
lgrimwood@wslaw.co.uk



GEMINI CECIL
Solicitor
020 3735 1914
gcecil@wslaw.co.uk

Charging Team



ANDREW MURRAY
Partner/Head of Housing
020 7593 5092
amurray@wslaw.co.uk



RUBY GIBLIN
Partner
020 7593 5016
rgiblin@wslaw.co.uk



JILL O'REILLY
Charging Team Leader
020 7593 5067
joreilly@wslaw.co.uk



ANNETTE MONTHY
Associate
020 7593 5062
amonthy@wslaw.co.uk



ALEXANDRA PETO
Associate
020 7593 5031
apeto@wslaw.co.uk



HAYLEY TURNER
Chartered Legal Executive
020 7593 5245
hturner@wslaw.co.uk