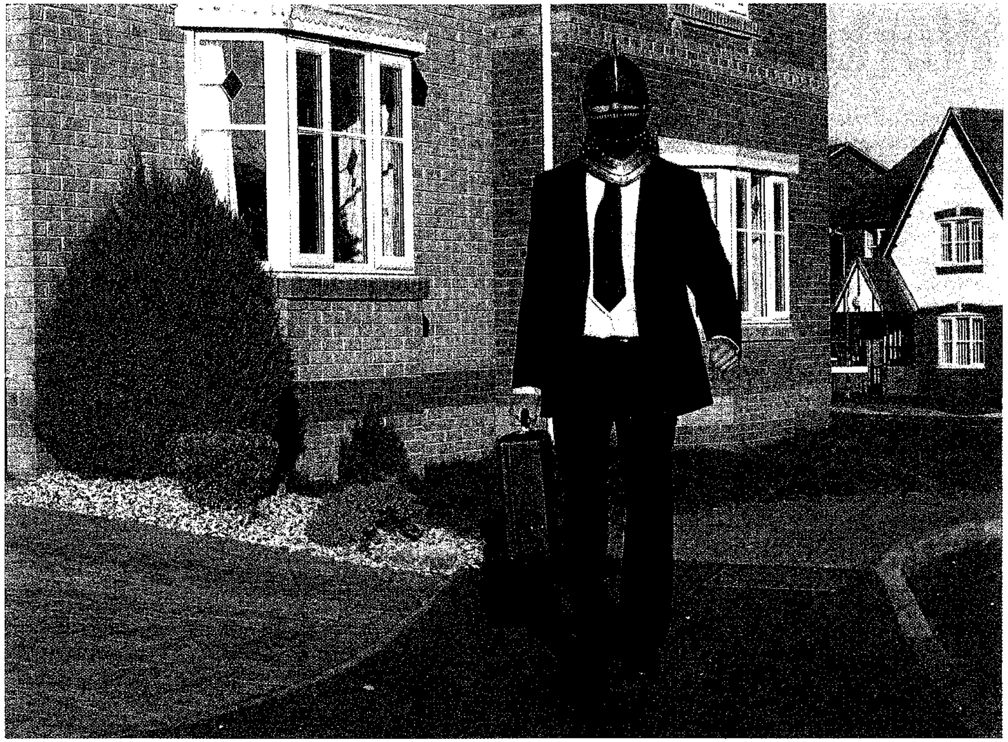

When times are tough

With tough trading conditions likely to continue into 2012, insolvency specialist Conrad Beighton offers practical advice to aid the survival of your business

The property sector has been particularly hard hit by the recession and estate agents continue to struggle with a reduction in available stock, transaction volumes and property values. On top of this, lending from the banks remains elusive and the prospect of raising finance proves difficult. So what steps can estate agent business owners take to avoid their company steering into troubled waters?

It pays to be 'in the know'

The first step is to keep a really close eye on how the business is performing on a weekly basis. Scrutinise the company's financial information to identify and rectify any deviations or budgetary controls that aren't going according to plan. Cost control and cash management are paramount to the health of the business in these difficult times, so adopt careful controls in areas such as advertising, marketing and staffing costs.

Give plenty of warning

Where possible, it is best to avoid a sizeable drop in working capital and an increasing overdraft.

It helps to maintain a good relationship with your funders, such as your bank, and talk to them early on if things are looking difficult. The more warning you can give, the more chance you'll have to renegotiate or find a solution that everyone will accept. This goes for HM Revenue and Customs too. If you have a strong business case, they will consider restructuring VAT and PAYE payments through a time to pay arrangement. In difficult times, key stakeholders are always keen to see a viable business survive and so early contact is vital.

How robust is the business?

Another area to monitor is the robustness of the business. That involves assessing how successful your team is at attracting new clients and, if necessary, finding ways to make improvements. How successful are the staff at building up a good reputation for the business? Does the business experience staff loyalty and retention or do employees invariably jump ship? How are you performing against the competition?

In a recession, an estate agency business needs to be able to survive the downturn and a fall in income. It will clearly be reliant upon funding and the ability to work within its existing facility or be able to demonstrate a short term increase in borrowing.

Cash flow vs letting deposits and rental money

For those estate agents operating a letting side to their business, it is important that client deposit and rental money are held in a designated clients' account – separate from the agency's business account. This is a requirement of ARLA and other professional bodies' codes of practice to protect landlords' interests should a letting agent become insolvent. No matter how difficult the cash flow situation, do not be tempted to dip into client letting funds. In fact, some landlords may insist you use the Deposit Protection Service. Here, deposit and rental monies are paid over to the scheme administrators, so there can be no question of an agent utilising the funds.

Administration and pre-packs

If circumstances continue to look bleak and the business is insolvent, an estate agent's business may still have a chance of survival by going into administration and, in particular, by selling the company as a pre-pack. A pre-pack is a deal for the sale of an insolvent company's business and assets which is agreed in principle before the company goes into a formal insolvency process.

The 'in principle' deal is usually worked out before an insolvency practitioner is appointed and then it is ordinarily executed rapidly once the appointment is made. The sale is always subject to obtaining independent valuations of the business and assets. It is not uncommon for the business to be sold to the former management, although this has to be in the best interests of the creditors.

Pre-packs demystified

Research suggests that pre-packs do retain more jobs than other business sales and they also tend to offer greater returns to secured and unsecured creditors. The speed with which they take place means they increase an insolvency practitioner's chances of negotiating the best possible price for the business and secure greater returns for creditors.

Conrad Beighton is a principal at Shipleys LLP and specialises in corporate recovery. His work covers all aspects of personal and corporate insolvency and his clients include not just individuals and businesses, but also lenders and other professional advisers. He enjoys working with individuals at all levels, especially those who often believe their problems can't be overcome. Conrad is a Fellow of the Association of Business Recovery Professionals and a member of the Insolvency Practitioners Association.

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Pre-packs tend to be particularly useful in companies where the assets are the people and where continuity of the business is paramount to maximising the chance of the business surviving in some form. Also, where a business is dependent on the general public, any delay in the sale of the business could materially affect the goodwill. Shutting the doors and ceasing to trade would effectively end the prospects of salvaging the business, as clients would go elsewhere in an already competitive market.

Some critics have suggested that pre-packs are invariably sold back to the owners of the original business and without the liabilities (this is known as a phoenix company). But not all pre-packs are sold back to the original management and it is not exclusively a feature of these types of administration. In fact, the insolvency practitioner is legally required to get an independent valuation of the business and be seen to properly advertise it to all potentially interested buyers. That independent valuation will take into account the estate agency's tangible and intangible assets.

Any agent wanting to know how going into administration, or using a pre-pack, might affect their membership of NAEA or ARLA should contact the Associations' regulation department at regulation@nfopp.co.uk.

The implications for agents

Clearly, estate agents are struggling like many other organisations and, if their management team feel they are not able to see out the current unstable period, then an insolvency process may be necessary.

Administration can provide a solution which allows some form of continuity, whether that is through a sale to the former management or a third party. This option usually results in a better return for creditors than liquidation. Early discussions with an insolvency practitioner are vital, as leaving key decisions to the last minute can often result in the process being determined by creditors, rather than the owners of the business. ■

With offices in London, Godalming (Surrey), and Saffron Walden (Essex), Shipleys LLP provides a full range of accounting, taxation and business advisory services. The firm's Birmingham office specialises in Corporate Recovery work. www.shipleys.com. Contact Conrad Beighton on 020 7766 8560 and 0121 698 8566, email: BeightonC@shipleys.com