

Chapter 2: The System of Land Registration and Third Party Rights

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Aims of this Chapter

This chapter will enable you to achieve the following learning outcome from the ILEX syllabus:

- 1 Understand conveyancing practice in relation to interests in land and the transfer of legal estates

2.1 Introduction

In **Chapter 1** we discussed briefly the two estates in law, freehold and leasehold. Either estate can be held as registered or unregistered land. Whether land is registered or unregistered depends on whether it has been transferred (or a “trigger” has occurred) since the various **Land Registration Acts** came into effect. The whole country has been subject to compulsory registration since December 1990 but some parts of the country were subject to it earlier. There are a number of “trigger” events which mean that the owner has to register the land at the Land Registry. At present, the Land Registry is pushing forward with a voluntary scheme of land registration, offering reduced fees for the voluntary registration of land.

In order to convert unregistered land to registered land an application has to be made to the Land Registry providing the title with documents in support. This is the same process that buyers of unregistered land have to follow when they apply to register the transfer of ownership.

The application is made on **Form FR1 (Document 23 of the Appendix)** with the documents in support listed on **Form DL (Document 24 of the Appendix)**. The documents will be those used to prove title and rectify any issues that arose. We will consider this in more depth when we look at unregistered land as the issues we consider as buyers will be broadly the same that the Land Registry considers when registering the property after completion.

The registered system is now governed by the **Land Registration Act 2002 (LRA 2002)**, which came into force in October 2003. It is also necessary for us to look at some older law, as many titles will have been created and dealt with prior to that date. It may be necessary for a conveyancer to spot whether land should have been registered previously, but has not been due to an error.

2.2 Registration under the Land Registration Acts 1925–1997

(1) The system of land registration was introduced in the 1920s with the aim of eventually replacing the older, unregistered system of conveyancing, which requires the title deeds to be produced and checked on the occasion of each successive dealing with the land. Under the system of land registration, the register is proof of the seller's title and records a description of the property, the nature of the estate held by the seller and many third parties' rights over the land.

(2) It is the register itself which is proof of ownership and so it becomes an owner's proof of the title to a property. There is no longer a need for title deeds as evidence of ownership. The names of any buyer must be entered on the register. Upon a sale of registered land, the legal estate does not pass upon completion of the transaction (as in unregistered conveyancing) but upon registration – that is, when the seller's name has been deleted from the register and the buyer's name is inserted as the “registered proprietor” (registered owner).

(3) The register is a register of titles, not of land: each estate is registered with a separate title so that there may be several registers relating to one piece of land – one for the freehold estate and one for each registrable leasehold estate.

(4) The system was intended to provide a complete and up-to-date record of the estate owner's title so that, when he sold, any buyer would be able to rely upon the register as conclusive evidence of all matters affecting the seller's title. This aim has not been fully achieved, as certain third party rights are binding upon the estate owner and buyer even if they do not appear on the register (these are known as interests which are overriding and are considered further in 2.7.2).

(5) Details of beneficial interests arising under trusts of land were kept off the register. Those interests were protected by entry on the register notifying any buyer that the property is trust property and that to buy the property free from those interests he must comply with the required formalities.

(6) The system was set up with District Land Registries, which dealt with the registration of titles to land within their allocated districts.

(7) Land registration effectively meant that the state would guarantee title to land and, subject to specific rules, compensate those who suffered loss through error or fraud.

2.2.1 Compulsory registration under the Land Registration Acts 1925–1997

Under **LRA 1925–1997** it was compulsory that the title be submitted to the Land Registry for first registration after:

- (a) every conveyance on sale of freehold land where land was in an area of compulsory registration (this applied to all land from 1 December 1990);
- (b) every grant of a lease for more than 21 years;

- (c) every assignment of a lease (i.e. sale of an existing lease) having more than 21 years left to run at the date of assignment;
- (d) as from 1 April 1998, all gifts, assents and first mortgages.

2.2.2 Classes of title under the Land Registration Acts 1925–1997

When considering an application for first registration of an estate under **LRAs 1925–1997**, the Land Registrar registered it with one of a number of alternative classes of title. The class of title granted determined the extent of the state guarantee of title. The possible classes were as follows.

(1) **Absolute title** (available to both freehold and leasehold estates)

Absolute title was the best possible title. The buyer was granted the freehold or leasehold title together with all rights, privileges and appurtenances (this includes the benefit of easements and covenants).

Absolute leasehold title, in effect, guaranteed not only that the proprietor was the holder of the lease but also that the lease was validly granted. An applicant could not be registered with absolute leasehold title unless the Registrar approved not only the title to the lease itself but also the titles of the freehold and any intermediate leases there might be.

(2) **Good leasehold title**

This meant that as the Land Registrar had not checked the freehold title, the Land Registry did not guarantee that the landlord was entitled to grant the lease. If the landlord was not entitled to do so, the tenant would lose the property. The tenant has no Land Registry guarantee in respect of this, so would not be entitled to compensation from the Land Registry.

Good leasehold title would not apply in cases where the freehold (and all intervening leaseholds if the applicant is a sub-leaseholder) was already registered with absolute title. As the Land Registry had already checked the title, an absolute title was available.

Marketability of good leasehold titles varies from region to region of the country. In some areas they are entirely acceptable and very common; in other areas a defective title indemnity policy may have to be sought from an insurance company before the property can be sold.

Many lenders are reluctant to accept good leasehold title as security for a mortgage. A lender could lose his security if the leaseholder's right to grant the lease was shown to be without basis.

(3) **Possessory title** (available to both freehold and leasehold estates)

Possessory title was awarded where an applicant's title was based solely on possession of the property as opposed to documentary evidence, for example, in cases of adverse possession by a squatter or where the applicant is unable to produce title documents which he ought to have, perhaps because they have been lost.

If there are any adverse interests at the date of first registration, the registration is subject to them.

(4) **Qualified title** (available to both freehold and leasehold estates)

The effect is the same as for absolute title, but the title is subject to some specified defect or qualification, for example, where there has been a breach of trust in the past (such as a sale by trustees to themselves leaving it open for the beneficiaries to have the sale set aside) or where the title produced for first registration does not cover the minimum required period of 15 years starting with a good root (see 5.4).

Unless the qualification related to a very minor matter, the title would not normally be acceptable to any future buyer. Again, defective title indemnity insurance would have to be sought. Qualified titles were, and still are, rare.

These classes of title continue to be the classes of title granted under the **Land Registration Act 2002 (LRA 2002)**.

2.2.3 Form of the register

Each title is given an individual title number. The register for each title number is split into three parts: the property register, the proprietorship register and the charges register.

(1) **Property register**

This describes the land with a brief description and a reference to the official plan (now called the “title plan”) based on a large-scale Ordnance Survey map. It will also state the estate held – freehold or leasehold. If leasehold, there will also appear short details of the lease, that is, date, term, parties, rent and, where applicable, the lessor’s title number. The register may also include general notes of any easements or covenants which exist for the benefit of the land, although registration does mean that the proprietor gains these rights, irrespective of whether they actually appear in this part of the register. In our example about Daljit Johal, the land is freehold and described as 2 Hazel Grove, East Corner, Shropshire SY6 5TA.

(2) **Proprietorship register**

This includes:

- the class of title, for example, absolute freehold title or good leasehold title (in our example, absolute freehold title);
- the name and address (or addresses) of the registered proprietor (in our example, Marilyn and Edward Alan Tennant). The owner can list up to three addresses. One must be a postal address, but the others can be DX or email addresses if wished;
- any limitations on the registered proprietor’s powers to deal with the land; for example, if the registered proprietor cannot transfer the property without the consent of his mortgage lender. Such limitations are usually reflected by restrictions (see 2.7.3);
- since April 2000 the price paid for the property is shown on the register.

(3) **Charges register**

This contains details of incumbrances adversely affecting the title, for example, restrictive covenants, easements and mortgages. Note:

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