Land registration – the new legislation

CLAYDEN ON LAW

THE BIGGEST CHANGES IN THE SYSTEM SINCE 1926 SHOULD BE GIVEN A FAIR TIME TO SETTLE DOWN

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Introduction

THE Land Registration Act 2002 has effected major changes in the system of registration of title to land in England and Wales. This article aims to describe the system briefly but succinctly, highlighting those areas of particular relevance to local councils.

The 2002 Act came into force on October 13, 2003 and applies to all relevant land title transactions taking place after that date.

The basic system of title recording

Unregistered title

The common law system of establishing and recording title to land is based on documents - usually called title deeds - which provide evidence of the ownership of land (which includes buildings on land and certain rights over or under land such as private rights of way, rights of common and rights of drainage).

When a person transfers ownership of land, especially by way of sale, he has to demonstrate by the production of the title deeds that he is the true owner of the land. He also has to disclose any rights which others may have over the land, any leases granted by him or by his predecessors which are still running and any financial or other charges over the land.

The transfer is evidenced by a deed of transfer, or conveyance, which sets out exactly what land or rights are being transferred. This deed then forms one of the series of title deeds which are required to be produced when the land or rights next change hands.

The unregistered system of land transfer began to be superseded by a registered system when the first Land Registration Act was passed in 1862, but progress in spreading the registration was very slow until the 1970s. There are still many parcels of land without a registered title. The number will of course continue to diminish as registration spreads, primarily as a result of compulsory registration of title, but also through registration on a voluntary basis.

Registered title

Under the Land Registration Act 1925 (as amended) the system of land registration which exists today was established.

Initially, registration of title was voluntary, but compulsory registration on the happening of certain events (principally the sale of freehold land and the grant of leases exceeding 40 years (reduced in due course to 21 years)) was introduced on a geographical basis. In the 1980s compulsory registration was extended to the whole country.

On first registration of title, the owner had to produce to the Land Registry the relevant title deeds, etc., in order to prove his title. Once accepted by the Registry, the pre-registration title deeds were superseded by a certificate of title (a Land Certificate for an unencumbered title, a Charge Certificate where the land was subject to a mortgage or other financial charge).

The title was guaranteed by the State. On a subsequent transfer of ownership, the Registry issued an amended certificate, showing the new owner.

The aim of the registration system was to simplify land transfer and to provide a comprehensive record of land ownership. Initially, access to the registers was restricted to the owners of the land in question (called registered proprietors), lenders and certain other persons. In the 1990s, the registers were opened to public inspection, and are so today.

Changes made by the Land Registration Act 2002

The 2002 Act is a comprehensive overhaul of the land registration system, taking into account the widespread use of electronic methods of providing and storing information. The main changes which are likely to be of relevance to local councils are as follows:

Abolition of land and charge certificates: as from October 13, 2003, land and charge certificates are abolished. This means that the Registry will no longer issue such certificates in relation to transactions taking place after that date. Instead, the Registry will issue a title information document (with a copy of any title plan).

This is not evidence of title; such evidence is provided by an official copy of the register, for which application can be made at any time. It will be very important to ensure that the Registry is informed of any change of address by a registered proprietor so that any information about a possible change to the register not initiated by the registered proprietor can be sent to, and will be received by him.

Extension of types of disposition subject to compulsory registration: prior to the coming into force of the 2002 Act, the main types of disposition of unregistered land or rights which were subject to compulsory registration were: sale or gift of land, grant of a lease for more than 21 years or transfer of a lease with more than 21 years to run, grant of mortgage of land and an assent (i.e. transfer of land to a beneficiary under a will or on intestacy).

The 2002 Act extends the list to include the grant of a lease for seven years or more, the assignment of a lease with more than seven years to run and the grant of a lease of any length which takes effect more than three months after the date of the grant (likely to be a very rare occurrence where a local council is involved).

It should be noted that a voluntary application to register title to land may be made at any time in relation to land which currently has an unregistered title. The law on this point has not been changed by the 2002 Act.

Adverse possession: the new rules governing the acquisition of registered land by squatters give greater protection to registered

oprietors than hitherto. In respect of a squatter who has completed 12 years or more adverse possession of registered land before October 13, there is no change in the law, and such a person will be able to resist a possession claim by the registered proprietor. Thereafter, adverse possession of itself will not bar the registered owner's title.

After 10 years, the squatter can apply for registration as proprietor but the registered proprietor will have to be notified. If there is no opposition, the squatter can be registered by default. If there is opposition, the squatter's claim will fail unless he can satisfy one of the three limited conditions: estoppel (i.e. acquiescence by the registered proprietor in the presence of the squatter without taking any action to dislodge him); failure to complete a transaction by registration (e.g. a sale of land where the purchase money has been paid but there has been no transfer document); a boundary change between adjoining properties where the boundary has not been defined. In practice, a local council acting as a squatter on registered land will have to satisfy either to first or the third condition.

If the initial application by the squatter is rejected (usually, no doubt, because of an objection by the registered proprietor), he can apply again after a further two years so long as he has remained in adverse possession. If in those two years the registered proprietor has taken no steps to recover possession, the application is likely to be successful. In practice, claims for adverse possession over registered land are likely to become very rare.

Claims for adverse possession over unregistered land are not affected by the 2002 Act, save that the procedure for registering title to such land must be made in accordance with the rules made under the 2002 Act. In essence, these are similar those which applied before October 13, 2003.

Overriding interests: the title to registered land has always been subject to "overriding interests"; i.e. interests in the land which take precedence to the rights of the registered proprietor and which are not shown on the register of title. The 2003 Act has redefined these so as to classify them as either unregistered interests which override first registration or unregistered interests which override dispositions of registered land. In fact, most overriding interests fall into both classifications.

They are: a lease for a term not exceeding seven years; the interest of a person in actual occupation of the land (e.g. a squatter); a legal easement (e.g. a private right of way) or profit (e.g. a right of common); a customary right (e.g. to indulge in lawful sports and pastimes on a village green); a public right (e.g. a public footpath or bridleway); a local land charge (e.g. a home improvement grant); certain interests in coal and other minerals; a franchise (e.g. the right to hold a market) and a manorial right (e.g. to hold a manorial court).

The last two will cease to be overriding interests after 10 years unless protected by a caution against first registration or by notice if the land is registered.

Caution against first registration: before October 13, 2003 it was possible for anyone to lodge a caution against first registration of land over which he claimed an interest or on relation to land with no apparent owner. This was done by local councils concerned to protect land of public benefit (e.g. a village pond or open space) against encroachment or appropriation.

Any caution lodged before October 13 remains effective. After October 13, a caution against first registration can only be lodged by someone with a legal interest in the land other than a freehold estate or a leasehold estate with more than seven years to run. It is thus no longer possible for a local council to lodge a caution in respect of ownerless land in order to protect it.

The effect of a caution is to entitle the cautioner to be notified by the Registry if an application to register land is made so that he can object to the application.

Exempt information documents: Before the coming into force of the 2002 Act, it was, as a general rule, not possible without the consent of the registered proprietor to inspect registered mortgages or leases.

The 2002 Act changes this so that anyone may apply for a copy of a registered mortgage or lease. However, it will be possible for an interested party (e.g. a landlord or a tenant in relation to a lease) to apply to the Registry for the whole or part of the document in question to be declared an exempt information document, details of which are not disclosed.

The persons perhaps most likely to seek EID status for documents are landlords of commercial premises who do not want the terms of their leases to be disclosed to outsiders.

Conclusion

The 2002 Act brings about the biggest changes to the land registration system since 1926. There are likely to be a number of hiccups before the system beds down. It is to be hoped that the new system is given a fair time to settle in before amendments are made.

New land manual very well indexed

Land Registration Manual by Stephen Coveney. Callow Publishing, 4 Shillingford Street, Islington, London N1 2DP, £37.50.

THIS book has been published to coincide with the coming into force on October 13, 2003 of the Land Registration Act 2002, which makes the biggest changes in the land registration system in England and Wales since 1926.

The author is Land Registrar at Kingston-upon-Hull district land registry and was concerned in the drafting of the new rules made under the 2002 Act. He is therefore in an excellent position to be able to describe and explain the many changes in the law and practice relating to land registration.

The Manual is written in encyclopaedic style with sections on topics arranged alphabetically. This is useful because it enables the reader to find quickly the information needed on a particular topic.

There is also an index, which is an invaluable additional means to locate a topic. For instance, I could not find "compulsory registration" in the alphabetical section, but it was in the index.

The information given in the manual is succinct and practical. The law is briefly described and the steps which have to be taken to apply the law are set out. These include details of any relevant forms and other documents which have to be submitted to the Registry.

Whilst the manual is aimed primarily at solicitors and licensed conveyancers, larger local councils will find it useful to have their own copy. Following the practical advice in the manual could well avoid the need to employ a solicitor in straightforward cases and thus save a good deal more than £37.50!

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