

Number 11

Dematerialisation and Vectorisation! The Land Registration Act 2002: Its Implications for You

Introduction

Substantial changes are about to be made to the land registration system in England and Wales. Two new “buzz words” are being introduced by the Land Registry, “dematerialisation” (reducing the need for paper titles) and “vectorisation” (the conversion of all Land Registry plans to electronic format).

The changes that will have a practical effect on land owners and occupiers are:

1. The move from a paper based conveyancing system to an electronic system within a few years;
2. More interests in land must be registered at the Land Registry;
3. The Land Register is to be more open with leases and mortgages being available for inspection by third parties;
4. A substantial change to the law of adverse possession and squatter’s rights.

These changes are contained in the Land Registration Act 2002 (the “LRA 2002”) which comes into force on **13 October 2003**. This article highlights some implications of the Act.

1. E-Conveyancing

From 13 October 2003 Land Certificates and Charge Certificates are to be abolished. A landowner will simply receive from the Land Registry a piece of paper giving brief details of ownership. This document will have no legal significance; it is designed purely to give comfort to the landowner. The Land Registry’s electronic register will provide the conclusive evidence of title.

2. More Interests are to be Registered

The LRA 2002 requires that the following interests must be registered:

- (a) Leases granted for more than 7 years;
- (b) Assignments of existing leases with more than 7 years left to run; and
- (c) A lease of any length where the tenant’s term of possession will start more than 3 months after the date the lease is granted (a reversionary lease).

Under the current law only leases of more than 21 years are registered. The new law means that a substantial number of new registered titles will be created. Suitable arrangements will need to be made for removal of the registered leasehold interests when the leases expire. There are likely to be problems where there are a large number of registerable leases affecting one freehold property.

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3. A more Open Register

The LRA 2002 allows public access to all documents held by the Land Registry. Thus, a copy of a mortgage deed or a lease will be given to any third party who requests it.

This new open policy will apply to all documents registered at the Land Registry after 13 October 2003. The rules are also to be retrospective. From 13 October 2005 the new open register rules will also apply to existing leases and mortgages registered before 13 October 2003. There is therefore a grace period of 2 years during which inspection of pre-2003 documents will not be allowed, except at the Registrar's discretion.

This new "openness" will have consequences. Publication of leases will enable third parties to discover details of concessionary rents, rent-free periods, tenants' break rights, qualifications to repairing covenants and so on. Rent review surveyors will be able to find details of comparable rentals and rent-free periods. Further, a mortgage deed may incorporate the terms of a loan agreement and the amount of the facility which the borrower would presumably not want to be made public.

There is a provision under the LRA 2002 for certain documents to be kept "off the Register" on the basis that they contain confidential commercial information. A formal application has to be made to the Land Registry for a particular document to be an "exempt commercial information document".

However a document will only remain confidential if the Land Registry is satisfied that the information if disclosed to other persons "would be likely to prejudice the commercial interests of the applicant". The decision as to whether a document is so designated will be made by the Land Registry. The rules are vague and it is likely that the Land Registry will be swamped by many such applications.

4. Changes to the Law of Adverse Possession

Under the current law once a party had occupied premises for more than 12 years it could apply to be registered as the owner of those premises. The courts have held that the applicant must have a sufficient degree of physical control of the property and an intention to possess the property.

The LRA 2002 substantially changes the position.

The new rules are briefly as follows:

- (a) After 10 years in possession of land the squatter can apply to be registered as the proprietor of the land. There is no "right" to assume ownership of the land.
- (b) Notice of the squatter's application will then be served on the registered proprietor and all other persons interested in the land by the Land Registry. The registered proprietor can object to the application.
- (c) Assuming the landowner objects (which is likely to be the case once the landowner is notified!) then the squatter's claim is automatically dismissed, unless the squatter can show a specific lawful ground for claiming the property such as a genuine boundary dispute or a genuine belief that he owned the property.
- (d) If the squatter's claim fails the registered proprietor must then take possession of the land. It is not sufficient for the registered proprietor simply to obtain an order for possession, he must actually enforce the order within the 2 year period.

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The registered proprietor's position is safer than it was under the old law. He must be notified of any squatters claim and he then has a 2 year period to object and to repossess the property. The squatter's grounds for a claim to the property are very narrow.

The new rules only apply to registered land. The provisions do not apply to unregistered land – they are intended to be the carrot that will persuade proprietors of unregistered land to register their land as soon as possible.

Landowners should consider the following specific actions in the light of the new squatters' rules:

- (i) Consider voluntary registration of any unregistered land now.
- (ii) Make sure that the Land Registry have up to date records of your contact details so that you will be notified of any squatter's application.
- (iii) If served with a squatter's notice serve a counter-notice promptly and having obtained a possession order ensure that it is enforced within the 2 year time period.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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