

Number 14

Land Registration Reforms – what you need to know

Introduction

The Land Registration Act 2002 (“the Act”) came into force on 13 October 2003.

The main elements of the Act are:

1. More interests in land to be registered

The law has changed. Leases with a term in excess of 7 years now have to be registered where previously the threshold was 21 years. This means most commercial leases will have to be registered including

- (a) assignments of existing leases with more than 7 years left to run; and
- (b) reversionary leases (of any length) that take effect more than 3 months after the date of the grant.

2. Leases and mortgages are open to the public

The Land Register has been open to the public for many years but for the first time copies of all documents, including leases and mortgages, are available to third parties. Any document received at the Land Registry after 13 October 2003 is available to the public immediately and from October 2005 documents registered before 13 October 2003 will also be available (although in both cases an application can be made for retrospective EID-see below).

Tenants negotiating leases will be able to obtain copies of completed registered leases and see what concessions have been granted to their neighbouring tenants. Lenders may be concerned that sensitive information regarding lending facilities will now be in the public domain. It is possible to apply for a blank-out from public view of any sensitive provisions in a document if they are prejudicial, because they are either commercially sensitive or likely to cause unwarranted damage or distress to the applicant. The landlord would need to make the application or the tenant may on behalf of the landlord. If the application is successful (and this is at HM Land Registry’s discretion) then the document will be designated an “*Exempt Information Document*” (EID). The public can then generally only obtain an edited copy of the document. However, it will be possible for a member of the public to apply for a full copy of an EID if it can be demonstrated that the information is not prejudicial or, if it is prejudicial, that its exposure will be in the public interest.

3. The registration of easements and disclosure of overriding interests

Easements

The majority of easements granted over registered land need to be registered against both the land that has the benefit of them and the land over which they pass. This will then bind third parties and ensure that the easements are legal easements.

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If they are not registered they will only be equitable easements and will not bind a purchaser for valuable consideration of the land out of which they are granted. Similarly a tenant taking a lease of adjoining land or other parts of a building would not be bound by them. It is therefore extremely important that all easements granted out of land or contained in leases are noted on the landlord's registered title.

Overriding interests

Applicants for first registration will need to disclose any overriding interests of which they are aware e.g leases which are too short to be registered, rights of people in actual occupation and easements granted before 13 October 2003.

4. Significant changes to the law on adverse possession and squatters' rights

It is now more difficult for "squatters" to obtain title to registered land by adverse possession. Many landowners are voluntarily registering their titles to take advantage of the new law. Under the old law, once a squatter had occupied premises for more than 12 years the squatter would be able to apply to be registered as the owner of those premises. The courts have held that the squatter must have a sufficient degree of control over the property and an intention to possess the property. Now, squatters will be able to apply for registration after not less than 10 years adverse possession. However, the registered proprietor and the proprietor of any registered charge will be notified of the squatter's application and will have an opportunity to object. Unless the squatter can bring a claim within a limited range of "exceptions" an objection will be conclusive. The registered proprietor will then have two years to either eject the squatter or to formalise the squatter's occupation of the land. If the registered proprietor has not taken those steps within two years the squatter may make another application which will generally succeed.

A registered proprietor has **65 business days** to respond to an application for registration made by a squatter. It is therefore imperative for the address of the registered proprietor to be kept up to date at the Land Registry.

5. Abolition of Land and Charge Certificates: Dematerialisation

With effect from 13 October 2003, land certificates and charge certificates have effectively been abolished. The Land Registry will now issue a "title information document" (with a copy of the title plan) instead.

Conclusion

The above outlines the main points of the Act. For further information please contact a member of the Commercial Property Department.

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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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