

Number 17

## A Tale of Two Systems – Reforms to the Law of Adverse Possession

The Land Registration Act 2002 (“the LRA”) came into force on 13 October 2003 and made major changes to the law in England and Wales governing adverse possession claims (often called “squatters rights”). This briefing summarises the changes and outlines some practical issues for land owners.

### The Old System

Under the Limitation Act 1980 a person (“the Adverse Possessor”) could make a claim for the ownership of land through adverse possession if the following criteria were met:-

1. The Adverse Possessor had a sufficient degree of exclusive physical control to claim actual possession of the relevant land;
2. The Adverse Possessor had actual possession with the intention of possessing the relevant land to the exclusion of all others including the true owner;
3. The possession of the relevant land was exercised without the true owner’s permission; and
4. Such possession had been continuous for a period of not less than 12 years.

Once the above criteria had been met the Adverse Possessor could apply to the land registry for registration of an interest in the land, and the true owner would lose title to the land.

### The New System

The LRA disapplies the “Old System” for claiming adverse possession but only for registered land. Under the “New System” the Adverse Possessor can obtain an interest in the relevant land by applying to be registered as the proprietor of the land after being in adverse possession for a period of 10 years (rather than 12 years as under the Old System). Under the New System the requirements for adverse possession remain as set out in points 1-4 above for the Old System. However, unlike the previous system, the Adverse Possessor’s application to the Land Registry will now start a notification system which must be followed before the Adverse Possessor’s application will succeed.

1. Upon receiving an application the Land Registry will give notice to all registered proprietors of the freehold estate, any leasehold interests and any registered chargees, any of whom may then challenge the claim.
2. The Land Registry will wait for a period of 3 months and if no challenge is made then the Adverse Possessor is entitled to be registered as the new proprietor of the land. This is a strict time limit and cannot be altered. It is also important to note that it is sufficient for the Land Registry to serve notices at the addresses of the interested parties shown on the registered title.
3. If a challenge is made within the 3 month period, the application will automatically fail unless the Adverse Possessor can show that one of three specific conditions has been met:-

- 3.1 it would be unconscionable for the registered proprietor to seek repossession;

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- 3.2 the Adverse Possessor is for some other reason entitled to be registered as the proprietor of the land; or
- 3.3 the Adverse Possessor is an adjoining owner who reasonably believed that the land belonged to him.

Please note that it is not yet clear what will be required in order to satisfy these conditions.

4. Following any challenge and a resultant failure of the application, the registered proprietor of the land has 2 years in which to recover possession of the land or commence possession proceedings in the courts. If the registered proprietor fails to do so, the Adverse Possessor may reapply and the application will automatically be granted.

## Points to Note

1. The New System will only apply to registered land. The Old System will still apply to unregistered land.
2. There is a transitional period of 3 years from October 2003 during which an Adverse Possessor of land of more than 12 years will have its interest protected as an overriding interest regardless of notice. However, if the Adverse Possessor does not make an application for ownership through adverse possession within the transitional period and the true owner of the land subsequently transfers the land, the rights of the Adverse Possessor will be lost where:-
  - 2.1 if asked by the purchaser before such a transfer, the Adverse Possessor did not disclose that there may be a claim for adverse possession; or
  - 2.2 the Adverse Possessor's occupation was not obvious and the new owner had no notice of the adverse possession.

If the transitional period expires without the Adverse Possessor applying to the Land Registry for ownership through adverse possession, the New System will then apply to any application subsequently made.

3. It is imperative that proprietors and other persons with interests in registered land, for example mortgagees, ensure their addresses at the Land Registry for service of notices are kept up to date.

This briefing summarises the main points of the new system for adverse possession under the LRA. For further information please contact a member of the 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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