



Special Release

New Land Registration Act abolishes land certificates and opens documents up to the public

In a move towards the goal of fully on-line conveyancing the Government has brought in broad reaching reforms to the land registration system that has been in place since 1925. The objective behind the new Act is to make the electronic register of title as comprehensive as possible so that investigations in the future can ultimately be conducted via the Internet. Under this new regime, which came into effect on 13 October 2003, land and charge certificates will disappear. They will no longer be issued and all existing certificates will no longer have any legal significance. Therefore in the future land/charge certificates will not need to be lodged with the Registry and, if a certificate is lodged, it will be destroyed together with its contents such as a charge. It should be noted that the Land Registry will begin a process of destroying the land and charge certificates it currently holds, including those on deposit, which will not be returned. This process will be completed after 5 years and during this period applications can be made for the return of original documents, for example charges, which are bound into the charge certificates.

If there are any original documents you would like recovered from the Land Registry then you should notify your contact at Davenport Lyons who will make the necessary application.

After 13 October, on applications under the new regime, the Registry will return an original provided a certified copy is submitted. If no copy is submitted then there is a danger that the original may not be subsequently recoverable, since the Registry can destroy it if it has a sufficient copy or the Registrar decides it is unnecessary to retain the original.

On completion of an application the Land Registry will instead of issuing a land certificate send an official copy of the register showing entries following completion of the application, together with the title plan and a Title Information Document. The Title Information Document is not a document of title - there will be no paper title - and this document merely explains why the official copy has been issued and how to obtain further copies in the future.

The question has been raised whether having no certificate makes fraud easier. The new system does provide some protection for the registered owner (such as the need to obtain their consent to or to notify them of certain dealings), but many owners will feel more exposed by the lack of a document of title.

Another major change introduced by the Land Registration Act 2002 is the requirement from 13 October 2003 to register leases granted for more than 7 years, or assignments of leases with more than 7 years to run. Previously leases had to be for a term of more than 21 years to be registered. Furthermore, even if the lease is for seven years or under, any easements granted to the tenant over the landlord's retained land and contained in the lease will need to be registered against the landlord's registered title for them to be legal easements.

For a landlord of an estate or a shopping centre with large numbers of leases, this change will lead to a cluttering of its title and increase the problems of removing references to leases from the title when they end. Inevitably this will lead to extra costs as this will involve the solicitor in more work and a tenant should bear in mind the Land Registry fee for registering the lease

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or dealing with the title as well as the stamp duty it may have to pay on the lease for the Land Registry to accept the lease.

As more leases will now need to be registered (either on grant or on an assignment) more attention will have to be paid to the plans to be used. For new leases, landlords will have to produce plans to identify the demise which are compatible with the Ordnance Survey plans. On assignments of lease which were previously not registerable, but now are, if the plan is not suitable for registration purposes, the tenant may have to incur the costs of producing a plan and entering into a Deed of Variation with the landlord to include that plan to allow the registration of legal title to proceed.

Another change brought in by this new Act is that from 13 October 2003 on a sale and registration of a new acquisition of property, your solicitor will ask you to confirm whether you are aware of any "disclosable overriding interests" affecting land that you own. Disclosable overriding interests are interests that will bind a buyer although not entered on the Register but which the applicant for registration is obliged to disclose thereby giving the Registrar the discretion as to whether to register them. Examples include a party in actual occupation. The reasoning behind this is again to try and make the register definitive of all matters affecting the title.

Unfortunately, these changes in procedure will inevitably result in more time being spent by lawyers in complying with the new Act. All reversionary titles to leases of more than seven years will now need to be investigated. The actual process of registering interests has become more complicated and time consuming with the additional burden of disclosing overriding interests on the application form. Furthermore, there will be many more transactions which will involve registration of title. All these changes will result in increased time having to be spent. Inevitably this will mean higher legal fees as well as more Land Registry application fees.

There is also another new and important implication of registering a lease or a mortgage. Leases and mortgages received by the Land Registry from 13 October 2003 will be generally available to the public to inspect and copy. At the moment leases and mortgages are only made available at the discretion of the Registrar who does not readily agree. In future, however, if any party applies to the Registrar for a copy of a lease or a mortgage, he will be provided with a full copy of the document unless a successful application has been made at the time of registration to exempt particular information in the document from disclosure.

This may have important implications for borrowers and lenders who may be concerned about the general availability of sensitive information in mortgages. In addition, landlords or tenants may not want


commercially sensitive information in leases to be widely available.

If this is the case then application can be made to the Land Registry to exempt "prejudicial information" (namely, personally sensitive information or information prejudicial to commercial interests) from disclosure. Provided the claim for exemption is not groundless, the Registrar will designate the relevant document an "exempt information document", with the effect that only the edited document will be available to the public.

However that is not the end of the story because a party may apply for the exempted information to be disclosed ultimately on the basis that the public interest justifies disclosure. The Registrar will notify the party who sought the exemption of this application unless the Registrar is satisfied it is unnecessary or impracticable. It is then for the Registrar to decide whether the information should be disclosed and if a party does not like the Registrar's decision, it would seem his only remedy lies in a judicial review of the decision.

For any document held by the Land Registry prior to 13 October 2003, parties have 2 years (up to 13 October 2005) in which to apply for any prejudicial information to be exempted. From 13 October 2003 generally copies of documents incorporated in mortgages (such as loan agreements) will no longer be required to be registered.

Although some may see the new regime for the general availability of leases and mortgages and its promotion of the free flow of information of benefit, others will be concerned that the ability to see the terms of leases granted at, for example, a shopping centre may prejudice their ability to negotiate new leases at the centre.

You should therefore carefully consider leases, mortgages and other related documentation such as loan agreements that are either already held by the Land Registry or will be registered in the future to determine whether there are any provisions that you would like exempted. Where appropriate, please liaise with your relevant Davenport Lyons contact. 

This Special Release is designed to provide a summary of the subject matter. It does not purport to be comprehensive or a substitute for specialist legal advice in individual circumstances.

If you would like any further information on these or any other topics please contact:

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