

Unregistered Land Conveyancing

This is an article intended for trainees and junior solicitors. Unfortunately, unregistered conveyancing always seems to be passed down to the junior members of any team. The reason is not that it is difficult, but because it is time-consuming. The other reason is, as I will mention later on, it is the best educational tool that a solicitor can offer to someone starting out in a property seat.

When do you do it?

Registration of the title to property has been introduced on a staged basis throughout England and Wales. Since around 1990, solicitors in all areas have been obliged to apply for first registration of transactions for a valuable consideration (whether freehold or leasehold), and since 2002 all transactions (whether or not for valuable consideration) have induced first registration. Nowadays, you are most likely to encounter first registrations in the following circumstances:

1. Freehold:
 - Conveyance/transfer.
2. Leasehold:
 - Grant of a new lease for a term of more than seven years.
 - Assignment or assent of a lease with more than seven years of the term left.
3. Both:
 - First legal mortgage of freehold, or leasehold with more than seven years of the term left.

Of course, it is also possible to voluntarily register the land for the first time, and this can be beneficial for institutions looking to access funding in the future, or when looking to sell the land. Funders and purchasers alike see unregistered land less frequently nowadays, and as such are uncomfortable when faced with registering the land themselves. If your client is willing to bear the cost of registration themselves, it may be best that they take the matter forward by instructing you to register the land.

Perception

My first experience of unregistered conveyancing came, as with many solicitors, during the Legal Practice Course (LPC). We had been taught about the registered conveyancing system over the course of three weeks, spending hours learning about the proprietorship register, the property register and the charges register, precisely none of which was any help when, on the third day of my training contract with a small, lovely high-street firm in a bustling market town, I looked at my first official copies. Without the support of a tutor, and the context they offered, I had no clue where to look. Short of being able to tell you with confidence (1) whether it was leasehold or freehold, (2) who owned the property, (3) whether there was a mortgage, (4) what class of title it had, and (5) if it was leasehold, how it was owned, I did not have much to add. In truth, I could tell you the bullet points, and even then with some difficulty.

Our lessons on unregistered conveyancing consisted of a chapter of our books that we were advised to read, and the message that it was very unlikely that we would ever have to deal with this in practice. Having now been qualified for nearly three years (a mere novice, baulk many more qualified and intelligent lawyers), I can say with certainty that my tutor, though honest, professional and very good at his job, could not have been more wrong.

After the incident above, on the third day of my training contract, I was advised by one of the partners to consult a few deed packs. This was sage advice, although when the first deed pack landed on my desk with a thud, I paused to muse on whether this was for me. I started reading, and the context that the unregistered system offered opened up the property before my eyes. Suddenly, I could see the history of the property before me, I could see how the title had first come about and then been passed from original freeholder and on to the modern day. I could see how the rights were mentioned on the register now existed.

Clearly this is all available from the registered conveyancing system when it is working, and when all the deeds are available. Sadly the system of registered conveyancing has similar issues to the unregistered system, and attempts to eliminate many of those issues. Though property lawyers will always have cause to complain about HM Land Registry, and we cannot argue that it has not improved the speed of transactions greatly since the days of the unregistered system, it is still not perfect.

The issues with both systems are, broadly:

1. Missing documents.
 - The bane of the unregistered system, the bane of the registered system, and one reason that so many indemnity policies are purchased.
 - The conveyancer needs to know what the property their client is purchasing is subject to, and if these restrictions, incumbrances or rights cannot be identified it leaves you scratching your head, and your client uncertain as to whether they can use their property in the way they wish!
2. Errors in drafting.
 - People made mistakes in the past, and they were not subject to the procedures of Land Registry in order to correct any. These occur frequently.
3. Poor handwriting.
 - In the past, legal draftsmen were highly trained. That is why you see beautiful documents which may have conveyed even the tiniest portion of land. That being said, not everyone produced such lovingly crafted documents, and this can cause headaches for modern day conveyancers looking to interpret what their predecessors had recorded.
4. Undocumented interests.
 - There is a chance that people may have granted or impliedly created rights over their land without documenting them, and whilst this can happen in modern conveyancing it is much easier for it to be noted against the title. This underlines the importance of having a full deed pack in front of you, and of making the land charges search referred to below.

Why is it useful?

In the time before registration of title was compulsory, conveyancers had to deduce title in every conveyancing transaction. This meant that they had to either refer to a document which stated how the land had come to be owned by the seller or proprietor, or they had to refer to the chain of previous ownership prior to the seller or applicant's ownership. This could be a painstaking process, and the disadvantages of this are obvious in that it requires a complete set of deeds, but the advantages are also clear. In recording the history of the title in one document, the conveyancer

would be able to set out clearly what rights, restrictions and obligations the property was subject to. For the trainee or newly qualified solicitor, this is a priceless lesson in deducing title, and shows you how a property evolves over many years to be the property that you are conveying today. The other advantage is that you have the opportunity to develop an understanding of how property law has evolved, and can see how fortunate we are to have one registered title as opposed to a box of deeds to work through every time we want to buy or sell a property

Process:

1. Do not be over-faced. Deed packs can be vast, and only a small proportion of it may be useful. It happens, we are paid for our expertise and our ability to sift through vast amounts of information to find that which is important.
2. First thing to do: Find your root of title. The root of title is the document which starts the process by which the current proprietor owns the property. Irrespective of the number of transactions since then, this document should allow you to work backwards and forwards from this point in time. Your root of title must also comply with the following points by virtue of the *Law of Property Act 1925* if you are to achieve absolute title, it must:
 - Be at least 15 years old (a buyer may accept a shorter root of title, but this may not provide absolute title and may leave the buyer subject to unknown incumbrances) and for valuable consideration. The 15 year period gives the added bonus that on any prior disposition, the disponee should also have checked the prior 15 years' ownership, meaning that 30 years' protection is provided (and so on).
 - Deal with or show the ownership of the whole legal and equitable interest in the land in question.
 - Contain a recognisable description of the property (preferably a clear plan which can be used and is compliant with Land Registry guidelines).
 - Not contain anything which casts any doubt on the title.
3. Work forwards from there. Make sure that you can provide an unbroken chain of ownership from then, but that you can also see all benefits and incumbrances.
4. Make a timeline – construct a picture for yourself. Make notes on the timeline as to when certain rights came into existence. As solicitors, we have to have the ability to move from one task to another and back again, and it must be relatively seamless, make it easier on yourself by recording what you know.
5. Read through the documents referred to in your root of title.
6. Find the documents that they refer to which are not on your timeline (if any, and if available).
7. Repeat the process until you have all of the documents which refer to every easement, right or obligation in relation to the property.
8. Selling? Prepare an epitome of title for the other side, who will take up the reins from here.
9. Using your timeline, prepare your document list (Land Registry form DL).

10. Prepare your FR1 (the Land Registry form which you must submit with all first registration applications).
11. Raise a land charges search (Land Registry e-services portal, Land Charges Services, Full Search) against all previous owners of the land during the period of their ownership unless there are prior searches already provided at the time of previous transactions. If there have been previous land charges searches which cover the period in which they owned the land and you have a copy, then you can include this as part of the document list and your application for first registration. This saves you time, and your client money in raising additional, unnecessary searches. The Land Charges system exists to make sure that you do not register the property with unknown interests against it, and (according to paragraph 3.7.5 of HM Land Registry Practice Guide 63) any entry made in the registry after the date of the certificate and before the completion of the purchase (which is not made pursuant to a priority notice entered in the register on or before the date of the certificate, will not affect the purchaser if the purchase is completed before the expiration of the 15th working day after the date of the certificate (section 11 of the *Land Charges Act 1972*).
12. Raise an index map search, this shows whether there are any registered interests or cautions against first registration (according to HM Land Registry Practice Guide 3, this is a form of protection for interests affecting unregistered land where the cautioner wishes to give notice to the intended applicant for first registration of their interest in the property concerned). Do not rely on Map Search, as this does not provide any protection for you or your firm!

Top tips:

1. Don't skip documents. Prior land charges searches may not seem useful in building a picture, but they will save you performing new searches against all of the owners of the property.
2. Abstracts of title – the traditional way to deduce title. Essentially this is a breakdown of the title at a particular point in time, and always starts with a document which is good root of title. A particular document may be referred to in the abstract, and someone may have written against it that it had been examined against the original and is a true copy thereof. This is as good as being a certified copy and can assist in bridging any gap caused by any missing documents. It is not unusual to have a number of houses built on land originally comprised in one lease, and only one of those house owners will have the original lease, with the others relying on marked abstracts (marked by a solicitor who examined the abstract against the original lease and can therefore attest to its veracity).

The difference between an abstract and an epitome is that an epitome of title is more modern, and is a list of the deeds in the title which copies of the deeds attached, whereas an abstract is a timeline of the deeds which comprise the title containing retyped versions of the deed concerned, not an actual copy.

3. Mortgages/charges – in unregistered conveyancing, in respect of first legal charges lenders would usually hold the deeds to property whilst they had an interest against the property. Only once the interest was released would they release the deeds back to the proprietor. In this system, there would be a signed legal charge (in much the same manner as modern legal charges), and when this was redeemed they would note that it had been redeemed either by way of a formal document, or by entering a paragraph or so on the last page of the

charge/mortgage (or there be a vacating receipt). Read carefully – there is always a danger that a charge has not been redeemed.

4. Read through every document – do not rush. More haste, less speed.
5. Make thorough notes.
6. Have someone review your work. Irrespective of whether they review it quickly, make sure they do. There is no shame in asking someone to help you, and there is no shame in someone marking it up. This is a tip for junior solicitors in general – do not be afraid of the red pen. When someone reviews your work, your aim is to receive it with as few points to note as possible. However, when someone does point out an error, or a point to note, do not be upset – learn from your mistakes and move on. The mistake would be to repeat the error. Always remember that the person reviewing your work was once in the same position you are in, and that hopefully you will one day be in their position.
7. Do not shy away from it. You may be busy, you may be tired, you may have more pressing things to do, but remember that if you register a property at the Land Registry, you are creating a piece of the register which will (or should) contribute to the objective of creating a complete register of all land interests in the country. Well done!
8. Land Registry WANTS to register the property. They do not like unregistered properties.
9. You can only deal with the documents you have available to you – if you do not have all of the documents and cannot find them that is not your fault. Report the issue to your client, resolve it.
10. BE POSITIVE – we are paid to find solutions to clients' problems, and there is never a problem that cannot be solved. Think creatively, use your expertise.

This is all very positive, but remember that first registrations can be hard, however it is ultimately rewarding to see the result of your efforts.

Tom Wright

Solicitor – Property

Brabners LLP



Tom Wright

Solicitor

T: 0161 836 8820 / +447875299455

E: tom.wright@brabners.com