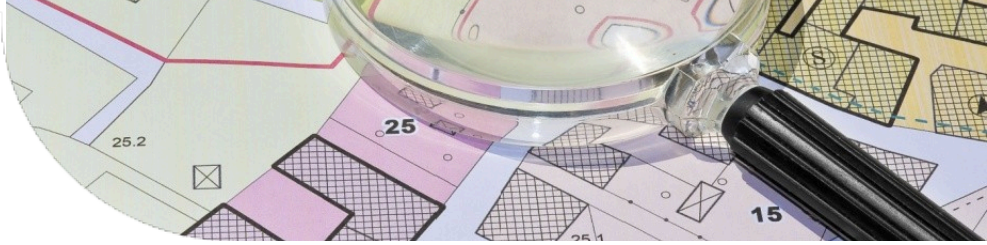

Tip Tuesday: Unregistered Land and How To Deal With It

Land that has not been formally registered under the *Land Registration Act 2002* is known as unregistered land. This could mean that ownership of a property has not changed since the Act was introduced, but there are certain provisions that unregistered land still need to comply with.

Compulsory registration of unregistered land

Unregistered land is subject to compulsory registration after a 'triggering event' which includes:

- The sale or transfer of property
- Grant of a new lease with a term or the assignment of an existing lease
- A deed of gift, assent or first legal mortgage

A solicitor or conveyancer will need to submit deeds and documents to the Land Registry to detail the history of land ownership, including rights and restrictions on the land.

Voluntary registration of unregistered land

Voluntary registration occurs when a 'triggering event' has not elapsed but the owner is entitled to register their property at the Land Registry regardless.

Owners may also voluntarily register their interest of freehold, leasehold, a rent charge, franchise, profit a prendre or mines and minerals held apart from the surface.

- Leasehold land can only be voluntarily registered if more than 7 years remain on the lease term unless:
    - The lease is discontinuous

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- Another lease has been granted on the same land within one month of the expiry, to which this is considered to be a continuous lease

Voluntary registration is advisable when a prospective purchaser or mortgagee has doubts on accepting title to curb potential liabilities. There is also a 25% overall reduced fee for voluntary registration to incentivise unregistered landowners to do so.

Registration requirements

Unregistered land must undergo registration within 2 months from the completion date of a 'triggering event'.

Requirements for first registration must include producing original title deeds to prove and track ownership throughout the years.

Class of title that can be granted

Class of title will be granted upon first registration of a property and details the owner's legal right to the property. This includes:

- Title absolute- the most secure title which guarantees the owner absolute right to the property
- Possessory title- given on circumstances where there is insufficient evidence from the owner to prove ownership e.g. when deeds have been lost or destroyed.
    - Possessory title can be upgraded to absolute title after 12 years of registration, or if evidence is provided to remedy this title
- Qualified title- when there is a defect in the title
- Good leasehold- given when the landlord cannot evidence full power to grant a lease

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Adverse possession of unregistered land

This is also commonly known as squatter's rights- where possession and title can be obtained by adverse possession over a period of time. Requirements for unregistered land include:

- Actual possession of the land for 12 continuous years and 30 continuous years for Crown Land (for registered land, only 10 continuous years is required)
- Single and exclusive possession of the land
- Intention to actually possess the land
- Possession without the owner's consent (satisfying the 'adverse' element)

There is a limitation period of 12 years to gain adverse possession:

- Adverse possession does not apply if the squatter or agent of the squatter brings signed written acknowledgement of the owner's title which leads to a grant of lease or licence
- A demand for possession or court procedures from the owner does not stop the period of limitation for purposes of adverse possession

However, adverse possession cannot be obtained over land with a public right of way such as highways, bridleways and footpaths, regardless of the limitation period.

Registering adverse possession:

Application requirements to registering land through adverse possession:

- Form FR1 for unregistered land with supporting 'statements of truth' or statutory declarations
- Form AP2 for registered land with supporting statements of truths or statutory declaration
    - Statement of truths must comply with *rule 215A of the Land Registration Rules 2003*

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Prior to registering a claim for adverse possession, HM Land Registry (HMLR) typically require an Ordinance Surveyor to inspect the land in question to determine boundaries and the nature of the land before any class of title is granted. Where the land is unregistered, the squatter is required to pay an inspection fee under the current *Land Registration Fee Order*.

Nevertheless, any claim to adverse possession can be challenged via a written statement to the HMLR registrar. If there is merit to the objection, a claim may end up at tribunal which can be costly and time consuming, so proper consideration and legal advice is strongly recommended before submitting a claim on adverse possession.

Lender requirements for taking security over unregistered land

Lenders need to be particularly diligent in ensuring ownership before taking security over unregistered land to protect their security.

This would include instructing a solicitor to carry out thorough investigation to accurately track the transfer of ownership of land and good 'root of title', and sometimes requiring unregistered land to undergo voluntary first registration prior to granting a loan.

What makes good 'root of title'?

Good 'root of title' relates to satisfaction of ownership of land, both legally and in equity. This is satisfied by being:

- At least 15 years old
- Documents describing the land in question (ideally with a plan attached but not detrimental)
- Deals with the whole of the legal and equitable estate and
- Contains nothing to cast a doubt on the title

Lenders should also request a valuation of the property to confirm its value, and may also require specific insurance policies in place.

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Summary points

- Unregistered landowners are responsible for their own registration- whether under compulsory or voluntary registration.
- There are financial penalties involved for unregistered land that should have been registered. Landowners should therefore take extra care to comply with registration requirements promptly and properly.
- If you are unsure about your land status or require help with registration of unregistered land or an adverse possession claim, it is wise to seek professional advice.
- For further guidance:
  The Land Registry Practice Guide 1 contains detailed information on registration and requirements for unregistered land.
  The Land Registry Practice Guide 4 contains detailed information on adverse possession of registered land.
  The Land Registry Practice Guide 5 contains detailed information on adverse possession of unregistered land.

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