

Chapter 2: The System of Land Registration and Third Party Rights

Outline	2.1	Introduction	2.6	Third party rights in registered title
	2.2	Registration under the Land Registration Acts 1925–1997	2.7	Occupiers with an interest arising under a trust of land
	2.3	Registration under the Land Registration Act 2002	2.8	Conveyancing implications
	2.4	Third party rights	2.9	Summary
	2.5	Third party rights in unregistered title		



Aims of this Chapter

This chapter will enable you to achieve the following learning outcome from the CILEx syllabus:

- 1 Understand conveyancing practice in relation to interests in land and the transfer of legal estates

2.1 Introduction

There are two systems of conveyancing: the traditional system based on the use of title deeds (unregistered conveyancing) and the newer system based on the registration of title with a government department, HM Land Registry (referred to in the manual as the Land Registry). The latter system is known as registered conveyancing and it is the means by which the state guarantees the title to a piece of land once it has been registered. The unregistered system is dying out as land is increasingly registered. However, not all land is yet registered for the reasons we shall see in this chapter. Basically, unregistered land does not have to be registered until it changes hands, so unregistered land is still encountered in practice. Conveyancers must therefore be able to handle transactions under either system.

In **Chapter 1** we saw that there are two legal estates, freehold and leasehold. Either estate can be held as registered or unregistered land. Whether land is registered or unregistered depends on whether it has been transferred (or more technically whether a trigger event has occurred) since the various **Land Registration Acts** came into effect.

The registered system has been phased in over a number of years. Over more than 50 years, various areas of England and Wales have gradually been designated as areas of compulsory registration, meaning that unregistered land has had to be registered when a designated trigger event, such as a sale, has taken place. It was not until December 1990 that the last area of the country was designated as one of compulsory registration, making the whole of England and Wales a compulsory registration area. Since that date, it has been compulsory to register all previously unregistered land on sale, and upon other specified trigger events, such as the grant of certain leases. It has only been compulsory to register changes of ownership following death or gifts of

land since April 1998. Voluntary registration is also encouraged by the Land Registry to accelerate the process of registration of title. The Land Registry offers reduced fees for voluntary registration applications.

In order to convert unregistered land to registered land an application has to be made to the Land Registry providing the title with documents in support. The Land Registry staff will examine the unregistered title and create a new register to reflect the registered ownership. A new title plan will also be prepared.

An application for first registration is made on form FR1 (**Document 23** of the **Appendix**) with the documents in support listed on form DL (**Document 24** of the **Appendix**). The documents will be those used to prove title and rectify any issues that arose. We will consider this in more depth when we look at unregistered land, as the issues we consider as buyers will be broadly the same as those which the Land Registry considers when registering the property after completion.

The registered system is now governed by the **Land Registration Act 2002 (LRA 2002)**, which came into force in October 2003. **LRA 2002** is supplemented by the procedures contained in the **Land Registration Rules 2003 (LRR 2003)** which came into force on the same date. These replaced the former law and procedures found in the **Land Registration Acts 1925–1997** and the **Land Registration Rules 1925**.

Although the old law has been replaced, conveyancers must have some knowledge of the former law, as many titles will have been created before October 2003. It may be necessary, for example, for a conveyancer to spot that land should have been registered in the past, but has not been due to an error.

This chapter will explain the system of land registration and will also look at third party rights – these are rights which other people may have over a piece of land, such as a right for a property owner to walk across his next door neighbour's garden. We will be looking at some of the background law which is necessary for an understanding of conveyancing procedures and will be putting the law into a practical context with some illustrative examples.

2.2 Registration under the Land Registration Acts 1925–1997

The system of land registration was introduced in the 1920s with the aim of eventually replacing the older, unregistered system of conveyancing, which requires the title deeds to be produced and checked on the occasion of each successive dealing with the land. Under the system of land registration, the register is proof of the seller's title and records a description of the property, the nature of the estate held by the seller and many third parties' rights over the land.

Under the registered system, the register itself is proof of ownership and so it becomes an owner's proof of the title to a property. There is no longer a need for title deeds as evidence of ownership. The names of any buyer must be entered on the register. Upon a sale of registered land, the legal estate does not pass upon completion of the transaction (as it does in unregistered

conveyancing) but upon registration – that is, when the seller's name has been deleted from the register and the buyer's name is inserted as the registered proprietor (registered owner).

The register is a register of titles, not of land: each estate is registered with a separate title, which is given a unique title number, so that there may be several registers relating to one piece of land – for example, one for the freehold estate and one for each registrable leasehold estate.

The system was intended to provide a complete and up-to-date record of the estate owner's title so that, when he sold, any buyer would be able to rely upon the register as conclusive evidence of all matters affecting the seller's title. This aim has not been fully achieved, as certain third party rights are binding upon the estate owner and buyer even if they do not appear on the register. These are known as interests which are overriding (more commonly referred to in practice as overriding interests) and are considered further in **2.6.2**.

Details of beneficial interests arising under trusts of land (these will be explained further at **2.6** and **2.7**) were kept off the register as private arrangements. Those interests were (and still are) protected by an entry on the register notifying any buyer that the property is trust property and that to buy the property free from those interests he must comply with the required formalities.

The registered system was set up with District Land Registries, which dealt with the registration of titles to land within their allocated districts. Land registration effectively meant that the state would guarantee title to land and, subject to specific rules, compensate those who suffered loss through error or fraud.

2.2.1 Compulsory registration under the Land Registration Acts 1925–1997

It is necessary to have a basic knowledge of past registration requirements in order to spot whether registration should have taken place at the time. This can be important, for example, when investigating an unregistered title (which will be explained further in **Chapter 5**).

As noted at **2.1**, compulsory first registration only had to be carried out following one of the trigger events where the land was situated in an area of compulsory registration. The areas were phased in over a number of years, with some areas of the country being designated as compulsory registration areas much earlier than others. For instance, parts of Surrey were designated as far back as 1937, Derby was designated in 1968, Exeter in 1974 and parts of Suffolk not until 1990. The whole of England and Wales became an area of compulsory registration in December 1990, meaning that those areas not previously so designated came within the compulsory registration scheme from that date. First registration would then have to be applied for upon the happening of a trigger event.

A simple example will illustrate the effect of this. Imagine that John bought a house with unregistered title in Exeter in 1977. Upon the sale to John (a trigger event) the house would have been registered for the first time (first registration) as Exeter was an area of compulsory registration at the time.

If John bought a house with unregistered title in 1991, it would have triggered first registration irrespective of where it was located in England and Wales, as the whole country was an area of compulsory registration by that point (from December 1990 onwards).

As first registration depended (and still depends) on there being a trigger event, we must now look at what events triggered first registration before **LRA 2002**.

Under **LRAs 1925–1997** the following events triggered first registration:

- (a) a conveyance on sale of freehold land;
- (b) a grant of a new lease for more than 21 years;
- (c) the assignment of a lease (i.e. sale of an existing lease) having more than 21 years left to run at the date of assignment;
- (d) as from 1 April 1998, all gifts, assents, conveyances arising from court orders and first legal mortgages.

2.2.2 Classes of title under the Land Registration Acts 1925–1997

It is necessary to be aware of the classes of title awarded on first registration under **LRAs 1925–1997** as many registers which conveyancers may come across today were created before October 2003 when **LRA 2002** came into force (e.g. if Samir bought his house in 1992 when it was registered for the first time, his register would have been created in 1992 and the appropriate class of title awarded at the time).

When considering an application for first registration of an estate under **LRAs 1925–1997**, the Land Registrar registered it with one of a number of alternative classes of title. The class of title granted determined the extent of the state guarantee of title. Absolute title was, and still is, the best class. The other classes were, and still are, inferior. The possible classes were as follows.

Class of title	Availability
Absolute title	Available for both freehold and leasehold titles
Good leasehold	Available for leasehold titles only
Possessory title	Available for both freehold and leasehold titles
Qualified title	Available for both freehold and leasehold titles

These classes of title continue to be the classes of title granted under the **Land Registration Act 2002 (LRA 2002)**, so we will look at the details of each class when considering the current law (see **2.3.2**).

© 2019 Copyright CILEx Law School Limited

All materials included in this CLS publication are copyright protected.

All rights reserved.

Any unauthorised reproduction or transmission of any part of this publication, whether electronically or otherwise, will constitute an infringement of copyright. No part of this publication may be lent, resold or hired out for any purpose without the prior written permission of CILEx Law School Ltd.

WARNING: Any person carrying out an unauthorised act in relation to this copyright work may be liable to both criminal prosecution and a civil claim for damages.

This publication is intended only for the purpose of private study. Its contents were believed to be correct at the time of publication or any date stated in any preface, whichever is the earlier.

This publication does not constitute any form of legal advice to any person or organisation.

CILEx Law School Ltd will not be liable for any loss or damage of any description caused by the reliance of any person on any part of the contents of this publication.

Published in 2019 by:
CILEx Law School Ltd
College House
Manor Drive
Kempston
Bedford
United Kingdom
MK42 7AB

British Library Cataloguing in Publication Data

A catalogue record for this manual is available from the British Library.
ISBN 978-1-84256-1111-9