



Date
26 November 2007

Dear ...

Proposal that possessory titles no longer contain the “first proprietor” entry

Our Ref
166/87/001

We are writing to consult stakeholders on a proposal to amend the Land Registration Rules 2003 (LRR 2003), which was too late to put into the main Rules Review document.

1. Current position

On the first change of the registered proprietor of an estate registered with possessory title:

- i. the name and address of that first proprietor remains in the proprietorship register preceded by the words “First proprietor”, and
- ii. the new proprietor is entered in the proprietorship register in the usual manner.

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On each subsequent change of proprietor, the first proprietor entry remains (unless and until the title is upgraded).

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This practice arise from rule 8(1)(i) of the LRR 2003, which provides:

8.—(1) The proprietorship register of a registered estate must contain, where appropriate—

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- (i) where the class of title is possessory, the name of the first proprietor of the registered estate and, where that proprietor is a company registered under the Companies Acts, or a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000, its registered number, and

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2. The Proposal

As part of the current review of the LRR 2003, we propose to amend those Rules to:

- (a) remove the requirement in rule 8(1)(i) for Land Registry to retain

¹ paragraphs 946 and 947 of evidence

² Law Commission Report 271 *Land Registration for the 21st Century*, paragraph 12.7. As a safeguard in case contractual freedom is abused, there is a rule-making power as to the regulation of title matters between sellers and buyers (paragraph 2 of Schedule 10 to the Land Registration Act 2002), but it has not been used.

the name of the first proprietor in a register with possessory title;
and

(b) allow Land Registry to update existing possessory titles by removing the first proprietor entry.

3. Background – why do we show the name of the first proprietor?

Under section 16 of the Land Transfer Act 1897 sellers of possessory land had to furnish the buyer with an abstract of title up to the first proprietor.

Brickdale and Sheldon, *The Land Transfer Acts*, 1905, explained:

In order to facilitate the preparation of abstracts on this footing, the name of the first registered proprietor is preserved on the register notwithstanding intermediate dealings.

In the 1911, when giving evidence to the Royal Commission on the Working of the Land Transfer Acts, the then Chief Land Registrar, Sir Charles Brickdale, used a visual demonstration to show how this worked. He laid out a number of deeds before MPs to show a 40 year chain of title, and demonstrated that in unregistered conveyancing as deeds over 40 years dropped off the end, they were being replaced by newer ones. Then he made the last deed a possessory land certificate, which always stayed as the last deed, while the pre-registration deeds dropped off as time went on¹. So a property registered 10 years would only need an abstract for the 30 years before registration.

By retaining the name of the first proprietor on the register, someone investigating the title knew how far back they needed to prove title.

This requirement was incorporated into section 110(2) of the Land Registration Act 1925, but the length of time to prove title was set at 30 years, by section 44(1) of the Law of Property Act 1925, later reduced to 15 years by an amendment contained in the Law of Property (Amendment) Act 1969.

The provisions of section 110 were not replicated in the Land Registration Act 2002, as it was considered that they were very prescriptive and heavy-handed and that in principle the parties should be left to make their own contractual arrangements as to how title should be deduced².

4. Reasons for Change

We consider the policy of entering the first proprietor no longer serves a useful purpose for the following reasons:

- The policy was framed in circumstances very different from today. Until 1908 most people applied for possessory title because it was cheaper. In the period 1899 to 1905 95.3% of first registrations were registered with possessory title, and only 0.4% with absolute title. Possessory titles are now only 0.64% of all titles.

- A hundred years ago most possessory titles would have had pre-registration title deeds in existence, now it is extremely rare for this to be the case. A sampling exercise of possessory freehold first registrations at the Coventry and Durham Boldon offices for January to June 2006 revealed that all were cases of adverse possession or where one or all of the documents of title had been lost.
- In the past, having the first proprietor on the register saved some work for customers and avoided the need to make enquiries of Land Registry that would have required Land Registry calling for and investigate paper files. Now the first proprietor can be quickly identified by ordering historical copies of the register, when necessary.
- As most possessory titles are based on adverse possession, sight of any statutory declarations as to adverse possession are likely to be more important than the name and address of the first proprietor.
- Originally 40 years proof of title was needed, since 1969 it has been only 15 years, so the need to prove title beyond the first proprietor is much less.
- If applying for upgrading of title to absolute based on the estate having been registered for at least 12 years (and the proprietor being in possession of the land), under section 62(4) or (5) of the Land Registration Act 2002, it is sufficient to know when the estate was first registered (rather than who the first proprietor was), which can be discovered, except in the rarest of cases, from the property register.
- The requirement to show the first proprietor in registers creates a disproportionate amount of work and costs for Land Registry, when making changes to register templates and casework systems.

5. Impact Assessment

(a) Benefits

There are savings to Land Registry in reduced costs in programming systems. For example, the last major system rewrite had to allocate 30 mandays for possessory registers, which equates to about £7,500 in total staff cost. This cost would be repeated every time another rewrite is required.

More importantly our computer programming resource is not unlimited, and this proposal will free up valuable time to pursue other worthwhile IT projects for the benefit of customers and caseworkers.

It will reduce the scope for errors by Land Registry staff, as the procedure on change of ownership will be brought more closely into line with that for other classes of title.

(b) Costs

In a very few cases, customers and our staff may have to order or view a historical copy of the register, to identify the first proprietor.

But as we have explained above, the chances of this are very slight. The change will not lead to any significant cost to customers. Currently the fee for a historical copy of the first edition of the register is £8.

The register will still clearly show that a title is possessory, so we do not consider that this proposed change would cause any problem for customers ascertaining the class of title.

6. Time for Reply

We should be grateful for your comments by **14 January 2008**.

I look forward to hearing from you.

Yours ...

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