



Chapter 12: Deducing and investigating title



Aims of this Chapter



12.1 Land registration – a recap



12.2 A freehold registered title



12.3 Deducing title – seller's conveyancer



Knowledge check



12.4 Chapter summary

Aims of this Chapter

An essential part of any conveyancing transaction is to ensure that the seller is legally entitled to sell the property in question. This sounds very obvious but is not always clear. Imagine, for example, that you receive instructions from a man regarding the sale of a house. He might own the house or he might be a personal representative acting on a probate sale or he might be acting as an attorney for the owner. A key part of the job of a conveyancer whether acting on a sale or purchase is to ensure that the seller of a property is legally entitled to do so.

This chapter examines another vital aspect of pre-contract work, deducing and investigating title. The seller's conveyancer deduces title (provides proof of the seller's title) to the buyer's conveyancer. The buyer's conveyancer then investigates title (checks it).

This chapter will cover:

- how title is proved in registered land transactions
- how title is investigated
- the issues that may arise, and
- how the buyer's conveyancer advises a client about title issues.



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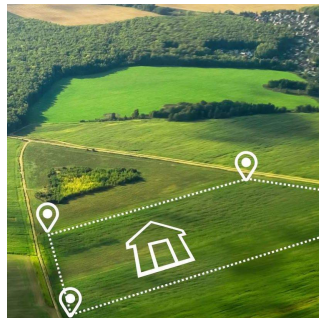
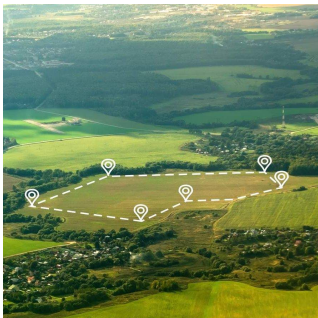
12.1 Land registration – a recap

We have seen that a seller must prove to a buyer that they have the legal title to the property being sold; that is to show they “**own**” the property. We have also seen that there are two systems of land ownership which run in parallel – the **unregistered system** which is the traditional system based on the production of documentary evidence of ownership and the **system of land registration**. If you need to review these concepts, please refer to earlier chapters.



The production of the evidence of title by the seller's conveyancer to accompany the draft contract is known as "**deducing**" title. This means that the seller's conveyancer will either send a copy of the HMLR register entries and title plan to the buyer's conveyancer or they will produce an epitome of title if the title is unregistered. The detail of unregistered title is outside the scope of this course book.

The process of checking that the title is satisfactory is known as "investigating" title. This process will, in fact, be carried out twice in the conveyancing process. First, the seller's conveyancer should investigate their client's title to ensure that it is satisfactory and that the contract can properly be drafted based upon that title. Second, upon receipt of the draft contract, the buyer's conveyancer will investigate the title and will raise any questions about the title as part of the process of raising pre-contract enquiries.



CONTINUE

12.2 A freehold registered title

12.2.1 Registers of title

You have seen a register of title in [Chapter 3](#). Please review the content of the register.

Note that there is further information about the contents of the register in [Chapter 2](#).

The format of a register

The register of title is kept by HMLR. As explained earlier, official copies can be obtained for payment of a small fee.

By way of recap, the register is in three sections:

(a) The property register —

This part of the register contains a description of the land and reference to the title plan. The title plan identifies the location of the registered property and shows the general position of the boundaries to the property.

The estate held will be stipulated as being freehold or leasehold. In addition, the property register may contain details of any easements or covenants that exist for the benefit of the land.

If it is a leasehold title, the register will contain further entries, but these are outside the scope of this course book.

In some cases, the entries may be linked to the title plan, with references to colourings on the plan. For example, a right of way is tinted brown and the drainage right is shown as a broken blue line.

(b) The proprietorship register —

This is headed with the class of title. The class of title determines the extent of the state guarantee. HMLR checks the title on first registration before deciding what category to award. There are different classes, depending on whether the land is freehold or leasehold.

Freehold titles can be one of the following.

- (i) **Absolute freehold (title absolute):** this is equivalent to the fee simple absolute and is essentially subject only to interests that are protected by an entry in the register and interests which are overriding. It is the best class of freehold title and the one that will be granted in the vast majority of cases. This is the class shown in the specimen.
- (ii) **Possessory title:** this is an inferior grade. It does not guarantee the registered proprietor against the possible existence of other valid claims to rights over the land existing from before registration. A possessory title might be granted, for instance, where title deeds have been lost or destroyed. A possessory title can be upgraded to absolute title by the Registrar if the Land Registry is satisfied as to the title (for instance, in the example given earlier, that the deeds have been found and title is now satisfactory), or if the land has been registered for at least 12 years and the Registrar is satisfied as to the registered proprietor's unchallenged possession for that period.
- (iii) **Qualified title:** this is very rare but is granted when HMLR wants to guarantee the title apart from a specified defect. The specific defect will be noted on the register but the state guarantee is otherwise the same as with title absolute. Again, this type of title can be upgraded in due course if the defect is removed.

(c) The charges register —

This part of the register shows any charges on the property, such as mortgages. The entry will show the name and address of the lender, but not the amount of the mortgage. The specimen shows a registered charge to a building society lender.

The charges register also contains notices of third-party rights, such as restrictive covenants, adverse easements and certain leases affecting the registered title.

12.2.2 Upgrading title

If a registered title does not have title absolute, it might be possible to “convert” the lesser title to title absolute in certain specified circumstances; this is known as “upgrading” the title. The most common example is upgrading a possessory title after lapse of time. Once a possessory title has been registered for 12 years, if that title has not been challenged or claimed by anyone, it is possible for the registered proprietor of the possessory title to apply to HMLR to upgrade the class of title to title absolute.

12.2.3 Notices and restrictions

You have seen that there are various entries on the registers of title. These are either notices or restrictions. The **LRA 2002** provides two types of entry for the protection of third-party interests affecting registered estates and charges:

1

A notice is an entry made in the register in respect of the burden of an interest affecting a registered estate or charge.

2

A restriction is an entry in the register that prevents or regulates the making of an entry on the register in respect of any disposition or a disposition of a specified kind.

Notices are almost always entered in the charges register of the registered estate to which they relate. Thus, an entry relating to a restrictive covenant or a mortgage on a charges register would be a notice. In the context of a residential conveyancing transaction, a charge will be removed and a new one registered as a result of the HMLR application made by the

buyer's conveyancer and form AP1 after completion. Generally, it is not necessary to make a separate application to register or remove a notice in a conveyancing transaction.

However, if it is necessary to apply to register a notice, there are separate HMLR forms to do this, the detail of which is outside the scope of this course book. There are also forms to remove a notice if required.

It is not possible to protect a beneficial interest by way of a notice. This must be protected by the entry of a restriction on the proprietorship register. You have seen in **Chapter 6** that a Form A restriction will be used if co-owners decide to hold the beneficial interest as tenants in common.

This is a very detailed area of conveyancing practice, much of which is contained in HMLR Practice Guide 19. You only need to have an outline understanding of the difference between notices and restrictions for the foundation course.

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12.2.4 Applications to the Land Registry

The registration of a transaction is either a **first registration** or a disposition of registered land (e.g. a sale), that is, a **dealing** with an already registered estate.

(1) First registration —

The whole of England and Wales is now a compulsory registration area, but first registration is not obligatory until an event “triggering” first registration takes place. The application is made on form FR1 and the accompanying documents are listed on form DL.

(2) Registration of dealings with registered land —

First registration relates only to previously unregistered titles. Once the title has been registered, all dealings or dispositions with a registered estate must (with very limited exceptions) be completed by registration. The legal estate only passes to a buyer or donee once they are registered in place of the seller or donor. The application form for a dealing with registered land is an AP1 (application to change the register).



Activity

Please review the forms FR1 and AP1 that you were asked to download and keep earlier in this course book.

Remember that applications relating to dealings with land that is already registered are made on form AP1, and you will come across these a lot in practice.

Please also look at form AP1 at the end of **Chapter 18**. Note that HMLR periodically updates the forms, so always check in practice that you are using the latest version.

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12.3 Deducing title – seller's conveyancer

12.3.1 Deducing title in a registered transaction

Deducing title involves the seller in producing documentation to the buyer, thus demonstrating that they have good title to the property they are selling. Investigating title means that the buyer examines the title and raises any queries, called requisitions on title. These queries may also be referred to as pre-contract enquiries on title.

Title is, in modern practice, deduced prior to exchange of contracts (i.e. title documentation sent out with the contract) and is also investigated prior to exchange. The fifth edition of the Standard Conditions of Sale (5th edition – 2018 Revision) reflects this. If the Law Society Conveyancing Protocol is being used, the seller's conveyancer is required to submit the title at pre-contract stage in all cases.

In registered land transactions, the Land Registration Act 2002 (LRA 2002) does not stipulate how title must be deduced and it is therefore open to the parties to make their own arrangements; however, the standard conditions in a contract incorporating the SCS govern proof of registered title.

The effect of SCS 4.1.2 is that the proof must include:

- official copies of the register of title for the property;

- official copy of the title plan; and
- copies of documents referred to on the register and kept by the Registrar (there are limited and specified exceptions).

The official copies are obtained from the Land Registry at an early stage and will be sent out with the contract.

CONTINUE

12.3.2 Title checks

Once the title documentation has been received, the buyer's conveyancer must check that it is acceptable.

In **registered** transactions, the buyer's conveyancer checks the register entries and the title plan and checks for any interests which are overriding.

The basic due diligence title checks that must be made by the buyer's conveyancer are as follows. There may be other matters depending on the particular transaction. In general terms, the checks will alert the buyer's conveyancer to any discrepancies which need to be queried, to any further enquiries which need to be made and to any action which needs to be required of the seller's conveyancer such as the removal of any problem entries (where possible) from the title register.

12.3.2.1 The property register

Are there any discrepancies in the **property description**? Does it differ from the property description stated in the contract or any other document? If so, the discrepancy must be resolved.



Link to Practice

If the contract states that 45 The Mews is being sold, and the official copies refer to 45A The Mews, this will be a discrepancy. It may be easy to explain any discrepancy (e.g. perhaps the houses in the street have been renumbered) but the buyer's conveyancer should follow this up.

Are there any discrepancies in the **title plan**? Does it include the land being bought, and are the boundaries as expected? A careful examination of the title plan may also alert the conveyancer as to any specific pre-contract enquiries or pre-contract searches required (pre-contract searches and enquiries are covered in **Chapter 14**).

Is the **title number** the same as the one stated in the contract? If not, this must be queried (e.g. perhaps there has been an administrative error). It is essential to ensure that the buyer is buying the correct property.

Is the **estate** consistent with that stated in the contract and other documentation? For instance, if the contract states that the property is freehold, the official copies should not state that it is leasehold.

Does the property have the benefit of any **easements**?



Link to Practice

Are any easements sufficient for the client's needs? For instance, if the register contains a right of way on foot only, this will not be sufficient for a buyer who needs to drive their car over the land.

Are any rights subject to any cost for the buyer (e.g. the right to use a footpath, driveway or road may carry a charge towards its maintenance)? If there is an obligation to pay towards the maintenance of a driveway, for instance, the buyer's conveyancer will probably want to make further enquiries as to the amounts which have been paid in the past and the present state of repair of the driveway, so the buyer client can assess the potential amounts they may be asked to pay in the future.

Do the **boundaries** shown on the title plan match the boundaries of the property on the ground? The clients should be asked to report any obvious discrepancies, which must be followed up (e.g. perhaps a neighbour has fenced off a part of the garden that does not belong to them).

12.3.2.2 The proprietorship register

Does the **class of title** match that stated in the contract and expected by the buyer?

Do the **names of the proprietors** (registered owners) match those in the contract? If not, any discrepancy must be resolved.



Link to Practice

If the registered proprietors are shown as Bernard Blanc and Angela Becker, but the contract refers to a sale by Bernard and

Angela Blanc, it may be that they have married since their initial purchase. In this case the discrepancy can be dealt with by raising a pre-contract enquiry on title, asking the seller's conveyancer to provide a copy of the marriage certificate.

If the registered proprietors are Helen and Owen Davies, but the seller in the contract is Owen Davies, it may be that Helen has died. In this case it would be necessary to confirm this, and ask for a copy of the death certificate to provide official evidence of the fact of death.

If the registered proprietor is Kevin Banks but the sellers are shown in the contract as India Finch and Paul Higgins, it may be, for instance, that they are selling as personal representatives (PRs) (e.g. executors) following Kevin's death.

Whenever there are discrepancies, they must be dealt with and any relevant documentation obtained (e.g. a marriage or death certificate).

Are there any **restrictions** on the register? If there are, the buyer's conveyancer must ensure that they will be complied with. The Form A restriction occurs frequently.

12.3.2.3 The charges register

Incumbrances are matters which burden the property, such as restrictive covenants and easements. If there are any, the details must be checked to ensure that they are not going to be a problem for the buyer.



Link to Practice

If the buyer wishes to set up a doctor's surgery in the house, and there is a covenant prohibiting use of the property for business purposes, there is a problem.

A covenant prohibiting the keeping of caravans on the driveway may be a problem for a buyer who has a caravan. If details of the covenants are set out in a separate deed rather than contained on the register in full, it will be necessary to obtain a copy of the deed so that all the details can be seen.

Restrictive covenants may cause a problem either in respect of a past breach (e.g. there is a covenant prohibiting building work, when it is obvious that an extension was built two years ago) or an anticipated breach (e.g. there is a covenant prohibiting business use and the buyer client wants to set up a business at the home).

If a covenant will seriously impede the buyer's use of the property and no solution can be found, the client should be advised not to proceed with the purchase.

If there are any mortgages, the buyer must ensure that they will be paid off (discharged or redeemed) before completion, or that the seller's conveyancer will undertake to discharge any mortgages from the proceeds of sale (see **Chapter 17**).



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Knowledge check

This knowledge check is a self-assessment to see how well you understood the content of this chapter and it does not count towards your course mark.

There are 2 questions in this knowledge check.

1. If the registered proprietors of 51 City Lane on the register are Alice Bancroft and Huw Bancroft but the property is being sold by Huw Bancroft, which of the following steps should you take, assuming there is no Form A restriction?

- ☐ a. Go ahead with the sale as Huw Bancroft is one of the registered proprietors
- ☐ b. Ask HMLR for evidence of a death certificate for Alice Bancroft
- ☐ c. Ask the seller's conveyancer for a death certificate for Alice Bancroft

SUBMIT



Complete the content above before moving on.

2. Match the following classes of title to the correct description:



Qualified

Equivalent to fee simple absolute – best class



Absolute

Does not guarantee registered proprietor against claims existing from before registration – inferior class



Possessory

Title is guaranteed apart from a specified defect

SUBMIT



Complete the content above before moving on.

12.4 Chapter summary

(1) A notice is an entry made in a register of title in respect of the burden of an interest.

(2) A restriction is an entry in the register that prevents or regulates the making of an entry on the register in respect of any disposition (or a disposition of a specified kind) notices almost always appear on the charges register of a registered title.

(3) In a sale involving registered land, the seller's conveyancer will deduce title by producing official copies of the register of title, and official copy of the title plan and copies of the documents referred to on the register and kept by the Registrar.

(4) The buyer's conveyancer will investigate the title.

You have completed Chapter 12.

EXIT