



Solicitors ought to note that it rests on vendors to supply maps in a transfer of land.

SUPPLY OF MAPS

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There appears to be amongst the profession generally some misunderstanding regarding the above and, accordingly, the Conveyancing Committee has deemed it necessary to issue a practice note covering the position which arises in relation to apartments/flats/commercial properties where the title consists of a lease carved out of a folio. The folio may be freehold or leasehold.

LEASES CARVED OUT OF FOLIOS

1. If one opts to have the lease registered as a burden on the folio (the lease should contain a consent by the lessor to the registration of the lease as a burden) there must then be opened in the Land Registry a new leasehold folio. (See Section 70 Registration of Title Act, 1964).

Registration is not mandatory under the Act but is advisable.

2. In order to have the new leasehold folio opened it is necessary to lodge the following documents in the Land Registry:-

- (a) lease and counterpart or a certified copy. (If the counterpart or certified copy is not lodged the Land Registry will retain the original);
- (b) affidavit of discovery;
- (c) verified hand search in the Registry of Deeds against the purchaser/borrower from the date of the lease. The property searched against must include the description “ and being part of the lands comprised in folio ”;
- (d) a judgement search against the borrowers;
- (e) if there is a loan, a mortgage and counterpart or certified copy;
- (f) the usual statutory declarations re the Family Home Protection Act, The Family Law Act, etc.;
- (g) Land Registry fee to cover the registration of the lease and mortgage of £30.00 (first registration).

UPDATE (1998): The operative date of the Registration of Title Act, 1964 was 1st January 1967. Prior to this the position was that if the lease was registered as a burden on the head folio all subsequent assignments were registered in the Registry of Deeds. The lease itself was not registered in the Registry of Deeds. It is now the universal practice that the lease is registered as a burden on the head folio and a new leasehold folio is opened for the new lease. This applies to all leasehold interests for more than 21 years.

Lenders are now requesting that the Land Certificate and a Certificate of Charge under Rule 156 be taken up and the requests for same (together with appropriate fees) should be included in the Form 17 when lodging the dealing to have the new folio opened. Where a Certificate under Rule 156 issues it is usually endorsed on the mortgage on completion of the registration. The original mortgage is returned and the certified copy or counterpart is retained in the Land Registry. This facilitates the stamping up of the original mortgage. If the Rule 156 Certificate is not requested the original mortgage is retained in the Land Registry.

UPDATE (2006): The Registration of Deeds and Title Act 2006 has introduced new provisions that may affect the registration of leasehold title and new Rules to be drawn up by the new Property Registration Authority are anticipated in due course.

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IDENTIFICATION

A member queried the correct procedure in the following circumstances. If the title of the property is registered on a leasehold or freehold folio and an original lease or a duplicate or attested copy transfer is furnished by the Vendor and contains a map satisfactorily identifying the premises is it reasonable to require the Vendor to furnish a copy Land Registry Map in addition?

The Committee take the view that if it is clear that the folio comprising the property for sale is the entire property contained in the Lease or Transfer there is no need to require further evidence of identification.



The Conveyancing Committee understands that to overcome the difficulties which have been encountered in situations where a lessee has obtained a consent to the vesting of the freehold of his property in him and has subsequently decided to sell his house before the Vesting Certificate issues, the following position prevails.

Strictly speaking under regulation 10 of the Landlord and Tenant Ground Rent No.2 Act 1978 Regulations, the Registrar would appear to be entitled to issue Vesting Certificates in the names of new owners. However, certain difficulties arise in doing so. To assist the public in general, in cases where a consent has been lodged or where a case is being dealt with by way of Arbitration, the Land Registry is endeavouring to issue the Vesting Certificates as expeditiously as possible.

In cases where they fail to issue the Vesting Certificates prior to the closing date of a sale it appears that the following is the procedure which is being followed.

They can issue the Vesting Certificate in consent cases in the name of the purchaser on receipt of :-

- (a) The consent of the original applicant
- (b) A fresh application in form (A) signed by the purchaser
- (c) A copy of the Deed of assignment to the purchaser

The Land Registry will presume that the question of purchase monies which will have been paid by the applicant will already have been dealt with by the vendor and the purchaser to their mutual satisfaction.

In Arbitration Cases they will continue the application in the name of the purchaser on the lodgement of:

- (a) The consent of the original applicant
- (b) A fresh application in form (B) signed by the purchaser
- (c) A copy of the Deed of Assignment to the purchaser

They will presume that the issue of the consent will have dealt with the question of the fee and the purchase money which same had been paid or deposited with the registrar. Where no money has been deposited with the Registrar and it is to be so deposited, the Registrar will presume that same is being deposited consequent on the agreement of the parties.

VESTING CERTIFICATES



LAND CERTIFICATES

In cases involving registered land the Committee takes the view that, if no Land Certificate has been issued in respect of property the subject of a Mortgage, the Solicitor for the Building Society should not insist on the issue of the Land Certificate.

If a Land Certificate has issued, it must, of course, be made available to the Solicitors for the Building Society to enable registration of the Mortgage to take place. The Committee takes the view that the proper practice for a Solicitor for a Building Society is to retain the Land Certificate with the Deeds in such circumstances unless requested to return it by the borrower.

Certificates of Charge

It has been the general practice of Building Societies' Solicitors to apply for a Certificate of Charge under Rule 156 of the Land Registry Rules. This document comprises the duplicate Mortgage which is rubber stamped by the Land Registry as a Certificate of Charge. With the extremely high volume of Mortgages involved, the odd Certificate of Charge gets mislaid and in cases like this, considerable delay and inconvenience is caused to all parties concerned. It is the opinion of the Committee that in the absence of a secondary market for Mortgages between Building Societies and other institutions that there was no practical need to obtain Certificates of Charge in ordinary cases and that this practice of doing so should be discontinued.

UPDATE (1998): Notwithstanding the foregoing it appears now to be the practice of all lenders that a Land Certificate be taken up, further that a Certificate of Charge under Rule 156 of the Land Registry Rules be obtained because, subsequent to the first legal mortgage or charge in favour of the lender, the borrower may require further funds from the lender and the lender may accept in lieu of a further charge the Land Certificate as an equitable deposit. Furthermore in relation to the mortgages/charges now being executed by borrowers in respect of housing loans and other commercial loans, the document is for "all sums due" and accordingly the reason a Certificate of Charge under Rule 156 is taken up is because on the lodgement of the mortgage/charge in the Land Registry for registration the original is returned with the Rule 156 Certificate endorsed thereon so that in the event of the lender advancing further monies it is not necessary to go to the Land Registry to take up the original mortgage, have it stamped and re-lodged and the appropriate amendment made on the folio because the original mortgage will be to hand, it can be stamped and then lodged in the Land Registry and this of course expedites matters.

There is of course a difficulty if the original mortgage with Rule 156 Certificate endorsed thereon is lost. You are in a very similar position to where a Land Certificate is lost.

UPDATE (2006): See Section 73 of the Registration of Deeds and Title Act 2006 regarding the abolition of Land Certificates. See also page 3.41 hereof regarding liens over Land Certificates.



In cases involving registered land the Committee takes the view that the Solicitor for the Purchaser (or, if the Mortgagee's Solicitor is registering the purchase deed, the Solicitor for the Mortgagee) should ensure that there is a Land Registry Map relating to the property being purchased. Accordingly, in Sub Division cases the Solicitor lodging the application for registration should also lodge a Requisition for a certified copy of the Land Registry Map relating to the Purchaser's holding, when registered. The said Land Registry Map should be held by the Purchaser's or Mortgagee's Solicitor with a certified copy of the Folio showing the Purchaser as registered owner.

If this procedure is followed the delay in obtaining a certified copy of the Land Registry Map for subsequent dealings by the Purchaser will be avoided. This practice will also assist clients and Mortgagee's Solicitors in all future dealings with the property.

LAND REGISTRY MAP

*Published in Law Society
Gazette, June 1980. JC*

The attention of members is drawn to the recent edition of the General Consent (June 1980) issued by the Land Commission and circulated to the profession. This consent corresponds generally with the version issued in December 1977 save for the important fact that the permitted maximum size of the individual sites within the framework of the consent is increased from 1 acre to 1 hectare (2.471 acres). The limitation in paragraph 6 (ii) of the General Consent, the provision relating to the minimum size of the balance of the holding, is now 2 hectares instead of 5 acres.

Paragraph (vi) (iii) of the 1977 forms of consent precluded more than five divisions of a holding. Under the new consent the number of subdivisions is not relevant, the limitation is now one of area and the limit is 2 hectares.

The amended consent should be carefully studied.

UPDATE (1998): With regard to Section 12 of the Land Act 1965 there has been no change save that two of the new County Councils in Dublin are exempt, namely Dun Laoghaire/Rathdown and South Dublin. The other County Council, Fingal, has not yet applied for the exemption. No doubt this should be forthcoming so that subdivisions within the three new County Councils viz. Dun Laoghaire/Rathdown, South Dublin and Fingal will be exempt.

UPDATE (2006): See page 3.35 hereof regarding the repeal of Section 12 of the Land Act 1965.

LAND COMMISSION CONSENTS

GENERAL CONSENT TO SUBDIVISION

*Published in Law Society
Gazette, October 1980*

SECTION 45
LAND ACT 1965

By Statutory Instrument 144/1983 the Minister for Agriculture has added an additional category of “qualified person” to Section 45 of the Land Act, 1965. The additional category is a person who is a citizen of a member State of the European Communities and who;

- (a) is exercising in the State the right of establishment as a self employed person under Article 52 of the E.E.C. Treaty by way of an economic activity the nature of which is specified in the relevant certificate given by that person under subsection 3 of the said Section 45 and
- (b) is acquiring an interest in land to which the said Section 45 applied for the purpose of or in connection with such exercise of that right.

The Statutory Instrument is in fact considerably more limited than one might believe, as the person must be exercising the right of establishment as a self employed person and must be acquiring the interest for the purpose of or in connection with the exercise of that right of establishment.

It would not appear to include foreign Nationals who buy holiday or retirement homes in Ireland or even Company Executives purchasing homes in the country. It would not appear to apply to Companies and accordingly it would appear that it may only apply, for example, a Stud Farm acquisition by an individual non National.

UPDATE (1998): Further changes have been made as follows:

Changes to Section 45 have been made by S.I. No. 67/1994 and S.I. No. 56/1995.

S.I. No. 67/1994 provides that all of Dublin City and County is exempt.

S.I. No. 56/1995 (Land Act, 1965 (Additional Categories of Qualified Persons) Regulations 1995) extended the categories of qualified persons. The definition of “qualified person” has been extended to include:

- (a) a person (other than a body corporate) whose principal place of residence is in a Member State of the European Communities or other European State which is a contracting party to the European Economic Area Agreement,
- (b) a body corporate incorporated in a Member State of the European Communities or other European State which is a contracting party to the European Economic Area Agreement and having its registered office, central administration or principal place of business within the territory of those States.

Provided a person or body corporate comes within the above definition there is now no restriction as to the vesting no matter the size of the holding.

The Land Commission no longer compulsorily acquire land and accordingly the reference to same in the old Requisitions on Title has now been deleted in the new Requisitions.



Practitioners' attention is drawn to the following:- S.I. No. 56 of 1995

Land Act, 1965 (Additional Categories of Qualified Persons) Regulations, 1995

I, Ivan Yates, Minister for Agriculture, Food and Forestry, in exercise of the power conferred on me by Section 45 (1) (X) of the Land Act, 1965 (No. 2 of 1965), and the Land (Transfer of Departmental Administration and Ministerial Functions) Order, 1977 (S.I. No. 28 of 1977), as adapted by the Agriculture and Fisheries (Alteration of Name of Department and Title of Minister) Order, 1977 (S.I. No. 31 of 1977), the Agriculture (Alteration of Name of Department and Title of Minister) Order, 1987 (S.I. No. 97 of 1987) and the Agriculture and Food (Alteration of Name of Department and Title of Minister) Order, 1993, (S.I. No. 11 of 1993), hereby make the following Regulations:

1. (a) These Regulations may be cited as the Land Act, 1965 (Additional Categories of Qualified Persons) Regulations, 1995.
- (b) The Land Act, 1965 (Additional Category of Qualified Person) Regulations, 1970 (S.I. No. 40 of 1970), the Land Act, 1965 (Additional Category of Qualified Persons) Regulations, 1972 (S.I. No. 332 of 1972), the Land Act, 1965 (Additional Category of Qualified Person) Regulations, 1983 (S.I. No. 144 of 1983), the Land Act, 1965 (Additional Category of Qualified Person) Regulations, 1994 (S.I. No. 67 of 1994) and these Regulations may be cited together as the Land Act, 1965 (Additional Categories of Qualified Persons) Regulations, 1970 to 1995.
2. For the purpose of the definition of a "qualified person" in Section 45 of the Land Act, 1965 (No. 2 of 1965), the following categories are hereby declared to be additional categories, namely:-
 - (a) a person (other than a body corporate) whose principal place of residence is in a Member State of the European Communities or other European State which is a contracting party to the European Economic Area Agreement.
 - (b) a body corporate incorporated in a Member State of the European Communities or other European State which is a contracting party to the European Economic Area Agreement and having its registered office, central administration or principal place of business within the territory of those States.

Given under my Official Seal, this 16th day of February 1995.

IVAN YATES, TD,

Minister for Agriculture, Food and Forestry

UPDATE (1998): As of May 1998 the contracting parties to the European Economic Area Agreement are:

- all EU Member States

- Austria, Finland, Iceland, Liechtenstein, Norway and Sweden.

Practitioners can check with the Department of Agriculture, Farnham Street, Cavan for any update on this list (Tel. No. (049) 68200).

UPDATE (2006): See page 3.35 hereof regarding the repeal of Section 45 of the Land Act 1965.

LAND ACT 1965

*Published in Law Society
Gazette, May/June 1995*



**LAND REGISTRY
DEALING NUMBERS**

The Conveyancing Committee, in conjunction with the Land Registry have reached agreement on a procedure whereby a note of the Dealing Number will be furnished to the Applicant's solicitor at the earliest possible date.

The Land Registry Rules provide that every Application to the Registry should be accompanied by a Statement in Form 17. Where a Dealing has been lodged by post Form 17 should be furnished in duplicate and subject to the Dealing being in order, the Registry will, on the allocation of a Dealing Number put a note of same on the Copy Form 17 and return this to the lodging Solicitor. In the case of Dealings lodged by hand, the form 17 should be furnished in triplicate. The registry, on the lodgement of the Dealing, will receipt one copy and furnish it to the solicitor making the lodgement. When a Dealing Number has been allocated, the extra copy of the Form 17 will be returned to the lodging solicitor with a note of the Dealing Number therein.

It is considered that this procedure will greatly assist solicitors who may have subsequent queries concerning the progress of their Applications. In all subsequent communications with the Registry, the Dealing Number should be quoted.



The practice of the Land Registry of using the suffix the letter “F” to the Folio number of freehold folios seems to be causing confusion to the profession. The Land Registry uses the suffix for all new freehold folios. No change is made to the numbers of the existing Folios, so the existence of an “F” folio does not preclude the existence of another folio with the same number, minus the “F”. For example, there can exist simultaneously a Folio 1234 County Dublin and a Folio 1234F (and of course 1234L County Dublin). Particular care should be taken to check the Folio number, as errors seem to arise frequently particularly on searches.

Checking Folio Numbers in Transfers

It is well established that many typists (except perhaps those working for firms of accountants) are particularly weak in typing figures. Presumably this is because of lack of frequency in doing so. It is very easy for a typist to transpose any two keys while working at speed, but it seems to be particularly easy to do so while working with figures. The result of this is that errors are found more often than might be expected in the numbers typed in documents including, unfortunately, Land Registry Transfers. The folio number is typed both in the heading and in the body. Getting the number right in the heading will be of no avail if it is incorrectly stated in the body of the deed. The Registry act only on the number in the body of the deed. If the number is wrong in the body of the deed, the Land Registry are obliged to seek re-execution of the Transfer, with consequent inconvenience for all parties. It is suggested that Solicitors should check Transfers carefully after they have been typed, paying particular attention to the Folio numbers. It might be a wise precaution for those who dictate Transfers to give the typist a copy of the folio to check the number.

UPDATE: Mortgages

It is also very important when completing the Schedule to a Mortgage that not only the folio number be given (bearing in mind the foregoing with regard to the insertion of “F” where appropriate) and the County but also the address of the property contained in the said folio.

LAND REGISTRY

FOLIO NUMBERS



**UNDERTAKING TO
DISCHARGE LAND
REGISTRY QUERIES
ON TRANSFER OF
REGISTERED LAND**

Such undertakings should only be asked for or given in the following circumstances:

- (1) building estates or other cases involving sub-division, or
- (2) where the vendor is purporting to sell as the person now entitled to be registered as owner i.e. where that person is not already registered himself, but is perhaps in possession of a completed and stamped transfer, or
- (3) where a lender's solicitor is being asked to register the borrower's title.

Solicitors should not give or ask for an undertaking to discharge Land Registry queries where the sale involves the entire land in a folio unless there are very unusual circumstances that would warrant such a request.

It is suggested that a reasonable wording for the form of undertaking to be given should be as follows:

“In consideration of your completing the above sale/mortgage with me, I hereby undertake on behalf of my client that he will do everything within his power or procurement to satisfy within a reasonable time any Land Registry queries arising on the registration of your client's transfer/mortgage and to pay and discharge any outlay to the Land Registry arising thereon and I personally undertake to assist my client in so doing”.

- (a) Care should be taken to get clients' authority to give such an undertaking.
- (b) Such an undertaking may not apply in cases where a purchaser is lodging an application to convert the title of the property sold from possessory to absolute, or where the title hitherto was unregistered and registration is compulsory upon the sale. Different considerations may arise in such cases and each case would have to be considered on its merits.
- (c) Practitioners are reminded of the desirability of including the words “as beneficial owner” in Land Registry Transfers, in order to avail of the appropriate implied covenants, despite the fact that they are not required by the Land Registry.



Members will have noted the gradual introduction of the new filed plan system in the Land Registry. Each Folio has attached to it a copy of a map on the largest ordnance survey scale for that area showing the property contained therein edged in red. When a copy of a map or a Folio which has a filed plan is bespoken, a photocopy of the Land Registry's map is issued. These photocopies are made on a special photocopier which is designed to give minimum distortion in the course of copying. The red line on the map attached to the original Folio of course comes out on the copy as a thick black line. Most solicitors require Land Registry maps to check identification rather than boundaries or areas and find the maps furnished perfectly adequate for their purposes. The main advantage of the file plan system is the speed with which the map issues.

It occasionally happens that property in a Folio is subject to or has appurtenant rights e.g. a right of way and of course the copying process will not show the yellow markings indicating the right of way. A special application has to be made for maps to have the right of way or such like marked. While the Land Registry will do everything in their power to provide an efficient service in cases the subject of special application it should be appreciated that it will take longer to get a map specially marked and in future they are likely to cost more. An application for a special map should be addressed to the Chief Superintendent (Mapping), Land Registry, Chancery Street, Dublin 7. ¹ In relation to Land Registry practice generally we would make the following recommendations:-

1. Remember that if lodging a dealing where rights appurtenant to the property transferred are being granted, a special application must be included in the Form 17 if you wish to have these appurtenant rights noted on the folio.
2. Also remember that, if making an application for a copy map, rights of way affecting property or appurtenant rights registered in favour thereof will not be shown on the map unless specifically requested.
3. Do not apply for a special map unless you need it.

LAND REGISTRY MAPPING

*Published in Law Society
Gazette, July/August 1982*

*1. or to the Land Registry
office at Waterford,
the Irish Life Centre
or Setanta Centre as
appropriate.*

UPDATE: It is not permissible to photocopy large Ordnance Survey maps without obtaining a licence from the Ordnance Survey Office but this can be obtained at a nominal charge. All matters pertaining to same should be addressed to the Ordnance Survey Office.

CHAPTER 3

LAND REGISTRY AND
LAND ACTS MATTERS

LAW SOCIETY CONVEYANCING HANDBOOK



EXTENSION OF PERIOD OF VALIDITY OF SUB DIVISION CONSENTS

The Land Commission has decided to extend the period for which certain consents are valid. The form of consent most commonly used by the Commission to date provides that the consent is valid for a period of 12 months. The Commission has now decided to extend the initial period of validity to 3 years.

The arrangement will not apply to consents in the case of applications in respect of non agricultural properties e.g. for building purposes where the consents are not subject to any time limit.

*Published in Law Society
Gazette, November 1982*



1. Where new boundaries are being created, for instance the carving of a site out of a field, the Registry will require the largest available scale of map from
 - (a) a Land Registry Map, or
 - (b) a Filed Plan, or
 - (c) Ordnance Survey Map.
2. Where no new boundaries are being created, for instance the transfer of an entire field, either the Land Registry Map, Filed Plan or Ordnance Survey Map not at current largest scale will be accepted.
3. Development Schemes - The Registry have special requirements details of which can be obtained from the Mapping Branch.

NOTES:

1. Photocopies of Maps are not acceptable due to distortion caused by photocopying. Filed Plans themselves, although photocopies, are prepared on special copiers which minimise distortion and accordingly are acceptable for subdivision purposes. Of course a photocopy of a Filed Plan would not be acceptable.
2. It occasionally happens that property in a Folio is subject to or has an appurtenant right of way and of course the copying process will not show the yellow markings indicating the right of way. A special application has to be made for Maps to have rights of way or such like marked. Any application for a special Map should be addressed to the Chief Superintendent (Mapping) Land Registry, Chancery Street, Dublin 7. ¹
3. All Maps should be marked by qualified Personnel and the property being transferred identified by means of a thin red line.
4. To avoid future boundary problems the boundaries to the property being transferred should be marked prior to Mapping and the stakes encased in cement and a Map should then be prepared by reference to these markings.

MAPS ACCEPTABLE TO THE LAND REGISTRY IN SUBDIVISION CASES

*Published in Law Society
Gazette, June 1983*

*1. or to the Land Registry
office at Waterford,
the Irish Life Centre
or Setanta Centre as
appropriate.*

UPDATE: It is not permissible to photocopy large Ordnance Survey maps without obtaining a licence from the Ordnance Survey Office but this can be obtained at a nominal charge. All matters pertaining to same should be addressed to the Ordnance Survey Office.



NO PENDING DEALINGS

The relevant requisition in the Law Society's requisitions on title is "Have any dealings been registered in the folio or are any dealings pending which are not shown on the folio furnished?". This requisition appears to have given rise to the practice of vendors' solicitors being asked to furnish a certificate that there are no pending dealings. Although the requisition and the resulting obligation on the vendor's solicitor was intended to apply only to specific cases, this is not clear from the requisition on title, and, as a result, solicitors have been asked for this certificate in all cases involving registered land.

Practitioners should be aware that this certificate should be requested only in cases where portion only of the vendor's land is being sold. Its principal purpose is to assure the purchaser that no pending dealings relate to lands being sold to the purchaser. Strictly speaking, the correct wording on the certificate should be that "none of the dealings pending (if any) affect the site in sale to the purchaser". This certificate can of course only relate to the facts within the knowledge of the solicitor giving it and should be so qualified. There could be dealings pending on the folio of which the vendor's solicitor was unaware. The Committee therefore recommends that these certificates should be given in cases of sub-division only and should not be asked for or given in cases of the sale of all of the lands on the folio. This recommendation should be read in conjunction with the practice note published with the January/February issue of the Gazette 1982 relating to undertakings to discharge queries.

*Published in Law Society
Gazette, September 1983*

UPDATE: This Practice Note should also be read in conjunction with the Practice Notes at page 3.26 and page 3.30 hereof.

SECTION 72 DECLARATIONS; SECRETARIAL COMPANIES

The Conveyancing Committee was asked to give a view on the acceptability of a Section 72 Declaration made by an individual as Secretary of a Secretarial Company which in turn was the Secretary of the land owning company. The Committee's view was that a Section 72 Declaration could properly be made by a Director as the Secretary of a Secretarial Company in such circumstances.

*Published in Law Society
Newsletter, November 1984 -
March 1986*



In a letter published in the June 1984 issue of the Gazette, Mr. Brian O'Reilly suggested a form of certificate for completion for the Land Registry in cases where persons were availing of their rights of establishment to acquire land in Ireland which was subject to Section 45 of the 1965 Land Act.

The Registrar of Titles subsequently wrote to the Editorial Board of the Gazette suggesting that the form of certificate proposed by Mr. O'Reilly was not in fact adequate.

The following certificate meets the Land Registry's requirements and is in accordance with the legislation:-

I, CERTIFY that:

1. I am a citizen and as such a citizen of a member state of the European Economic Community.
2. I am exercising in the State the right of self establishment as a self employed person under Article 52 of the E.E.C. Treaty (within the meaning of the European Communities Act 1972) by way of economic activity the nature of which is
3. I am acquiring an interest in land to which Section 45 of the Land Act 1965 applies for the purpose of and in connection with such exercise of that right.

UPDATE (1998): Please see the update to the Practice Note on page 3.6 hereof and the Practice Note with update on page 3.7 hereof.

UPDATE (2006): See page 3.35 hereof regarding the repeal of Section 45 of the Land Act 1965.

**LAND ACT
1965**

**RIGHTS OF
ESTABLISHMENT**

*Published in Law Society
Gazette, May 1985*



THE LAND ACT 1984

The Land Act 1984 came into force on 16th December last and contained a number of significant provisions namely:

1. The provisions of the previous Land Acts which militate against long term leasing of agricultural land were repealed. It is important to note however that regard must still be had to the terms of the Landlord and Tenant Amendment Act 1980 and the rights accruing to a Lessee by virtue of business occupation in excess of three years¹. If farm buildings are let to a tenant without lands or with such a small amount of land so that the buildings would not be deemed to be ancillary to the lands then in these circumstances the buildings may be a tenement within the meaning of Section 5 of the Landlord & Tenant Amendment Act 1980. In such cases the lessor should have regard to the fact that the lessee may acquire rights to a new tenancy pursuant to Part 11 of the 1980 Act.
2. The Building Societies Amendment Act of 1983² provided that a Charge on land to secure payment of a conventional rent, Fee Farm Rent or a Crown Rent, shall not be a prior mortgage for the purposes of Section 80 of the Building Societies Act 1976². Section 4 (2) of the Land Act 1984 goes further to provide that a Purchase Annuity, a Land Reclamation annuity or any other annual payment to the Land Commission not covered by the Building Societies Amendment Act 1983² shall not be a prior mortgage. This overcomes the lacuna in the 1983 Act² which while covering Rent Charges generally failed to deal with Tithe Rents. Now by virtue of the Land Act all annual payments to the Land Commission shall not be prior mortgages and accordingly will not have the effect of rendering void a building society mortgage or charge which may be subsequent in priority to it.
3. Section 7 of the Act in recognition of the fact that Tithe Rents are an anachronism provides that as and from 1st January 1985 all rent charges in lieu of Tithes, Perpetuity Rents or other periodic payments payable to the Irish Church Temporalities Fund which subsisted on 28th September 1975 shall be extinguished. The Land Commission ceased to collect Tithe Rents as and from 28th September 1975, as the administrative cost in doing so exceeded the income received.
4. Section 13 provides that an appointment of new trustees by the Minister to trusts set up to hold lands allotted by the Land Commission - mainly sports fields - shall operate to vest the property in such Trustees. This overcomes a lacuna in the 1950 Land Act.

*Published in Law Society
Newsletter, September 1985*

*1. The reference to 3 years is
now 5 years - see Landlord
and Tenant (Amendment) Act,
1994*

*2. Please note that the
Building Societies Acts 1976 -
1983 have now been repealed
and replaced by the Building
Societies Act 1989*



In order to have uniformity of practice in the matter the Land Registry has confirmed that Affidavits and Statutory Declarations for use in proceedings in the Land Registry, in compliance with rule 201(2) of the Land Registration Rules 1972 and Order 40 Rule 7 of the Rules of the Superior Courts, may be taken in any foreign place or country before:

- (a) Any Irish diplomatic or consular representative or agent exercising his functions in that country or place, or
- (b) When there is no such representative or agent as at (a) above or no such representative or agent convenient near to the deponent in such country or place, before any notary public lawfully authorised to administer oaths in that Country or place, or
- (c) Where such country or place is a part of the British Commonwealth of Nations or a British possession, before any judge, court, notary public or person authorised to administer oaths in such part or possession and the seal or signature, as the case may be, of any such diplomatic or consular representative or agent, judge, court, notary public or other person attached to or appended or subscribed to any such affidavit or declaration may be adopted on its face without further authentication or proof.

Further, affidavits sworn before a Solicitor in England or Northern Ireland are acceptable also, as a Solicitor in those jurisdictions is automatically a commissioner for oaths.

LAND REGISTRY

EXECUTION OF AFFIDAVITS ABROAD FOR REGISTRATION PURPOSES



**EXEMPTED
“TOWNS”
UNDER
SECTION 45
LAND ACT,
1965**

The requirement to obtain consent under section 45 of the Land Act, 1965 to the vesting of an interest in land does not apply to land situate in a County Borough, Borough, Urban District or Town. A difficulty can sometimes arise in identifying whether a particular conurbation is in fact a “Town” within the meaning of the Section.

The list below has been kindly provided to the Society by John Geraghty, Solicitor in the Land Commission, to whom our thanks are due.

- N.B. (a) While the Towns listed comprise Scheduled Towns, Non-Municipal Towns and Towns within the meaning of the Towns Improvement (Ireland) Act, 1854, for the purpose of the Certificate one need only use the word “Town”.
- (b) As the Certificate is analogous to an averment in an affidavit it is a matter for the purchasers and/or their solicitors to satisfy themselves that the property is situate within the relevant boundaries of exempted areas.

Please note that all applications for section 45 and section 12 Land Act, 1965 consents should be addressed to:

Irish Land Commission,
Government Buildings,
Farnham Street, Cavan.

County Index to Exemption follows on the next two pages



Counties	County Boroughs	Boroughs	UDCs	Towns
Carlow	—	—	Carlow	Muine Beag, Tullow
Cavan	—	—	Cavan	Bailieboro', Belturbet, Cootehill
Clare	—	—	Ennis Kilrush	Ennistymon, Kilkee, Shannon
Cork	Cork	—	Clonakilty Cobh Fermoy Kinsale Macroon Mallow Midleton Skibbereen Youghal	Bandon, Bantry, Blarney, Dunmanway, Kanturk, Millstreet, Mitchelstown, Passage West, Rathluirc (Charleville)
Donegal	—	—	Buncrana Bundoran Letterkenny	Ballybofey, Ballyshannon, Carndonagh, Donegal, Killybegs, Moville
Dublin	Dublin	Dun Laoghaire	—	Balbriggan, Blanchardstown, Clondalkin, Lucan- Doddsboro', Malahide, Rush, Skerries, Swords, Tallaght
Galway	Galway	—	Ballinasloe	Athenry, Clifden, Gort, Loughrea, Tuam
Kildare	—	—	Athy, Naas	Celbridge, Kildare, Leixlip, Maynooth, Monasterevin, Newbridge
Kilkenny	—	Kilkenny	—	Callan, Castlecomer / Donaguile, Graigenamanagh / Tinnahinch, Thomastown
Kerry	—	—	Killarney Listowel Tralee	Ballybunion, Cahirciveen, Castleisland, Dingle, Kenmare, Killorglin
Laois	—	—	—	Abbeyleix, Mountmellick, Mountrath, Portarlinton, Portlaoise

**EXEMPTED
“TOWNS”****UNDER
SECTION 45
LAND ACT,
1965**

(Contd.)

**COUNTY INDEX
TO EXEMPTION**

(Continued overleaf)

CHAPTER 3

LAND REGISTRY AND
LAND ACTS MATTERS

LAW SOCIETY CONVEYANCING HANDBOOK



**EXEMPTED
“TOWNS”**

**UNDER
SECTION 45
LAND ACT,**

1965

(Contd.)

**COUNTY INDEX
TO EXEMPTION**

Counties	County Boroughs	Boroughs	UDCs	Towns
Leitrim	—	—	—	Carrick-on-Shannon
Limerick	Limerick	—	—	Abbeyfeale, Kilmallock, Newcastlewest, Rathkeale
Longford	—	—	Longford	Granard
Louth	—	Drogheda	Dundalk	Ardee
Mayo	—	—	Ballina Castlebar Westport	Ballinrobe, Ballyhaunis, Claremorris, Swinford
Meath	—	—	Kells Navan Trim	—
Monaghan	—	—	Carrickmacross Castleblaney Clones Monaghan	Ballybay
Offaly	—	—	Birr Tullamore	Banagher, Clara, Edenderry
Roscommon	—	—	—	Ballaghaderreen, Boyle, Castlerea, Roscommon
Sligo	—	Sligo	—	—
Tipperary	—	Clonmel	Carrick-on Suir, Cashel, Nenagh, Templemore, Thurles, Tipperary	Cahir, Fethard, Roscrea
Waterford	Waterford	—	Dungarvan	Lismore, Portlaw, Tramore
Westmeath	—	—	Athlone	Moate, Mullingar
Wexford	—	Wexford	Enniscorthy New Ross	Gorey
Wicklow	—	—	Arklow Bray Wicklow	Greystones / Delgany, Rathdrum

*Published in Law Society
Gazette, December 1993*



The Land Registry have now adopted a procedure for approving Scheme Maps for new developments 'subject to conflict'. The Land Registry in adopting this practice are drawing to the attention of the profession that their approval of a Scheme Map merely means that the map is of such a nature and is marked in such a way as to be acceptable for registration purposes and that a photocopy of same attached to an individual transfer will be acceptable. The Land Registry in approving a Scheme Map have never warranted that the boundaries of the property shown on this map do not conflict with any existing Land Registry mapping data. In inserting the words 'subject to conflict' in their endorsement they are merely bringing to the attention of the profession what has always been the situation.

Bearing in mind the foregoing the Joint Law Society/Building Society committee have been asked for their opinion as to whether it would be necessary for a purchaser/mortgagee's solicitor to obtain an official Land Registry mapping search to ascertain whether there is in fact any conflict of boundaries. The committee are of the opinion that where the usual declaration of identity has been furnished by the developers architect in which it is confirmed, inter alia, that the site is entirely within the confines of the parent folio that there is no need for an independent Land Registry Mapping search.

In addition there is the protection of the usual undertaking as to Land Registry Mapping Queries.

LAND REGISTRY SCHEME MAPS APPROVAL 'SUBJECT TO CONFLICT'



**CERTIFICATE OF
NO DEATHS OR
VOLUNTARY
DISPOSITIONS ON
TITLE**

A Certificate is required in the case of registered land where the Vendor/Lessor/Mortgagor has not been registered as full owner for twelve years or more. A Certificate is not required with regard to unregistered land as the devolution of the property will be clear from an examination of the title.

Under the provisions of Section 47 of the Capital Acquisition Tax Act 1976 gift tax and inheritance tax are a charge on the property forming part of the gift or inheritance. The Act provides that the tax shall not as against a bona fide purchaser for value remain charged after the expiration of a period of 12 years from the date of the gift or inheritance. A Purchaser/Lessee/Mortgagee of registered land should obtain on closing a Certificate confirming that there have been no deaths or voluntary dispositions on title within the previous twelve years. A Certificate of no Deaths or voluntary dispositions is not required for unregistered property as the position would be apparent from an examination of Title. In the event of there being deaths or voluntary dispositions on title within the previous twelve years an appropriate Certificate of Discharge from Capital Acquisition Tax will be required.

Under the provisions of the Bankruptcy code an Official Assignee in Bankruptcy has power to set aside voluntary dispositions in certain circumstances. The Conveyancing Committee has previously recommended that should a voluntary disposition appear on title within the previous 10 years¹ a Declaration as to the disponent's solvency at the date of the disposition should be furnished. The practice accordingly grew up of seeking on closing a Certificate that there were no voluntary dispositions within the previous 10 years¹. The Certificate mentioned above as to deaths or voluntary dispositions within the 12 year period covers in addition to dispositions which might give rise to CAT liability any dispositions for which a Declaration of Solvency will be required. A Certificate that there were no voluntary dispositions for the previous 10 years¹ would be adequate for Bankruptcy purposes but inadequate for gift tax purposes (gift tax being a charge for 12 years).

The Committee recommends that the former practice with regard to registered land of obtaining a Certificate that there were no deaths on title within the last 12 years and no voluntary dispositions on title within the last 10 years¹ should be altered and a Certificate should be obtained that there were no deaths or voluntary dispositions within the last 12 years.

*Published in Law Society
Gazette, November 1987*

*1. See Bankruptcy Act, 1988 -
"10 years" is now "5 years"*

UPDATE: This Practice Note should be read in conjunction with the Practice Note on page 3.26 hereof.



From time to time the need arises for an application to the Land Registry by a registered owner for the opening of a new folio for part of his registered land, separate from the rest, but not involving a change of ownership. For example he may want to have the dwellinghouse and ground attached to it on a separate folio, or, he may want a new folio for a site on which he proposes to build a new dwellinghouse.

Practitioners are advised that the Land Registry will accept a simple application along the lines set out below. A formal transfer is not necessary or appropriate as it is not a transfer of the part to another person. At the same time care should be exercised to ensure that the application is within the ambience of the Family Home Protection Act 1976.

The following form of application may be used:

LAND REGISTRY

Application for a new folio for part of registered land not involving a change of ownership.

County:

Folio:

I the registered owner of the lands described in Folio of the Register of County hereby apply for the opening of a new folio in respect of that part of my said lands specified in the Schedule hereto.

IT IS HEREBY CERTIFIED that the Irish Land Commission have given their consent pursuant to Section 12 of the Land Act 1965 to the sub-division of the lands described in Folio County, **OR**

IT IS HEREBY CERTIFIED that Folio of the Register of County is not affected by any of the circumstances listed in paragraph 6 of the general consent to sub-division dated 1st July 1980 SR 13/77.

SCHEDULE

Part of the townland of described in Folio County containing or thereabouts statute measure being the lands edged in red and marked with the letter “B” on the O.S. map annexed hereto [and referred to in the Land Commission letter of consent to sub-division dated lodged herewith].

Dated this day of 19

Signed by the said..... the registered owner, in the presence of:

To: The Registrar of Titles, Central Office, Land Registry, Chancery Street, Dublin 7.

UPDATE: The registered owner may not want to charge all of a folio, but part only and, in this regard, sub-division may be necessary. Provision should be made whereby the portion being mortgaged is capable of being transferred e.g. by a mortgagee selling such portion as mortgagee in possession.

LAND REGISTRY

**APPLICATION
FOR A NEW FOLIO
FOR PART OF
REGISTERED LAND
NOT INVOLVING
A CHANGE OF
OWNERSHIP**

**LAND REGISTRY**
**COMMON OMISSIONS
AND ERRORS IN
LODGING
APPLICATIONS FOR
REGISTRATION**

1. Failure to lodge any fees, or sufficient fees.
2. Failure to lodge either:
 - (i) the Land Certificate where appropriate or
 - (ii) consent to the user of a Land Certificate already lodged, where appropriate.
3. Omitting to complete form 17 fully. See Rule 57.
4. Failure to state in transfers that the transferor is the registered owner. The insertion of the wrong folio number in deeds and documents (necessitating re-execution).
5. Omission of assent to registration of charge/burden/easement by the owner of the lands affected thereby. (See Form 66).
6. Failure to have P.D. stamp affixed to Deeds of Transfer.
7. Failure to furnish consents/certificates as appropriate, pursuant to the provisions of the Family Home Protection Act, 1976.
8. Failure to state out in attestation clauses or in affidavits why a deed is signed by a mark (See Rule 54).
9. Failure to state the shares in which tenants-in-common are to hold the property in deeds creating a tenancy-in-common.
10. Status of witnesses to sealing of Deeds by Companies not specified (Rule 77 (4)).
11. Amended documents not re-executed/re-sworn by the parties.
12. Failure to lodge consents under Section 88 and 90 (6) Housing Act 1966, where appropriate.
13. Failure to furnish letter of consent to sub-division from the Land Commission or certificate of compliance with the conditions specified in such letters (cf. Section 12 (1) of the Land Act 1965). Where general consent procedure applies, failure to incorporate such certificate in the Deed.
14. In sub-division cases, failure to lodge original Land Registry Map or current largest Ordinance Survey map with boundaries unambiguously marked by a thin red line. In schemes, failure to lodge copy of approved scheme map or multi-storey map with approval stamp impressed thereon.
15. Omitting the necessary certificate under Section 45 of the Land Act. Certificates are required from all persons deriving interests under documents. This applies to assents by personal representatives.
16. Incorrect stamp duty impressed on Deeds of Charge.
17. Certificates of charge (Rues 156 and 157) not furnished with discharges.
18. Deponent in Affidavit to register a Judgement Mortgage not being a competent person under the Judgement Mortgage Acts 1850, 1858.
19. Failure to strictly follow the precedent forms in Transmission cases as per Rules 94 - 97.
20. On lodgement of leases, failure to furnish up to date searches in Registry of Deeds and Judgements Office and up to date Affidavits of Discovery properly sworn. Deeds of Charge lodged with leases should be in the form applicable to unregistered land.



21. In liquidation cases, failure to furnish evidence of appointment of liquidator and failure to have seal of company properly witnessed by liquidator.
22. In receivership cases, failure to furnish evidence of appointment of Receiver and the Articles of Association of the Company. Any Deed of Transfer should be executed by the Receiver as Attorney of the company. The Common Seal of the company must not be used.

LAND REGISTRY

COMMON OMISSIONS AND ERRORS IN LODGING APPLICATIONS FOR REGISTRATION

(Contd.)

*Extract from circular sent
to the profession with the
Gazette, December 1990*

Practitioners are advised that if they require appurtenant rights to be registered on a folio this can be done by including a request for same when lodging their dealings. The Land Registry would prefer the request to go on a separate Form 17. The fee is £10.00.

The Land Registry have recommended that this procedure is *not* followed in the case of registration of appurtenant rights in respect of houses on housing estates (as huge delays would be caused in registering same).

For the convenience of practitioners and colleagues, and to avoid the subsequent necessity of obtaining certified copy instruments, practitioners are advised when making an application for registration of appurtenant rights to lodge a certified copy of the instrument creating the right with the request that it be date stamped and returned by the Land Registry when the dealing is completed, to be placed with the title deeds. This suggestion has been put to the Land Registry and had met with a favourable response.

REGISTRATION OF RIGHTS APPURTENANT TO REGISTERED LAND

*Published in Law Society
Gazette, June 1992*



**CERTIFICATE AS TO
NO DEATHS OR
VOLUNTARY
DISPOSITIONS/
CERTIFICATES OF
NO DEALINGS
PENDING/
UNDERTAKING
TO DISCHARGE
LAND REGISTRY
QUERIES**

A practice has grown up whereby solicitors give all of the above mentioned certificates on closing regardless of whether they are requisitioned or not. The Conveyancing Committee has considered this practice and disapproves of it.

It means that a vendor's solicitor actually guarantees the title of the property he is selling. If the Conveyancing Committee recommended that these certificates be given, then it would not be possible for a vendor to sell his property without a solicitor.

Certificates as to no Deaths or Voluntary Dispositions on Title

When a vendor gives a Section 72 Declaration he is covering the position, inter alia, as to any acts on the title which might give rise to Capital Acquisitions Tax. (Pursuant to Section 68 (2) of the Capital Acquisitions Tax Act, 1976, inheritance tax is a burden in respect of which said Section 72 of the Registration of Title Act, 1964 applies).

However, the Conveyancing Committee is of the opinion that an additional paragraph should be inserted in the Section 72 Declaration so that the vendor declares that there have been no deaths or voluntary dispositions on the title within the previous 12 years.

In the case of unregistered titles, the title documents will show whether there were any deaths or voluntary dispositions on the title.

Undertakings to Deal with Land Registry Queries

The Conveyancing Committee is of the opinion that this is a very broad undertaking and should not be given by a vendor's solicitor. It is up to a purchaser's solicitor to obtain sufficient documentation on closing so as to enable him to complete the registration of his client's title.

Requisition Number 19.8¹ which deals with Transfers of Part asks for an undertaking *on behalf of the vendor* to discharge Land Registry mapping queries. This is the vendor's undertaking and not his solicitor's undertaking and, if given by the solicitor, it should be worded as such and the necessary authority obtained from the vendor.

Certificates as to No Dealings Pending

A certificate of no dealings pending can only relate to dealings in the Land Registry and accordingly is not appropriate on the disposal of unregistered property. Similarly it is inappropriate on the transfer of all the property comprised in a folio as any dealing pending must of its very nature affect the property being acquired by the purchaser. A purchaser can in this event be protected by the making of a priority search.

1. Now Requisition 22.2.d.in the 1996 edition of the Law Society Objections and Requisitions on Title



The need for a certificate of no dealings pending arises only where there is a purchase, lease or charge of part of registered land where other portions may have already been sold, leased or charged and these dealings are pending in the Land Registry. In these circumstances the making of a priority search would be difficult. In such a case a purchaser needs a certificate from the vendor's solicitors to the effect that those transfers or other transactions which are pending in the Land Registry do not affect the portion of the property being acquired, leased or charged by his client.

CERTIFICATE AS TO NO DEATHS OR VOLUNTARY DISPOSITIONS/ CERTIFICATES OF NO DEALINGS PENDING/ UNDERTAKING TO DISCHARGE LAND REGISTRY QUERIES

(Contd.)



**OBLIGATIONS OF
VENDOR'S
SOLICITOR IN
RELATION TO THE
EXPLANATION OF
NON-MONETARY
BURDENS WHICH
APPEAR ON FOLIOS
OR APPEAR AS
'ACTS' ON
REGISTRY OF
DEEDS SEARCHES**

It would appear that a vendor's duty in respect of prior burdens affecting registered land is the same as the vendor's duty would be in respect of prior acts appearing on searches in the Registry of Deeds against unregistered land. The simplistic explanation 'does not affect' would not be acceptable in relation to unregistered land and a similar explanation should equally be unacceptable for registered land.

Land Registry

From time to time, especially in regard to housing estates, there appears a burden registered such as the following:

'The property is subject to such of the conditions relating to the use and enjoyment thereof contained in deeds of transfer made between AB of the one part and the registered owners of this and other property formerly part of the folio x of the other part'.

Difficulties arise in practice in that the vendor's solicitors are reluctant to furnish the instrument creating the burden and further because there is none with the title they are not prepared to certify that it does not adversely affect. In most cases the instrument is the transfer lodged with the application to have the transferee registered as the first registered owner. The transfer contains the usual covenants, conditions, exceptions, grants and reservations applicable to such an estate. In order to avoid such difficulties, it is suggested that the better practice should be that the transferee should retain a copy of the completed transfer with the title documents and this could then be furnished with the other documents when furnishing title on a sale of the property. However, if a copy was not retained, the vendor's solicitor should obtain a copy from the Land Registry.

If there are similar burdens on the original grantor's/transferor's title, a copy of the instrument should be with the prior title and is usually contained in a booklet of title with a written explanation of the burden.

There are, however, other cases where the burden is not as informative as the above - for example:

AB became registered with a covenant in the instrument of registration in the following terms: 'AB hereby covenants with CD not without the prior consent in writing of CD to transfer during the lifetime of the said CD the lands hereby transferred or any part thereof'.

However, the burden appearing on the folio showed only the following: 'The covenants specified in instrument X relating to the use and enjoyment of the property'.



This is not very satisfactory and, despite an exchange of correspondence with the Land Registry, the Land Registry have stated: 'Please note that it is generally our practice to register covenants by reference to the instrument (see Rule 105 of the Land Registration Rules 1972 in this regard)'.

However, Rule 105 sets out two options as to how the burden may be recorded:

1. By reference to the instrument; or
2. By setting out an extract therefrom or the affect thereof.

It is submitted that it would be far preferable for the extract itself to be registered rather than a mere reference to the instrument which a third party looking at the folio must then take up. There is, of course, the added difficulty that there is no entitlement on anybody's part to take up the instrument without the consent of the registered owner (see Rule 188). However, it is the stated policy of the Land Registry to register only by reference to the instrument, the purpose being to reduce the drafting and engrossing times and increase productivity in the Land Registry and that such a policy shall continue until the arrears of dealings have been significantly cleared after which time it may be reviewed.

It would appear, therefore, that the only satisfactory solution for the time being is for the vendor to include, by way of title, copies of all instruments appearing on the folio.

It is the intention of the Conveyancing Committee to keep the matter under review and to keep it on the agenda for any future meetings with the Land Registry.

Registry of Deeds

With regard to acts appearing on Registry of Deeds searches, the explanation where applicable 'does not affect' is not acceptable. The vendor's solicitor should check the relevant documentation to ensure that the 'act' does not, in fact, affect the property in sale. Unless the vendor's solicitor has personal knowledge of the particular transaction, the fact that an 'act' refers to particular lands such as 'Site 7 Black Acre', does not entitle the vendor's solicitor to assume that 'it does not affect' for example, Site 2 Black Acre and **enquires should be made**. When it is established that the act does not affect the property in sale, the explanation should read 'affects only Site 7 Black Acre; does not affect Site 2 Black Acre'.

It is not unknown for such acts to affect other property - and it may be necessary to inspect the relevant memorial.

OBLIGATIONS OF VENDOR'S SOLICITOR IN RELATION TO THE EXPLANATION OF NON-MONETARY BURDENS WHICH APPEAR ON FOLIOS OR APPEAR AS 'ACTS' ON REGISTRY OF DEEDS SEARCHES

(Contd.)

**CERTIFICATE OF
NO DEALINGS
PENDING**

The Conveyancing Committee has been requested to clarify the practice note published in the July/August 1993 edition of the Gazette as it applies to the practice of furnishing certificates of no dealings pending.

The Committee had recommended that a certificate should only be given by a vendor's solicitor in relation to the purchase, lease or charge of a folio due to the difficulty of making a priority search *where there are dealings already pending* affecting other parts of the same folio.

The Committee wishes to clarify that the purchaser's solicitor should not insist upon a certificate unless there are in fact dealings pending which are revealed by the purchaser's searches. It is then the responsibility of the vendor's solicitor to establish the subject matter of the relevant dealings and to give a certificate that those dealings do not affect the portion of the property being acquired, leased or charged (if this be the case).

However, it is recommended that the certificate should not be a blanket certificate but should be specific by reference to the numbers or other means of identification of the relevant dealings. This is because other dealings may have been lodged by third parties which may not be known to the vendor's solicitor such as those relating to judgement mortgages, cautions etc., or relating to transactions in respect of which another solicitor had been instructed by the client or which may not be revealed on the search. A blanket certificate would arguably cover these other dealings and thus would leave the vendor's solicitor exposed to an action from the purchaser.



I, JOE WALSH, Minister for Agriculture, Food and Forestry, in exercise of the power conferred on me by section 45 (1) (x) of the Land Act, 1965 (No. 2 of 1965), and the Lands (Transfer of Departmental Administration and Ministerial Functions) Order, 1977 (S.I. No. 28 of 1977), hereby make the following Regulations:-

1. These Regulations may be cited as the Land Act, 1965 (Additional Category of Qualified Person) Regulations, 1994.
2. For the purpose of the definition of a "qualified person" in section 45 of the Land Act, 1965 (No. 2 of 1965), the following category is hereby declared to be an additional category, namely, a person acquiring an interest in land which is situate within the counties of Dublin South, Fingal and Dun Laoghaire-Rathdown as specified in the Local Government (Dublin) Act, 1993 (No. 31 of 1993).

GIVEN under my Official Seal, this 28th day of March, 1994

(L.S)

JOE WALSH,
Minister for Agriculture, Food and Forestry.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations exclude from the provisions of section 45 of the LAND Act, 1965, the "Counties" of Dublin South, Fingal and Dun Laoghaire-Rathdown as specified in the Local Government (Dublin) Act, 1993, the boundaries of these having been fixed by the said Act.

**S.I. No. 67 OF
1994**

**LAND ACT, 1965
(ADDITIONAL
CATEGORY OF
QUALIFIED
PERSON)
REGULATIONS,
1994**

*Notice of the making of this
Statutory Instrument was
published in "Iris Oifigiuil"
on 15th April, 1994*



**POSSESSORY TITLE
APPLICATIONS
SECTION 146
FINANCE ACT,
1994**

Practitioners are referred to the copy letter dated 25 July, 1994 circulated with this Gazette and received by the Taxation Committee from Mr. Pat Burke, Principal Officer of Capital Taxes Branch of the Revenue Commissioners following a joint meeting with members of the Conveyancing and Taxation Committees to consider the tax implications of section 146 Finance Act, 1994. The purpose of the section is to ensure that there is no tax related incentive to avoid taking out representation, with particular reference to probate tax and inheritance tax. The section requires that all applications for registration based on possession, the most common of which are usually referred to as s. 49 applications, made on or after 11 April 1994, will require a tax clearance certificate to be produced to the Registrar of Titles. Although the section does not impose any new charge to gift/inheritance tax, the effect of the requirement will be to bring into the charge deemed dispositions on abandonment of rights which may heretofore have been overlooked. The definition of "disposition" in section 2 Capital Acquisitions Tax Act, 1976 includes at paragraph (h) *"the release, forfeiture, surrender or abandonment of any debt or benefit or the failure to exercise a right; and for the purpose of this paragraph a debt or benefit shall be deemed to have been released when it has become unenforceable by action through lapse of time..."*.

Having regard to the lower exemption threshold applying to collaterals, consideration should be given to disclaimers in appropriate cases. The Taxation Committee is liaising with the Revenue Commissioners with a view to resolving difficulties concerning disclaimers on intestacy.

The examples in the letter from the Revenue Commissioners illustrate the tax problems which can arise on even the most routine possessory title applications to the Land Registry. When taking instructions in relation to such applications or when considering whether to extract representation on the death of a person on the title, solicitors should therefore consider and advise their clients on the taxation implications.

The Taxation Committee would welcome hearing from practitioners in the event of difficulties being encountered in the operation of the section.

TAXATION COMMITTEE



Under the provisions of Section 9 (4) of the Family Law Act, 1995 and Section 14(4) of the Family Law (Divorce) Act, 1996 the registrar of the court which makes a property adjustment order when granting a decree of judicial separation or divorce is obliged to lodge a certified copy of the property adjustment order in the Land Registry for registration under Section 69 (1)(h) of the Registration of Title Act 1964.

There is no procedure under which the burden consisting of the property adjustment order will automatically be cancelled when the instrument implementing the order is lodged in the Registry for registration.

The Conveyancing Committee recommends that when a transfer implementing a property adjustment order is being drafted the solicitor concerned should include a consent by the parties to the cancellation of the burden consisting of the property adjustment order.

CANCELLATION OF FAMILY LAW BURDENS REGISTERED ON FOLIO

CHAPTER 3

LAND REGISTRY AND
LAND ACTS MATTERS

LAW SOCIETY CONVEYANCING HANDBOOK



CANCELLATION OF LAND CERTIFICATES ON CHANGE OF OWNERSHIP

The Conveyancing Committee of the Law Society fully supports the decision of the Land Registry to cancel Land Certificates on a change of ownership.

The committee also notes that lending institutions no longer have an automatic requirement that new Land Certificates be bespoke in respect of property taken as security by way of legal mortgage.

Practitioners, therefore, should no longer bespeak a Land Certificate, unless they have specific instructions from their clients to do so.

The next edition of the certificate of title documentation will reflect the new position.

*Published in
Law Society Gazette,
July 2004*

UPDATE (2006): See Section 73 of the Registration of Deeds and Title Act 2006 regarding the abolition of Land Certificates. See also page 3.41 hereof regarding liens over Land Certificates.



The Land Act 2005 has now been enacted and all sections of the Act have been commenced by statutory instrument, operational from 4 November 2005 for all sections of the Act, with the exception of section 5. The operational date for Section 5 was 2 December 2005.

Repeal of Sections 12 and 45 of the Land Act, 1965

Sections 12 and 45 of the Land Act 1965 and section 6 of the Land Act 1946 are fully repealed with effect from 4 November, 2005. Section 12 of the Land Act 2005 contains the specific repeal provisions.

In the circumstances, consents will no longer be necessary from the Land Commission/Minister for Agriculture and Food for:

- (i) The subdivision of holdings or,
- (ii) The purchase of land by non-qualified persons.

The administrative practice of issuing retrospective consents also ceased from 4 November 2005.

In this regard, the following arrangements have been agreed by the Department of Agriculture with the Land Registry office. Where a deed of transfer has been executed prior to the date of commencement of the Land Act 2005, without the necessary consents being sought and issued, contact should be made by the relevant solicitor with the Department's office at Farnham Street, Cavan to request a letter of confirmation (for lodgement with the Land Registry dealing) that if the consents had been applied for at the appropriate time (prior to the operation of the Act), the relevant consents would have been issued at that time.

Land purchase annuities

The Act provides that any land purchase annuity with an outstanding balance of under €200 is written off as and from 4 November, 2005. This leaves approximately 2,300 remaining land purchase annuities that may be bought out at a 25% discount during a period of 6 months from the 1 January 2006; alternatively, people may wish to continue to discharge the annuity in the usual way until the full loan is paid off.¹

Practitioners should note that the letter of confirmation referred to in relation to Sections 12 and 45 above, does not remove the requirement to obtain a specific certificate from the Department of Agriculture in respect of the clearance of any current land purchase annuity arrears, as set out in Section 5 of the Act. This would arise where an annuitant decided, for whatever reason, not to avail of the proposed discounted buyout and continued with their annuity repayments until the full loan was paid off.

LAND ACT 2005 - REPEAL OF SECTIONS 12 AND 45 OF THE LAND ACT, 1965



**LAND ACT 2005 -
REPEAL OF
SECTIONS 12
AND 45 OF THE
LAND ACT, 1965**

(Contd.)

Section 5 of the Land Act 2005, provides for a certificate of clearance being furnished to the Land Registry in respect of annuity arrears where a transfer of land subject to an annuity is presented for registration in the Registry. It is possible that there may be transfers in existence which, while executed prior to the commencement of the Land Act 2005, will only be presented to the Land Registry after the Land Act 2005 commenced. In order to provide for this eventuality, the Department indicated that Section 5 would be commenced on 2 December, 2005, approximately one month after the date for commencement of the other provisions of the Land Act 2005.

Any dealing involving land, the subject of a trust scheme set up under sections 4 and 20 of the Land Act 1903, as extended, continues to require the appropriate specific consent from the Minister for Agriculture and Food under section 30 of the Land Act 1950.

*Published in
Law Society Gazette,
December 2005*

*1. The deadline for buying out
these annuities was extended to
31st October 2006 under
S.I. No. 352 of 2006.*



In the draft Land and Conveyancing Bill 2005 published in the Law Reform Commission's latest Report on the Reform and Modernisation of Land Law and Conveyancing Law, it is proposed at Section 129 that applicants for registration based on adverse possession will, in future, have to make such an **application in Court** instead of by way of Section 49 application to the Registrar of Titles as is currently the case.

It is also proposed that legal title will not vest in the applicant who obtains a Court Order until it is registered in the Land Registry and, until so registered, it will vest only an equitable interest in the applicant. This applies in respect of both registered and unregistered title.

Section 130 of the draft Bill provides that the Vesting Order shall be made only if the Court is satisfied that certain criteria are met and subject, if the Court thinks fit, to payment by the applicant of a sum of money to the owner by way of **compensation** for loss, defrayment of costs and expenses or otherwise.

Practitioners with any pending S.49 applications (or any adverse possession claims in relation to unregistered land) may wish to take steps to expedite same in advance of the introduction of any new law or procedures in this area.

The proposed new requirement for a court application and the possibility of being required to pay compensation will radically change the nature of adverse possession claims and the Conveyancing Committee would be greatly interested in hearing from practitioners with their views on these new proposals. Practitioners may also wish to make submissions to the Minister for Justice, Equality and Law Reform and/or to the Law Reform Commission.

PROPOSED CHANGES TO LAW ON ADVERSE POSSESSION

**DRAFT LAND AND
CONVEYANCING
BILL 2005 -
ADVERSE
POSSESSION**

Readers may recall from the December issue [of the Gazette] that the Conveyancing Committee proposed lodging a submission on the above topic with the Minister for Justice Equality and Law Reform. The committee's first submission, arguing against the proposed changes in the law on adverse possession contained in the draft Bill, was duly lodged on 21st December 2005 and was followed by a supplemental submission on 31st January 2006. (Both submissions can be accessed on www.lawsociety.ie by logging in to the Members' area and clicking in turn on Society Committees, Conveyancing Committee and Submissions.)

The committee has received a letter dated 21st February, 2006 from the Private Secretary to the Minister for Justice Equality and Law Reform replying on behalf of the Minister to the committee's submissions. The reply confirms

“The position is that the provisions relating to adverse possession of land in the draft Land and Conveyancing Bill published by the Law Reform Commission sought to take account of the European Court of Human Rights judgment in the case of JA Pye (Oxford) Ltd v UK. The UK authorities have now sought to appeal this judgment to the ECHR's Grand Chamber and if this request is successful, a new judgment will follow in due course. In the meantime, it is not intended to proceed with changes in existing statutory provisions relating to adverse possession. However, the points set out in your submissions will be taken into account in the context of any such future changes.

Yours sincerely”

The committee is pleased to note that the proposed changes will not now proceed and if a review becomes necessary at any stage the committee's submissions will be taken into account. The committee will continue to monitor the situation. Thanks to all practitioners who wrote to the committee and to the Department on this topic and it was noted that the vast majority of you supported the committee's views on the matter.



This Act has recently passed all its stages in the Oireachtas and some sections have been brought into force. Others will be brought into effect by Ministerial Order, with some Parts being implemented on different dates. Among the sections which have been brought into force are sections 58, 59 and 60, 63, and 70, the effects of which are noted below.

Much of the Act relates to the conversion of the Land Registry and Registry of Deeds into a new Property Registration Authority and will be of little immediate concern to solicitors and their clients. A number of the changes will require the making of new Rules before the changes can be brought into operation and some of these will provide for greater flexibility in the operation of the Registers.

In advance of this legislation significant changes were made in 2005 in that compulsory registration was extended to three further counties, Longford, Westmeath and Roscommon, as from the 1st April 2006 and, as and from the 1st January 2006, certificates of title on first registration are being accepted where the amount of the purchase money or compensation does not exceed €1,000,000.00, the previous figure having been €320,000.00

Among the changes in the law which been introduced are

1. A provision enabling adverse possession to a leasehold interest to be registered. (Section 50)
2. The amendment of Section 90 of the 1964 Act to enable persons who are entitled to be registered as owners of registered land to grant leases and to grant easements, etc. (Section 63)
3. Clarification that words of limitation will no longer be required to effect a grant of easements or profits a prendre. (Section 70)
4. The abolition of the need to register titles covered by the Irish Church Act 1869. (Section 52)
5. The ability to apply *ab initio* for registration with qualified title. (Section 57)
6. The phasing out of land certificates and certificates of charge, and the conversion of existing equitable mortgages into burdens under Section 69 of the 1964 Act.¹ (Section 73)
7. An amendment to Section 25 of the 1964 Act to make it clear that it relates only to the requirement to register under Section 24 of that Act, as amended (Section 24 applies to situations where registration becomes compulsory under a Ministerial Order). (Section 54)
8. A provision which enables compulsory registration to be extended by Ministerial Order to include specified areas, specified land or specified land in such an area. This would enable multi-apartment buildings to be included. (Section 53)
9. A provision that where a registered owner leases land in the Folio, the lessee is to

REGISTRATION OF DEEDS AND TITLE ACT 2006

1. This practice note incorporates the correction made in the August/September 2006 issue of the Gazette.



**REGISTRATION OF
DEEDS AND TITLE
ACT 2006**

(Contd.)

be registered as owner of the leasehold interest. Previously an application for first registration had to be made. (Section 58)

10. Rules may provide for the amendment of the periods of leases which will come within Section 69 and for which leasehold folios must be opened.(Section 59)

In addition there are two Sections which are, at best, peripheral to the registration systems, and which are already in force

1. The amendment of Section 16 of the Landlord and Tenant (Ground Rents) (No.2) Act 1978 to provide generally that a person who holds an interest under which that person would not be entitled to acquire the fee simple in the property cannot grant a sub-lease under which the sub-lessee would be become entitled to acquire the fee simple. (Section 76)
2. The amendment of Section 28 of the same Act to provide that only covenants in the lease the fee simple interest in which is being acquired, are to be extinguished on the acquisition of the fee simple. (Section 77)



Section 73 of the Registration of Deeds and Title Act 2006 provides for the abolition of land certificates and certificates of charge. S 73(1) provides that the Property Registration Authority ('the Authority') to be set up under the Act will cease to issue such certificates. The Land Registry has indicated that this provision is not expected to come into effect until one month after the establishment date for the Authority has been set by Ministerial Order.

S 73(2) provides that any land certificates or certificates of charge issued before the commencement of S 73(1) and not already cancelled will cease to have any force or effect on the expiration of 3 years from the commencement of this subsection.

During this 3-year period any existing land certificates or certificates of charge will still need to be lodged for registration of any dealings with the relevant property, but they will be cancelled on completion of such dealings and will not be re-issued.

S 73(3)(b) provides that any person holding a lien on registered land or a registered charge through deposit or possession of land certificates or certificates of charge may apply to the Authority for registration of the lien.¹ This application is to be on notice to the registered owner of the land or the charge and the relevant certificate must be lodged with the application. There will be no fee for the registration. The Authority will publicise the effects of this section.

It is expected that the Authority will in due course make rules setting out the manner in which applications for registration of liens should be made. In the meantime solicitors should alert all relevant clients to the potential implications for them of this section of the Act, and they might also check their own records to see if they are holding liens over such certificates for unpaid fees. Any clients likely to have large volumes of liens they will wish to secure by applying to have them registered within the 3-year period should be encouraged to begin now to identify such liens so that the scale of the work to be completed within the 3-year period can be assessed.² It would be advisable not to leave applications for registration to the eleventh hour, bearing in mind that queries may arise on such applications or any documentation lodged with them.

There is a provision in S 73(4) for application to court for a declaration that the holder of a lien is entitled to compensation if the holder suffers loss through not having applied for registration of the lien within the 3-year period. However, the circumstances in which such an application can be made are quite limited and clients should be advised that it would be in their own best interests if they did not view this provision as a "fall-back" option.

The Society will keep solicitors updated on this topic through its website and in the Gazette over the next few months according as it receives information on the establishment date of the Property Registration Authority and other related matters. The Act can be viewed on the Land Registry or the Oireachtas websites.

LIENS - REGISTER THEM OR LOSE THEM

1.(as a burden under Section 69 of the 1964 Act.)

2. It should be noted that registration of a lien as a burden will not "secure" the lien in the same way as a registered charge, but it will put parties dealing with the folio on notice of the burden.

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