

Keeping track of your assets

The recent Land Registration Act has introduced changes to the way property is registered in England & Wales and has important implications for pension fund trustees and their beneficiaries. Lee Medlock looks at the implications

It has long been important for trustees wishing to become legal owners of a property (freehold or leasehold) to ensure that the transfer of any property to them is registered at HM Land Registry. Until the transfer is registered, trustees will not effectively own the property and will encounter difficulties if they later try to either dispose of it or grant leases or other interests. This, in turn, could lead to embarrassment with the beneficiaries and delays in future transactions.

As a result of the changes brought in by the Land Registration Act 2002, it is now essential that the correct legal owners of the property are registered at HM Land Registry and that the address details of the registered proprietor are kept up-to-date. Failure to do so could ultimately result in the legal owner losing title and ownership of the property.

Trustees of smaller pensions funds and personal pension funds need to take particular note. While transfers between trust corporations are likely to be registered at HM Land Registry, where individual trustees are retiring from a trust and being replaced, the transfer of the legal estate and the registration of that transfer can often be overlooked.

Before the Act came into force on 13 October 2003, any person wishing to claim title to a property by adverse possession was required to show:

- At least 12 years exclusive possession of the property from the date of first occupation
- That the true owner of the land had been dispossessed or had discontinued possession and
- That the person claiming the adverse possession had the intention of possessing that land.

While the law relating to the establishment of adverse possession continues to apply, the 12 year limitation period does not. A squatter now has the right to apply to be the registered proprietor of the land after 10 years adverse possession. If such an application is made, notice of the application will be given to:

- The registered proprietor of the registered estate
- The proprietor of a registered charge on the registered estate
- If the land is leasehold, the proprietor of any superior title
- Any person who is noted on the registers of title of the property as a person entitled to be notified.

So, if the details of the registered proprietor or his / her address on the registered title are incorrect, it is possible that the registered proprietor (i.e. the pension fund trustees) will not receive notice of the application and so will be unable to prevent the squatter from ultimately becoming the registered proprietor and legal owner of the land.

Action

1. Check the current trustees are registered as the present registered proprietors of the property at HM Land Registry. If not, arrange execution and registration of appropriate transfer documentation. 2. Ensure addresses of the registered proprietors are currently correct and are checked and updated as and when required; for example on a change of offices.

Land subject to tenancies

Again, as a result of changes brought in by the Land Registration Act 2002, trustees as landlords are now more likely to be affected by the need to ensure that any leases granted are registered at HM Land Registry.

Prior to October 2003, a lease had to be registered at HM Land Registry if it

was granted for a term of more than 21 years and, consequently, a large number of commercial leases were not registrable. Since October 2003, a number of new lease transactions require registration with their own title, the two most significant being:

- A new lease granted for a term of more than 7 years
- A transfer of a lease which has more than 7 years left until expiry of the term.

Failure to register the new lease within two months will lead to problems for both landlords and tenants. The tenant may well have difficulty in assigning the lease in the future as it cannot prove good title, while a landlord may find, on a disposal of the reversion, that a purchaser or its funder would not regard the lease as good security until registration of the lease is perfected. Where the assignment of a lease is not registered, purchasers and funders will look to the previous tenant when assessing the covenant strength of the tenant which, again, may well cause difficulties on a disposal.

Trustees granting leases should therefore ensure that their documents place the tenant under an obligation to register the new lease within two months of the date of completion. Where a tenant is assigning a lease, the licence granted by the landlord consenting to the assignment should also contain obligations on the part of the assignee to register the transfer at HM Land Registry.

Action

1. Ensure precedents are up-to-date. 2. Check tenants / assignees do complete appropriate registrations.

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