

# Land law



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The introduction of the Land Registration Act 2002 (LRA 2002) marked the beginning of major reforms in the land sector. This was a result of the Land Commission that was instituted to look into the matters of land. This commission produced the report, Land Registration for the Twenty-First Century. The recommendations of this report were later used to come up with the LRA 2002. This Act made the law in land registration more modernized and efficient. It also came up with an accurate and trustworthy land register that incorporated the real titleholder, delineated rights and other interests that may affect the land in question. Another important article of the Act dealt with the introduction of the e-Conveyancing of the registration.

The LRA 2002 was enacted to rectify some of the mistakes that had existed in the previous Act. There had been an increasing number of the land registration disputes that needed to be solved before they brought on more problems. There had been the Land Registration Act 1925 that allowed what was known as adverse possession of land (LRA 1925). This was a situation where a squatter would automatically claim the title of a land property after occupying it for a period of twelve years. A squatter is a person who occupies someone's property without the owner's authority. Lord Denning has a better way of describing a squatter as '...one who without color of right enters on an occupied house or land, intending to stay there as long as he can.'

Such people would thus claim the property which they had occupied for the previous twelve years. This was, however, disadvantageous to the rightful owners of that land. They were not given any chance of defending their ownership for the property. This law was also being abused by those tenants

who refused to leave just to wait for this period to expire. These people deliberately did this to take advantage of the existing law in the LRA 1925. The loss of property by the legitimate owners became rampant throughout the country.

The major reason for this was the unavailability of a credible and accessible land property registration system. This was necessary to safeguard against the malpractice that had crept into the system. The LRA 2002 was to effect a change in this whole process. This Act brought with it new measures that would ensure that all the parties involved in the land deals were in line with the law. The property owners were fully considered in the Act so as to ensure that there was a level ground for all players.

In the new law, for one to claim adverse possession of an occupied property, the twelve-year time limit had to be met. First, the claimant had up to a minimum of ten years to apply for the title of the property. This person had a right of applying for the ownership of this land after occupying it for this period of time. The land registry later had to notify the registered owner of the said property of the intention of being deregistered. The proprietor has up to 65 days to appeal against this application. In other words, the other two years out of ten are for the registered proprietor to try to evict the occupant. Failure to evict the claimant before the two years has passed would give him or her the second chance of re-applying for the ownership of this land.

It is worth noting the effects that this law has caused so far. The modernization of land registration system has made the process easier. The

LRA 2002 resulted in the formation of the on-line system that could be easily be accessed by all the parties concerned. The national data have been put in place to display all the owners of land. This comprehensive and elaborate data system has been made to include all the interests that may pertain to land ownership. The previous absence of this system had kept many in the dark concerning the official information on the ownership of different pieces of land.

The developed electronic system has made all land dealings automated and guaranteed only by the state. The estate ownership has now become a protected entity controlled only by the registry that cannot be manipulated. The earlier methods of acquiring the titles have now become obsolete and irrelevant. This is an achievement that cannot go unnoticed. Order and sanity have been brought back to this important sector. The unscrupulous people who occupied property without the authority of the registered proprietors with an aim of later claiming the ownership can never find it easy at the moment.

In the LRA 1925, adverse possession gave the claimants a stronger argument compared to the rightful proprietors of the estates. This law gave the occupants automatic ownership without giving the real owners any chance of defending themselves. This caused many agencies and municipal councils to lose a lot of land property in courts. It was a loose law that was prone to abuse; however, it was eventually rectified by the enactment of the LRA 2002.

The Law Registration Act 2002 was also able to immensely reduce the overriding interests over titles. Overriding interests are those interests overlapping with both the proprietor who is registered and the person who also acquires an interest in the same property. These interests had previously never been fixed in the registration titles for the properties – something that brought about much confusion in the identification of the title ownership. The fact that the overriding interests were not listed in the title registry also complicated the process of selling or exchanging the ownership of these titles.

The LRA 2002 has been able to reduce the existing overriding interests as much as possible. The aim of this Act was to ensure that all of these interests are replaced with the entries within the registered titles themselves. The title registries have been made to be as complete as possible with all the relevant information required by the relevant parties. To achieve this, a number of things have been put in place. These include the reduction in the overriding interests, urging the parties who are applying for registration to give out all the relevant information concerning the known overriding interests.

Recording of these interests in the registry has been of help in clarifying many issues that may bring problems later on. All those conflicting interests lose their overriding status after being noted in the registry. This remains the status even if the titles are cancelled. Some of these overriding interests have also been abolished altogether.

Overriding interests are normally used in the process of the purchasing. Under the Land Registration Act 2002, some of these interests have been automatically binding to the purchasers. There also exist some minor

interests that have been taken into consideration by this new law. These interests are only binding after a corresponding entry have been brought into the registry. Some of these include restrictive covenants, matrimonial rights, equitable leases, and estate contracts. Other concerns are also addressed by the restriction in the registry. These include constructive trust interests and equitable interest arising from a strict settlement. All these are well elaborated in the third schedule of the second paragraph.

As in the case of *Malory Enterprises Ltd vs. Cheshire Homes (UK) Ltd*, anybody who buys land with wrongdoing and later seeks to change the title to his or her name is termed to have taken the rights of the rightful owner to seek the rectification. This was true according to the old law. This new law gives the rightful owner enough ground to sue the culprits without rectification. The new law also changes the major components of the overriding interests in its schedules 1 and 3. This changes the Land Registration Act 1925 in section 70 (1) on overriding interests. The old Act transferred the rights of the title owner to the wrong person without fair consideration of circumstances.

The LRA 2002 in section 58 and schedule 4 clearly describes how to tackle forgery in land deals. The court has the power to overturn any transferal that has been made in a forged manner. This only happens where the registration was initially done. Under the new law, the registry provides reliable bottom-line information. In the case of *Barclays Bank Plc vs. Guy*, 8 acres of very profitable land was held by Mr. Guy. He later transferred this land to another company which was later registered as the proprietor of the land. The company later used this same land as security for loan from the Barclays

Bank Plc. Mr. Guy later claimed that the transfer was procured through fraud and forgery. The bank had to confirm the authenticity of Mr. Guy's allegations and also find out more of the land as mortgage collateral.

The finding of the court was that section 58 of the Land Registration Act 2002 clearly asserts that registration is conclusive and only subject to its rectification. The company was the registered owner of this land and, therefore, had the authority to transfer it to Barclays Bank. The only way for Mr. Guy to claim this information was to retrieve it from the register. This was a tall order, as he had to prove that the correction was a result of a mistake that had earlier occurred. The conclusion of the matter suggested that Mr. Guy should have exercised caution transferring his title. Having done this in time could have spared him entering into any disadvantageous contracts with the company. This was one of the distinctive cases that were resolved by the new law.

Registration system of land has been a big success, as seen in the cases that have been successfully resolved using the LRA 2002. The older law made it difficult for the buyer to know any intermediate beneficiaries of the land. There was no written law on how to identify such people. The result of this was not pleasant, as problems arose with the buyers. Those who collected rent and other profits have not been given the rights in the new law. This law has not granted the overriding authority to such due to much emphasis on the registration of the titles.

The requirement of registering all the existing land estates has been boosted by the availability of cheap proceedings. Landowners can easily register their

titles without passing through tedious bureaucratic processes. These records can easily be accessed on-line using modern technology. This has reduced the time that could have been taken in going to the relevant offices to do the searches on the lands in question. Those companies with interest in lands for development can now easily get the information about them before proceeding with the purchase. The land registry has been updated all the time from its branch offices.

The enactment of the new law has brought about many other benefits. Their categorization into different overriding interests has enabled exemption of short leases (7 years or less) from the registration. The new Act has also lessened the burden of having to register different titles on different names within short periods of time. This would be a tedious job to the different clients who came for the lease.

Most importantly, it should be noted that the U. K. residents have much gained from the enactment of this law. Questionable land cases have reduced drastically, and those that have recently arisen have been resolved very quickly. This has been due to the availability of the clear guidelines, well elaborated in the Land Registration Act 2002. Lawyers are able to argue their cases from a strong point of law, something that guarantees justice in the long run. Transparency in land deals has been exercised by providing the information available to all the parties involved. This has been a result of the well documented records at the land registry. The absence of title registration in the past legal environment made work really hectic when it came into solving matters that arose due to the overriding interests.



The discouragement of the temporary occupiers of lands to unfairly claim the properties has also been achieved. This is the adverse possession that has been mentioned above. These people have to formally apply to the land registry to be named the owners of the land. The registry then notifies the registered proprietor of this intention. He or she then decides to either accept the registration or reject it by ordering eviction. This is a process that takes a maximum of two years. It, therefore, discourages the spread of this practice.

Nevertheless, the enactment of this law has also not done well to some. The squatters who have otherwise benefitted from the acquisition of the land whose owners have neglected it are not able to do so. The Land Registration Act 2002 has made it difficult for such people to settle themselves in a new home. The step of notifying the registered proprietor of the land simply acts as a notice to evict the subjects. The former law was very lenient as it gave the automatic ownership after twelve years of occupancy.

In conclusion, it is still remarkable that the achievements of the Land Registration Act 2002 stand out compared to those of the old Act of 1925, many of whose provisions had really failed. This old Act left many questions unanswered when issues arose. However, the new Act has streamlined the land sector with clear sections and well elaborated schedules. Confusion and double entry of titles are now things of the past. A greater confidence has been given to the land registry due to the improved transparency. Almost all estates have got titles with well organized records which avoid overriding interests, something that has greatly helped in the clear understanding of the cases arising from conflicting interests.