

In my article on the subject of the introduction of ARTL in January I undertook to report further both on the discussion paper that would be put before the profession at the AGM and also in relation to the Keeper's draft Terms and Conditions which I anticipated would be available at this time.

The discussion paper appears below and I would invite feedback from the profession on this very important development in the practice of conveyancing .

You will be surprised to note that the Keeper's Terms and Conditions run to a modest five pages although you will appreciate they cannot be printed in full in the Journal. The Society launched their new web site last month and I would commend it to you. It is a significant step forward not only in that it is easier to navigate with an index and a search engine but it now incorporates almost all of the Society's Legislative, Regulatory and Guidance material and as such represents a significant resource for the profession. In particular I think that you will find the Profession Practice area which can be found under "Members Services- Advice and Guidance" useful. The draft of the Keeper's Terms and Conditions can be found on the Society's new web site at www.lawscot.org.uk using the new search facility on the web site and typing in the word "ARTL".

A variety of committees are now working on the regulatory and other implications of ARTL and I will report further on that, and on the AGM and other general progress in the early summer.

Automated Registration of Title to Land (ARTL) Discussion Paper

Background

ARTL has been a development in the pipeline of Registers of Scotland for several years. In many ways in its first incarnation it was ahead of its time. Technology, the profession and hard economics have all conspired to now make it a reality. In autumn 2004, the Society formed the ARTL Implementation Group to work with the Keeper and other key stakeholders on the Project. Its remit is:

"To co-ordinate the Society's response to and involvement with the ARTL Project with a view to it being satisfactorily implemented into the practice of conveyancing in Scotland."

The key point in that remit is that ARTL is to be "satisfactorily implemented into the practice of conveyancing". At no time has the Society or the Implementation Group considered that ARTL will not happen. The Group, working with the Keeper expects that ARTL will be implemented in pilot in late 2006 and rolled out throughout Scotland in mid-2007.

What exactly is ARTL?

Conveyancing transactions are processed by both agents for the purchaser and seller working through a web site operated by the Keeper. The agents work independently but collaboratively online. Once they are both satisfied as to all matters, registration takes place by the submission of an application, in an electronic format.

The registration part of the conveyancing transaction will become truly paperless and other than the missives and a mandate signed by the client there will be no paper Disposition and no paper-based Land Certificate (unless you really want one).

The paperless Disposition and/or Standard Security will be electronically signed by the solicitor, (using a digital signature incorporating a chip and pin arrangement similar to that used for credit cards)

Discharges will be executed electronically by the lender in the same way (in some cases by the agent on behalf of the lender).

ARTL will also include a paperless SDLT process. There will be no certificate and therefore no delay. The tax will be payable to the Keeper along with the registration dues at the point of registration.

Once the appropriate agents have applied their digital signatures and each has pressed the button to approve the completion of the transaction, the ARTL process will continue with the result that the Register will be amended within 24 hours with minimal intervention by the Keeper's staff.

Limitations

ARTL will only be available for applications for registration of "dealings with whole", which applies to transactions involving properties already registered in the Land Register. This will include transfers of property, discharges, the creation of new securities and remortgages. First registrations, sasine transactions and transfers of part are excluded. Although just over half of all the titles in Scotland are now registered in the Land Register, dealings with whole account for over 70% of the total volume of transactions. Accordingly it is not unreasonable to assume that by mid-2007 nearly three transactions in four will be ARTL-enabled.

The user group for ARTL is restricted to solicitors, institutions and other recognised bodies (see below).

For the avoidance of doubt ARTL is also entirely voluntary.

Benefits

The Keeper is currently undertaking a review of registration fees and is looking at the scope for reducing registration fees for the streamlined ARTL registration process.

ARTL will provide a daily data feed to the lending institutions, confirming to them

precisely which of their securities were created/discharged that day. There is little doubt that the institutions will also find paperless transactions where they do not have to store titles attractive.

Given that the Land Register will be amended virtually live in ARTL transactions, solicitors can significantly reduce their exposure to 21-day letters of obligation. Because of this benefit, notwithstanding the possible new opportunities for fraud that might be created, the Keeper takes the view ARTL is risk-neutral overall

Firms with case management systems will find that they can readily pre-populate many of the ARTL fields, streamlining transactions significantly. Even firms who enter the data manually without a case management system will find that it is quicker than preparing a traditional disposition and registration forms since ARTL will generate the deeds and forms and the same information is rarely entered twice.

The inclusion in the system of a paperless SDLT process removes the requirement to obtain certificates is very attractive as there is little sign of improvement in service levels at HMRC in regard to SDLT

System requirements

For a detailed analysis of system requirements see the article in the Journal (2006 January pp 50/51) with accompanying technical specification prepared by the Keeper. Essentially a computer less than three years old running Windows XP with a broadband connection and Adobe Acrobat 7 (which is free) installed, is pretty much all that is required. A smartcard reader for the purposes of the chip and pin digital signature can be purchased for under £15. The Keeper will provide the smartcard itself free of charge

The issues

The Society's ARTL Implementation Group and indeed the Keeper would like the views of the profession in this regard. The Implementation Group has prepared a list of around 30 issues. Some of these have already been resolved. Others are being considered by a variety of committees within the Society. The full list of these issues and their current status can be viewed at the Society's web site in "Member Services" under the ARTL heading. Some issues will require either new or amended Rules and Guidelines. In principle, since the existing paper process has merely been translated into a paperless process many of the issues are likely to be covered by existing guidance. The key issues are:

(1) Mandates

Style mandates have been prepared and an opinion obtained from Professor Robert Rennie on the issue. The mandates will authorise solicitors to electronically execute documents on behalf of their clients. They are key to the operation of ARTL. The Council has already agreed that archiving of such mandates should be a professional requirement. The Keeper has agreed to offer an archive facility free of charge. It is intended to promulgate Rules and guidance regarding the creation, storage, use and integrity of these mandates.

(2) User community

ARTL is designed to be open to accredited users. In practice, solicitors (and licensed conveyancers) together with lending institutions, local authorities and other such bodies will be the main or only users but in principle other parties who meet appropriate standards of legal knowledge, probity and insurance / financial backing should be able to use the full functionality of the system.

(3) Registers of Scotland Terms and Conditions

Draft Terms and Conditions prepared by the Keeper are currently being considered by the ARTL Implementation Group and the Conveyancing Committee. The initial draft can be viewed on the Society's website. These Terms and Conditions do not deal with the operation of the digital signature (PKI) regime, which will be covered directly between the PKI service provider and firms.

(4) Electronic Funds Transfer (EFT)

ARTL will require firms to sign up to electronic funds transfer, which is currently available to all firms for payment of all recording and registration dues. It requires the setting up of a subsidiary client account on which the Direct Debit operates, with the Keeper notifying the firm in advance of collecting payment. The sum to be debited will be the total relevant dues of registration and the SDLT applicable to the transaction. In view of the fact that the Keeper collects the tax, there will be no certificate to that effect and therefore no delay in the registration of the title.

(5) Certification

Due to the nature of the ARTL process and underlying principle of "Tell Me Don't Show Me", solicitors completing applications on behalf of clients will effectively be certifying a number of matters as true and correct. Amongst these are:

- (a) that the relevant parties have authorised the transaction and have legal capacity to do so;
- (b) that reasonable steps have been taken to confirm the identity of those parties;
- (c) that specified statutory requirements (including Matrimonial Homes Act requirements) have been complied with;
- (d) that necessary mid-couples and links in title have been examined and are in order; and
- (e) that supporting evidence has been retained.

(6) Security

The Society's Technology Committee has already looked at the chip and pin arrangements and subject to seeing them in their final form have deemed the level of security sufficient. The Insurance Committee will also require to review arrangements in conjunction with Marsh on behalf of the Master Policy insurers.

(7) Dematerialisation

The Keeper is now actively working towards dematerialisation of the Registers, both within and outwith ARTL. This will remove the necessity for Land Certificates, which will be available in either electronic or paper form (as the equivalent of office copies). There will be implications for the profession in terms of ownership and retention of documents including ancillary documents.

(8) Additional Matters

- Amended missive clauses will be required to deal with the ARTL process;
- The concept of holding items as undelivered in an electronic environment will require to be reviewed;
- Audit procedures;
- Disaster recovery plans;
- New style letters of obligation;
- The Register of Inhibitions (initially at least not integrated into the ARTL process); and
- Lenders' instructions specific to ARTL

Summary

The ARTL Implementation Group would welcome thoughts, observations and comments from the profession on any of the above or indeed other related issues.

Draft Rules and Guidelines in regard to ARTL will be brought forward for consideration at a Special General Meeting of the Society in autumn 2006. These Rules and Guidelines will permit the ARTL Project to proceed on schedule.

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