

# Foreign and different

Registers of Scotland's first briefing this month covers standard securities by overseas companies, title conditions, and a reminder not to submit photocopy certificates



## STANDARD SECURITIES

# Overseas latest

Solicitors will be familiar with the requirement for a standard security granted by a limited company (or a limited liability partnership) to be registered in the Register of Charges within 21 days of the date of registration in the Land Register or the General Register of Sasines. Sections 874 and 889 of the Companies Act 2006 provide that failure to do so means that the standard security is void against the liquidator or administrator, or a creditor of the company.

The Department for Business, Innovation and Skills announced that overseas companies will cease to be subject to the scheme for registration of charges at Companies House from 1 October 2011. From that date, an overseas company with a UK establishment which has registered at Companies House, will no longer require to register with the Registrar of Companies charges created by the company over its UK property.

Where an overseas company

grants a standard security which is presented for registration in the Land Register on or after 1 October 2011, the Keeper will not require to see a certificate of registration of charge issued by the Registrar of Companies. The applicant should not ask the Keeper to confirm the date of registration of such a security. The applicant should make it clear in the application that the granter of the security is an overseas company. Similarly, where a security granted by an overseas company is presented for recording in the Register of Sasines on or after 1 October 2011, the applicant should not request confirmation of the recording date but should clarify that the granter is an overseas company.

**Further information on the changes, and the Keeper's practice in connection with UK limited company standard securities, can be found in Registers Update 34 and on our website [ros.gov.uk](http://ros.gov.uk)**

## TITLE CONDITIONS (SCOTLAND) ACT 2003

# Update on registration practice

Our experience indicates that there continue to be many cases of non-compliance with ss 4 and 120 of the Title Conditions (Scotland) Act 2003 where dispositions are used to create praedial real burdens. Those sections require any such disposition to be contemporaneously registered against both the benefited and burdened properties. Failure to comply results in the deed being legally unacceptable for registration.

To aid solicitors, we endeavour to identify those applications containing a deed that purports to create new real burdens, at the point of receipt. Having done so, we will conduct a preliminary examination of the application in an effort to identify whether the application is being registered against all the required titles. Applications for which the necessary forms and/or fees are not provided will be rejected outright (and, where appropriate, withdrawn from the General Register of Sasines), and returned to the presenting agent. In the period from January to July

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2011, the failure to provide all of the required forms and/or fees for deeds purporting to create new real burdens or servitudes constituted the third most common reason for rejection of an application at the point of receipt. The return of the application will incur the £30 rejection charge.

Problems can be avoided through the use of a single deed registered in advance of the sale of individual units, such as a deed of conditions. It will avoid the many cost and legal problems that can arise if the requirement

# Registers



## CERTIFICATES

### No photocopies please

The Keeper reminds solicitors that photocopy birth, death, marriage and civil partnership certificates are not acceptable evidence for Land Register applications. As intimated in the May 2010 issue of the Journal, extract birth, death, marriage and civil partnership certificates are subject to Crown copyright. The copyright guidance, published at [www.opsi.gov.uk/advice/crown-copyright/](http://www.opsi.gov.uk/advice/crown-copyright/) specifies

that the use of a photocopy of an extract as evidence of the occurrence of the event in question is not authorised.

This is further supported by the Registrar General for Scotland, who advises that the photocopying of certificates for purposes other than record keeping is not authorised. In cases where such evidence is required, the Keeper will therefore require sight of an extract.



As at 26 September 2011

- 1 **47,855 transactions** have taken place
- 2 **677 solicitors' firms** are currently on the ARTL system
- 3 **29 lenders** are currently on the ARTL system
- 4 **13 local authorities** are using the system



From 4 July 2011, ARTL can process applications containing a transfer with a value of more than £1 million.

For up-to-date information and a full list of participating practices and companies, go to [www.ros.gov.uk/artl](http://www.ros.gov.uk/artl)

**Registers of Scotland is encouraging voluntary applications for registration of titles in the Land Register: see the separate feature on p22.**



for double or multiple registration of constitutive deeds is not adhered to.

#### Identification of benefited and burdened properties in title sheets and land certificates

The Title Conditions (Scotland) Act 2003 introduced a general requirement that a deed constituting new real burdens should identify both the benefited and burdened properties. On registration, the identities of these properties as narrated in the constitutive deed are shown on the relevant title sheet and/or reflected in the General Register of Sasines as appropriate.

However, in time, changes may take place which mean that the description of one or both of these properties is no longer accurate. One

such change would be where a benefited or burdened property is subdivided.

Although constitutive deeds pertaining to praedial real burdens or positive servitudes now require dual registration against both burdened and benefited properties, the same is not true for a conveyance which effects subdivision of the property burdened by or which benefits from a constitutive deed, or a waiver of the conditions. This means that in order to establish the properties with a potential interest in a burden, it is necessary to establish the title position as at the date of registration of the constitutive deed and then trace the progress of title of the properties in question.

To aid in this matter, the majority of new title sheets

created on or after 1 October 2011 (notwithstanding the date of receipt) will explain that the identification of burdened and benefited properties reflects the position as at the date of recording or registration of any constitutive deeds disclosed in the title sheet.

This will offer a clear point from which those who seek to rely upon the register must commence their investigation, and continue to support the spirit of transparency in respect of rights and obligations inherent in the 2003 Act.

*Full details of both the intake application check, and the information we will provide on title sheets to aid identification of benefited and burdened properties, can be found in Registers Update 35.*



[ros.gov.uk](http://ros.gov.uk)

# All aboard the Land Register

In April, the Land Register celebrated its 30th anniversary. Having started its rollout in 1981, the "new" register is progressively replacing the General Register of Sasines as the pre-eminent Scottish property ownership register. Some 56% of Scottish properties are now on the Land Register, covering around 21% of Scotland's land mass. Registrations are, in the main, triggered by a transfer for value. However, there are now

opportunities for solicitors and their clients to acquire the benefits land registration brings, even where there is no transaction inducing registration. Fergus Ewing MSP, Minister for Energy, Enterprise and Tourism, and Sheenagh Adams, Keeper of the Registers of Scotland, explain the case for registration in the Land Register, and highlight the availability to solicitors and their clients of voluntary registration.

## Business benefits



I can remember the introduction of the Land Register when in practice as a young solicitor! The Scottish Government is keen to see the levers of government used in these times of economic difficulty to help generate more business for businesses.

It appears to me that one such area is that the Keeper will accept voluntary registrations in most cases, and solicitors in private practice especially can encourage clients to bring forward voluntary registrations, which would generate more legal work, as well as in some cases help to identify titles more clearly.

A robust and effective system of land registration is essential for providing the right environment in which Scotland's economic wellbeing can be maintained and grown. A register of title brings certainty of ownership, and that ensures that parties who wish to transact with land can do so with the confidence that stems from a register that has a state-backed guarantee.

On 7 September 2011, this administration's new Programme for Government was launched, introducing an ambitious programme of 16 bills for this parliamentary year. This includes the Land Registration (Scotland) Bill, for which I am the lead Minister.

The current land registration system derives from the Land Registration (Scotland) Act 1979,



Minister for Energy, Enterprise and Tourism Fergus Ewing and Keeper of the Register Sheenagh Adams at the launch of Foundation, Glasgow

and although in the main land registration has operated effectively, it is widely acknowledged that the law is now in need of reform. The aim of the Bill is to modernise the process of registering land and property rights to make it clearer, more certain, more efficient, and fit for the 21st century.

A key component of this is to provide the legal basis for the eventual completion of the Land Register, by increasing the triggers for the first registration of property and providing powers in relation to voluntary registrations and Keeper-induced registrations. This Government is committed to a Scotland that welcomes and supports investors. Every step towards

completing the Land Register is a firmer step in the right direction.

The proposals in the Bill will accelerate the process of land registration, and so increase the number of titles backed by state guarantee. However, solicitors and their clients who wish to take advantage of the benefits of land registration are not solely dependent on enactment of the new Land Registration Bill. Solicitors will be familiar with the provisions in the 1979 Act, which permits interested parties to request registration in the absence of a trigger event. Parties can ask the Keeper to consider a voluntary request for registration. The Keeper and I are both keen to emphasise the benefits that land registration can bring and to encourage solicitors to discuss with their clients the advantages of a registered title.

Over the coming months, the Keeper will be engaging with the profession, and with the representatives of key groups, whose members' business is related to land ownership. The focus of these discussions will be to highlight the benefits of voluntary registration. I urge solicitors to take advantage of that dialogue, and to consider actively how voluntary registration can enable their clients to take full advantage of their property portfolio. ■

**Fergus Ewing MSP**, Minister for Energy, Enterprise and Tourism

# Open-door policy



Land registration brings economic and legal benefits, and Registers of Scotland is a key part of the infrastructure that supports the Scottish economy, underpinning a property market worth over £20 billion. To maximise the benefits of land registration, I am keen to promote voluntary registration and, whenever possible, I want to encourage an open-door policy to requests for voluntary registration.

Although the Land Registration (Scotland) Act 1979 gives me absolute discretion to refuse or accept applications for voluntary registration, in practice I reject very few. For instance, I rejected only 70 out of over 1,000 applications for voluntary registration received in 2010-11. A refusal will generally be for one of two reasons: either there is an actual or potential boundary dispute, or the cost of registration is not covered by the registration fee and there is no other compelling reason to agree the request.

I welcome enquiries from solicitors interested in voluntary registration. Registration can provide your client with an asset register of their properties, bringing clarity and certainty to what is owned; it can uncover and resolve any title issues in advance of a subsequent sale; it can make the property more readily marketable, particularly where outside investors are involved; and it can reduce the costs of future conveyancing.

I recognise that there can, on occasion, be issues in readying a set of titles for voluntary registration. My Title Investigation Team can assist in this regard. They have a proven record of accomplishment in working with public and private sector organisations to identify and resolve title extent issues in readiness for registration.

RoS will continue to engage in dialogue with solicitors, and also those public and private bodies who have extensive land holdings, to discuss options for voluntary registration. If you are invited to attend one of these events, please do come along. We have already worked closely with a number of organisations with very positive results from their voluntary registration. ■

**Sheenagh Adams**, *Keeper of the Registers of Scotland*

## CASE STUDY 1

### Old Course Hotel, St Andrews

In 2008, RoS completed the voluntary registration of the Old Course Hotel in St Andrews, Fife. Not just of interest to golfers, this application provided certainty of boundaries for one of Scotland's most famous hotels, situated on the edge of one of our most historic towns.

Gordon Aitken, of Maclay



Murray & Spens, was the solicitor representing the owners of the Old Course Hotel. He said the reason that they went down the

voluntary registration route was "to achieve a better level of certainty, clarity, and of course indemnity".

## CASE STUDY 2

### Grangemouth Oil Refinery

Deborah Lovell, a partner in Anderson Strathern LLP's Commercial Real Estate team, commented on their voluntary registration of Grangemouth Refinery.

"The voluntary registration process was used recently on behalf of our client, INEOS, for their landholding comprising their oil refinery and petrochemicals facility at Grangemouth and terminal at Finnart, all held on the historic General Register of Sasines. The registration of the land was key to a number of strategic deals involving transfers of the landholding, the reorganisation of the client's funding arrangements, and the involvement of a new foreign investor. The benefit of the voluntary registration for our clients included speed and certainty for all parties, which was of major assistance in enabling the parties to achieve their goals."



## CASE STUDY 3

### Strathclyde Partnership for Transport (SPT) Subway, Glasgow

SPT have been working with RoS for a number of years to voluntarily register their land and property that comprises the subway system in Glasgow. They sought voluntary registration, as they were persuaded by the benefits of "greater clarity and certainty, which makes for a better deed". SPT are also seeking to consolidate their titles to enable appropriate funding to be put in place for upgrading the Glasgow underground network for the Commonwealth Games in 2014, and voluntary registration will help them to do this.



If you would like to discuss voluntary registration or the services the Title Investigation Team can provide, please contact Fiona Martin (Fiona.Martin@ros.gov.uk or call 0131 528 3887).



**ros.gov.uk**