

## A Guide to the registration of deeds containing new real burdens

**This checklist may assist you when lodging applications to register deeds that contain new real burdens in the General Register of Sasines and Land Register. This Guide supplements the leaflets entitled ‘A well planned registration’ and ‘A guide to good deeds’. Further information on the Keeper’s policy and practice in relation to the provisions of the Title Conditions (Scotland) Act 2003 can be found in Registers Updates 10; 10.1; 10.2; 10.4; 10.5 and 23 and in a series of answers to Frequently Asked Questions on the Registers of Scotland website [www.ros.gov.uk/FAQs](http://www.ros.gov.uk/FAQs)**

### Creation of real burdens

#### **Legislative requirements for the content of a deed creating new real burdens**

The Title Conditions (Scotland) Act 2003 imposes rules for the creation of new real burdens. In general, and subject to the exceptions noted overleaf, a deed creating new real burdens must:

- be granted by or on behalf of the owner of the land that is to be burdened [s.4(2)(b)];
- contain the terms of the real burden in full [s. 4(2)(a)];
- employ the expression “real burden” or use the statutory name of a type of real burden provided by the 2003 Act (e.g. community burden or conservation burden) [s.4(2)(a) and s. 4(3)];
- either nominate and identify the land which is to be the burdened property [s. 4(2)(c)(i)] and
- nominate and identify the land which is to be the benefited property [s. 4(2)(c)(ii)]

- or, if the deed relates to the creation of a community burden, nominate and identify the community [s.4(4)].

#### **Legislative requirements for the registration of a deed creating new real burdens**

In addition to imposing rules for the creation of real burdens, the 2003 Act imposes rules for the registration of the constitutive deed. In general and subject to the exceptions overleaf, a deed creating new real burdens must:

- be registered simultaneously against both the burdened property and the benefited property [s. 4(5) and 120 of the 2003 Act]

**Please remember that section 75 of the 2003 Act imposes a similar requirement for registration against both the burdened property and the benefited property in respect of deeds containing new positive servitudes.**

#### **Notes:**

- A deed creating real burdens must clearly nominate and identify both the benefited and burdened properties, for example, “the benefited property in respect of the foregoing real burdens is ...”. In the Land Register reference should be made to a Title Number. If only part of a title is affected, an adequate plan or verbal description is also required. If title to an affected property lies in the General Register of Sasines, the description should be either a particular description or an adequate description by reference to a recorded deed. In appropriate circumstances, you may wish to identify either or both of the properties by reference to a plan that meets the usual first registration criteria.



## A Guide to the registration of deeds containing new real burdens

- Community burdens are mutually enforceable among the units in a development or community. These are commonly narrated in a Deed of Conditions affecting the whole community that is registered in advance of the sale of individual units. If you have identified the community (for example, a development) in your Deed of Conditions, it is not necessary for you to separately nominate and identify the benefited and burdened properties in that deed or in the break-off dispositions of individual units.

- Registration may involve 'double' or multiple registrations depending on the terms of the constitutive deed. Please remember that in the Land Register you must apply for registration (with the relevant forms and fees) against all of the affected properties. The General Register of Sasines is a unitary register for which only a single Sasine Application Form is required.

- In addition to the principal ad valorem fee for a disposition, a further fee of £60 is payable for each other title sheet affected by that application and for each county affected by a deed recorded in the General Register of Sasines.

### **Exceptions to the general rule: cases in which a deed creating new real burdens need not be registered against both the burdened and benefited properties**

- A deed that creates real burdens solely in reliance on the transitional provisions of section 53 of the 2003 Act need only be registered against the burdened property. Break-off dispositions by local authorities and housing associations frequently fall within this category. Note: an additional application(s) will be required if a deed granted in terms of section 53 also seeks to constitute a new positive servitude.

(unless that servitude is a 'pipeline servitude' in terms of section 77 of the 2003 Act).

- Where the burden to be constituted is a personal real burden there is no benefited property and no requirement for an additional application for registration in respect of that burden.

Where a disposition relies on the provisions of section 53 or where the burdens are personal real burdens, you are requested to narrate this fact in the "additional information" field of the application form or in a covering letter. This will enable the Keeper to identify at Intake stage that the application does not require dual registration.

**The requirement for double or multiple registrations can be avoided by using a single deed to create real burdens, for example a Deed of Conditions. If registered in advance of the sale of individual units, registration will often only be required in respect of a single title for which only a single registration fee of £60 is required.**

### **Pre-Registration Enquiries**

**Our Pre-Registration Enquiries Section will be pleased to offer guidance to solicitors on specific matters of concern in connection with an application for registration affected by the issues raised in this leaflet. A fee of £50 will be charged for this service. Enquiries should be by email, letter or fax and be clearly marked for the attention of Pre-Registration Enquiries. No telephone enquiries will be accepted.**

**Contact Pre-Registration Enquiries Section at Registers of Scotland Executive Agency, Meadowbank House, 153 London Road, Edinburgh EH8 7AU.**

**LP 55 EDINBURGH 5**

**DX 550907 EDINBURGH 9**

**Email: [preregistrationenquiries@ros.gov.uk](mailto:preregistrationenquiries@ros.gov.uk)**



**ros.gov.uk**