



This Registers Update explains the registration implications that arise from the recent decision of the Outer House of the Court of Session in the case of *The Board of Management of Aberdeen College v. Stewart Watt Youngson and Another* [2005] CSOH 31

### General

A disposition *a non domino* is a disposition of property granted by a party who has no title to it. The *a non domino* facility is a recognised and legitimate device for making good a lack of title which cannot otherwise be made good.

For a disposition to found a basis for positive prescription in the General Register of Sasines in terms of section 1 of the Prescription and Limitation (Scotland) Act 1973, the deed must be valid *ex facie*.

The question in *The Board of Management of Aberdeen College v. Stewart Watt Youngson and Another* was whether a disposition granted by a disponent in favour of himself in the same status or capacity (i.e. A to A), could be a valid foundation writ. The court determined that such a disposition was not sufficient in its terms to constitute a title to the interest in the subjects purportedly transferred, and that it was invalid *ex facie*. Such a deed could not be a foundation writ for the purposes of positive prescription in terms of the 1973 Act.

The judgement affects the way in which *a non domino* deeds are dealt with in the two property registers, which are the General Register of Sasines and the Land Register.

### A *non domino* Applications to the General Register of Sasines and the Land Register

In order to ensure a consistent approach in both property registers the Keeper will not accept dispositions *a non domino* by A to A for recording in the General Register of Sasines or for applications for registration in the Land Register where the disposition *a non domino* is the deed inducing registration.

### First Registrations - Prior recorded disposition *a non domino* in progress of titles

There may be instances where a disposition *a non domino* by A to A already recorded in the General Register of Sasines may form part of the progress of titles in an application for first registration in the Land Register.



Since a disposition *a non domino* by a granter in favour of himself in the same capacity is not a valid disposition to found prescription in terms of section 1 of the 1979 Act, possession on such a deed cannot render the title unchallengeable.

In examining the application for first registration, the Keeper's staff will consider whether positive prescription has operated on a *subsequent* deed in the prescriptive progress of titles. In the situation where a period of ten years has elapsed since the recording of the subsequent deed, and the application for registration contains satisfactory evidence, which demonstrates that possession has been exercised openly, peaceably and without judicial interruption, then the title will be registered without exclusion of indemnity. However if the period of positive prescription has yet to pass then an exclusion of indemnity is inevitable in respect of the proprietorship of the interest being registered.





### **Titles registered in the Land Register with an exclusion of indemnity that have proceeded on a disposition *a non domino* by A to A**

Prior to the decision in *The Board of Management of Aberdeen College v. Stewart Watt Youngson*, the Keeper accepted applications for registration that proceeded on a disposition *a non domino* by A to A, either as the deed that induced registration or as a link in the prior prescriptive progress of titles. Consequently the Land Register currently contains titles with an exclusion of indemnity that have proceeded on such deeds.

The decision in *The Board of Management of Aberdeen College v. Stewart Watt Youngson* does not, as regards the post registration period, affect the operation of positive prescription on a title registered in the Land Register subject to an exclusion of indemnity. Positive prescription can therefore operate on a title already registered in the Land Register which was subject to an exclusion of indemnity, where the deed that induced registration in the Land Register was a disposition *a non domino* by A to A. Where, for example, a registered interest following from a disposition by A to A was registered in June 1995, the exclusion of indemnity could be removed (upon application) in June 2005, provided suitable evidence of prescriptive possession had been submitted.

As a consequence of the decision, the Keeper will discount any period of possession which was founded upon a disposition *a non domino* by A to A recorded in the General Register of Sasines prior to the interest being registered in the Land Register. For example in the situation of a disposition by A to A recorded in the General Register of Sasines in June 1995 and a disposition by A to B registered in the Land Register subject to an exclusion of indemnity in June 2000, the period of possession between 1995 and registration in 2000 will be discounted. The exclusion of indemnity will be removed (upon application) in June 2010, provided suitable evidence of prescriptive possession had been submitted.

### ***A non domino* Deeds by A to B**

The judgement has no effect on the Keeper's policy on applications for registration founded upon dispositions *a non domino*, provided these dispositions are in the form of a grant by the disponent to a third party (A to B). Such dispositions presented for registration in the General Register of Sasines and the Land Register will continue to be considered in line with the Keeper's current *a non domino* policy. This policy is set out at paragraph 6.4 of the Registration of Title Practice Book 2nd Edition, which is now available on the Agency's website at [www.ros.gov.uk](http://www.ros.gov.uk).

*This is the latest in a series of updates to keep you informed on the various aspects of Registers of Scotland's services, policies and procedures. More details can be found at [www.ros.gov.uk/updates](http://www.ros.gov.uk/updates), or by contacting Customer Relations on 0131 200 3944.*

