



Although the Land Register is now operational throughout the whole of Scotland, the Register of Sasines is still in operation. We are frequently asked whether a particular transaction will induce first registration in the Land Register, or whether the writs should be recorded in the Register of Sasines. This leaflet examines those provisions of Section 2(1) of the Land Registration (Scotland) Act 1979, which often generate enquiries.

Guide to Types of Transactions Inducing First Registration

Grant of long lease - Section 2(1)(a)(i)

Any grant of a new long lease induces first registration. The term 'long lease' is defined in Section 28 of the 1979 Act; it includes both a lease whose duration exceeds 20 years and a lease for a shorter period which contains provisions which could oblige the landlord to extend it to exceed 20 years.

Transfer of an interest for valuable consideration - Section 2(1)(a)(ii)

The Act does not define the term 'valuable consideration'. Clearly this must include monetary payment at full market value. However, examples of a transfer for valuable consideration can also include:

- a conveyance for a monetary payment of less than full market value (e.g. a Disposition for a nominal £10)
- a conveyance on marital separation or divorce (e.g. a Disposition for certain good and onerous causes)
- a conveyance in exchange for taking over financial obligations under a loan (e.g. a Disposition accompanied by a Deed of Variation of a Standard Security)
- a conveyance in exchange for other subjects (a Contract of Excambion is normally treated as containing two transfers for valuable consideration).

The following would **not** normally be treated as transfers for valuable consideration:

- a gift (e.g. a Disposition for love, favour and affection)
- a conveyance to a beneficiary under a Will or on intestate succession
- a reconveyance (or a Discharge under Section 40 of the Conveyancing and Feudal Reform (Scotland) Act 1970) by the creditor under an ex facie absolute Disposition.

In some cases there may be doubt as to whether the transfer of title is for valuable consideration (e.g. an ostensibly gratuitous Disposition may be accompanied by a Deed of Variation of a Standard Security, but it may be unclear whether the financial arrangements under the loan are actually being altered). In such circumstances, we usually rely on the Solicitor's assessment as to whether there is valuable consideration. If there is genuine difficulty in making that assessment, we normally encourage registration in the Land Register, so as to avoid the possibility of an inept recording in the Register of Sasines.

Voluntary registration Section 2(1)(b) of the 1979 Act gives the Keeper discretion to accept voluntary registration of an interest where there is no transaction leading to registration under Section 2(1)(a). Any solicitor who wishes us to consider a voluntary registration should write to the Business Manager for the relevant County, giving details of the title and the reasons why registration is sought.

Transfer of an interest held under a long lease - Section 2(1)(a)(v)

Any transfer of the tenant's interest under a long lease induces first registration, whether or not there is valuable consideration. This is the case even if the lease has less than 20 years still to run, and irrespective of whether the lease was recorded in the Register of Sasines.

Other transactions

For completeness note that:

- a conveyance of a pro indiviso share for valuable consideration induces first registration of that share under Section 2(1)(a)(ii)
- a transfer of an interest in consideration of marriage induces first registration under Section 2(1)(a)(iii)
- absorption of an unregistered interest into a registered interest leads to registration under Section 2(1)(a)(iv)
- a transfer of an interest held under udal tenure or a kindly tenancy induces first registration under Section 2(1)(a)(v).

Transactions NOT inducing first registration

Where an interest is unregistered and the proposed transaction does not induce first registration, the relevant writ may still be recorded in the Register of Sasines. Examples of such a transaction include:

- a Disposition not for valuable consideration
- the grant of a Standard Security where there is no transfer of title
- the grant of a Deed of Servitude (if neither the dominant nor the servient tenement is registered).

Further Information

Solicitors who are unsure whether their transaction induces first registration are encouraged to seek advice from:

Pre-Registration Enquiries Section, Registers of Scotland Executive Agency

Meadowbank House, 153 London Road, Edinburgh EH8 7AU

LP55, EDINBURGH 5 DX 550907, EDINBURGH 9

Tel: 0845 607 0163 (local rate) Direct Line: 0131 479 3674 Fax: 0131 479 3675

Email: pre-registrationenquiries@ros.gov.uk

