

Practice Guide 1

First Registration

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1. Introduction

1.1. What Interests may be Registered?

s21 LTRA 2011 makes provision for the registration of title to:

- estates in land
- rentcharges
- profits a prendre in gross.

This guide deals only with the first registration of unregistered freehold and leasehold estates in land. While much of it will be relevant to the first registration of profits a prendre in gross and rentcharges, it does not deal with the particular issues that arise in registering those interests (see [Practice Guide 15 - Profits a Prendre in Gross](#) for more detailed information).

This guide does not deal with:

- Applications based on adverse possession (see [Practice Guide 4 - Adverse Possession](#)) nor
- The creation of new leases out of registered titles. Under s46(2)(b) LTRA 2011 these are treated as dealings, not as first registrations (see [Practice Guide 18 - Leases – When to Register](#)).

1.2. Estates in Land

The only estates that can be registered under the LTRA 2011 are a fee simple absolute in possession (Freehold) or a term of years absolute (Leasehold).

Because of the provisions of s46(2)(b) LTRA 2011 in respect of the granting of leases out of registered titles, this guide refers only to the registration of leasehold estates granted out of an unregistered estate.

For estates granted out of a registered estate where registration of title is compulsory (see [Section 2 - Compulsory Applications for First Registration](#)).

1.3. The Advantages of Land Title Registration

Registration under the LTRA 2011 supports home and property ownership and the secured credit market by:

- allowing the government to guarantee ownership of each parcel of land, thus giving greater security of title to individual owners
- providing greater protection against the possibility of losing title by adverse possession
- indemnifying the owners under s11 and Schedule 1 LTRA 2011 against any loss if they are deprived of their guaranteed title on a rectification of the register under s83 and Schedule 6 LTRA 2011
- introducing certainty and simplicity into conveyancing
- setting out, or referring in the register to, all the legal rights that benefit and affect the title (other than certain overriding interests)
- ensuring that capital can circulate freely in the economy by making land readily available as security.



2. Compulsory Applications for First Registration – Section 24 LTRA 2011

s24 LTRA 2011 specifies the events that trigger compulsory registration. The requirement of registration applies to a conveyance or other transfer of land;

1. For value or other consideration
2. By way of gift (voluntary conveyance)
3. In pursuance of an order of the court
4. By estate representatives in the course of administering a deceased person's estate
5. Giving effect to a partition of land held in co-tenancy
6. By a deed that appoints a new trustee or is made in consequence of the appointment of a new trustee
7. By a vesting order under **section 34 of the Trustee Act 1975** that is consequential on the appointment of a new trustee, or by a deed executed under **section 4 of the Appropriation of Escheats Act 1870**;
8. The grant of a lease for a term of more than 21 years from the date of the lease
9. The creation of a first legal mortgage of a qualifying estate
10. A re-conveyance or transfer by a mortgagee, on the satisfaction of a mortgage debt.

For the avoidance of any doubt only triggers 1, 3, 8 and 9 will be introduced when the LTRA 2011 comes into force. The other triggers will be introduced at a later date to be decided by the Minister.

Additionally, **schedule 3 LTRA 2011** provides that voluntary registration of title may be required prior to an:

1. Application being submitted for a sub-division to the Department of Planning
2. Application being submitted to the Office of the Tax Commissioner for primary family homestead designation
3. Application being submitted to organize land as a condominium under the **Condominium Act 1986**
4. should any of them require it pursuant to their policy.

s98 LTRA 2011 provides for compulsory registration of grants by Her Majesty out of demesne land.

2.1 On a Conveyance or Other Transfer of a Freehold Estate in Land

Registration is compulsory on a conveyance or other transfer of an unregistered freehold estate in land (**s24(1)(a) LTRA 2011**):

- for valuable or other consideration including a transfer of property with a negative value
- by way of gift including for the purposes of constituting a trust under which the settlor does not retain the whole of the beneficial interest, or uniting the bare legal title and the beneficial interest in property held under a trust under which the settlor did not, on constitution, retain the whole beneficial interest
- in pursuance of an order of any court by means of an assent including a vesting assent
- giving effect to a partition of land subject to a trust of land
- by a vesting order under **s34 Trustee Act 1975** that is consequential on the appointment of a new trustee
- By a deed that appoints a new trustee or is made in consequence of the appointment of a new trustee.



Please note that not all of the examples above will result in first registration when the **LTRA 2011** comes into force.

2.2 On a Transfer of an Existing Leasehold Estate in Land

Registration is compulsory on transfers of an unregistered leasehold estate in land with more than twenty one years to run at the time of the transfer for valuable or other consideration (including a transfer of property with a negative value) and also:-

1. by way of gift (including for the purposes mentioned in [Section 2.1 - On a conveyance or other transfer of a freehold estate in land](#))
2. in pursuance of an order of the court
3. by means of an assent (including a vesting assent)
4. by a deed giving effect to a partition of land subject to a trust of land
5. by a deed that appoints a new trustee (in the circumstances referred to in [Section 2.1 - On a conveyance or other transfer of a freehold estate in land](#) or

*For the avoidance of any doubt only trigger 2 will be introduced when the **LTRA 2011** comes into force. The other triggers will be introduced at a later date to be decided by the Minister.*

2.3 On the Grant of a New Leasehold Estate in Land

Compulsory registration applies to grants both out of unregistered freehold estates and out of unregistered leasehold estates that at the time of the grant have **more than** twenty one years to run. The lease granted must be either:

- for a term of more than twenty one years from the date of the grant, and
- for valuable or other consideration (including a lease of property with a negative value), be by way of gift (including for the purposes mentioned in [Section 2.1 - On a Conveyance or Other Freehold Estate in Land](#)) or in pursuance of an order of the court

or:

- be for a term of years absolute to take effect in possession after a period of three months from the date of the grant.

2.4 On a First Legal Mortgage

Compulsory registration also applies on the creation by the owner of an estate in unregistered land of a first legal mortgage (**s24(1)(d) LTRA 2011**). A first legal mortgage is one that, on creation, will rank in priority ahead of other mortgages affecting the mortgaged estate.

2.5 Cases in which Compulsory Registration does not apply

Nothing in the **LTRA 2011** makes it compulsory to register title to:



- incorporeal hereditaments (such as rentcharges and profits), or
- mines and minerals held apart from the surface.

Registration of the above is voluntary. Incorporeal hereditaments other than profits a prendre in gross and rentcharges can only be registered as appurtenant rights to registered land.

3. Lodging Applications for First Registration

3.1 Who can apply?

When registration is compulsory, the attorney on behalf of the estate owner (transferee or grantee) or their successor in title must make the application (**s25(1) LTRA 2011**).

Where the requirement for registration is triggered by a first legal mortgage, the mortgagee (lender) or mortgagor (borrower) attorney may make an application for first registration (**s23(2) LTRA 2011 and rr 21 & 22 LTRR 2018**).

Time limit

Where there is a requirement of registration, the application must be made within two months (**s25(3) LTRA 2011**). This period may be extended by the Registrar upon application. We will always extend the period for registration when your application is delayed in another Government Department.

The following persons cannot apply:

- A person whose entitlement is as a person who has contracted to buy under a contract under **s21(6) LTRA 2011**
- The **s25 LTRA 2011** time limit does not apply to voluntary first registrations as there is no duty to apply for registration.

3.2 Form of application

Your application must be made using **Form A1**, which can be downloaded from our website free of charge.

3.3 Completion of application Form A1

SECTION A

Names and addresses of applicants to be registered as owners of the land

This information will be entered in the proprietorship register. The name(s) of the person(s) applying to be registered as proprietors should be given here. Where an attorney lodges the application, the names of the client(s) not the firm should be given. If the applicant is a firm, then the firm's name and address and the address of the applicant(s) will also need to be included. *You may give up to three addresses, the first of which must be a physical address for service in Bermuda. This may be the address of the applicant's attorney or other agent.*



SECTION B

- Property Address or other description of the estate to be registered

Give the property address including postcode, if any. If there is no property address, a general description, e.g. 'land lying to the west of 45 South Road, Paget' will suffice.

- Extent to be registered

You must provide sufficient details to enable us to identify clearly the extent of the land to be registered (**r24(1)(a) LTRR 2018**). If we cannot establish the extent sufficiently for it to be indexed, we will reject your application (see [Practice Guide 7 - A Guide to the Land Title Registry Index Map \(LTRIM\)](#)).

- Disclosable overriding interests

Schedule 2 LTRA 2011 and **r29 LTRR 2018**, list the interests that override first registration. With certain exceptions, you must disclose overriding interests that affect the estate being registered, and that the applicant actually know about (**s89 LTRA 2011**). The exceptions are set out in **r29(2) LTRR 2018**. In particular, you do not need to disclose any interest that is apparent from the deeds and documents of title lodged with your application.

If there are any overriding interests you must inform us of them in writing, and lodge it with your application.

Generally there will be no rights, interests or claims known to the applicant other than those disclosed in the title documents or forms lodged. If a certified copy of the instrument creating a right or interest is lodged, the right or interest will be treated as disclosed in the title documents. If there are any other undisclosed interests, rights or claims known to the applicant, please inform us in writing.

Examples of third party rights, interests and claims that can affect the property are set out below:-

- Puisne mortgages, equitable charges, estate contracts, restrictive covenants, equitable easements and other charges on, or obligations affecting land
- You must tell us of any lease to which the land is subject for which you are unable to provide documentary evidence, and that is not an overriding interest. Please give details if you are aware of any options contained in these leases
- You should also tell us about any options contained in leases that are not capable of being noted where the option has not been disclosed in the title deeds or on **Form DL**
- Rights acquired, or in course of being acquired, under the **Limitation Act 1984**

If squatters occupy any part of the property details must be given unless the squatters' interest has been disclosed under **r29 LTRR 2018**. We will not complete registration until the claims of the squatters have been investigated and settled once and for all.

- Claims - give particulars of any claims that may result in an objection to the application or should be noted in the register (unless disclosed to us in writing). If possible, provide the name and address of the person making the claim.



We may enter a notice in the register of any interest that you disclose.

Further information on overriding interests is contained in [Practice Guide 14 - Overriding Interests and Disclosures](#).

- Class of Title applied for

You will need to add whether the land is to be registered as ‘absolute freehold’ or ‘absolute leasehold’ or ‘provisional freehold’ or ‘provisional leasehold’. The Registrar will then grant the best class of title that the circumstances permit. You should note that we might not be able to grant the class of title that you apply for.

An absolute title is the best form of title available as it is a state guaranteed title. If the chain of title is broken by a missing deed or where the owner cannot produce documentary evidence or where evidence is lacking, it may not be possible for the LTRRO to guarantee the owner absolutely. In such cases a provisional title may then be granted by the Registrar. If such defect is rectified at a later date, then the applicant may make an application for an upgrade of the title at that time (see [Practice Guide 27 - Upgrading the class of title](#)).

- How the land is held?

Specify how the land is to be held on the register by each of the applicants and in what shares. This will enable us to make the correct proprietorship section entries e.g.

John Smith 40% as tenant in common

Jane Smith 40% as tenant in common

Robert Smith 20% as tenant in common

Or John Smith and Jane Smith as Joint Tenants

Or John Smith as Sole Owner

Or John Smith and Jane Smith as Trustees.

We need to establish how the owners are to hold the land. The purpose of this is not to give the Registrar notice of the trusts under which the land is held, but simply to enable us to enter a Form B restriction to protect a beneficiary under a trust (**r92 LTRR 2018**). We must enter this restriction to protect the interests of such beneficiaries.

Form B - Restriction on Dispositions by Trustees (Certificate Required)

“No disposition [or specify details] by the owners of the registered estate is to be registered unless they make a Statutory Declaration, or their attorney gives a certificate, that the disposition [or give details] is in accordance with [specify the disposition creating the trust] or some variation thereof referred to in the declaration or certificate.”



Disposal by a Sole Proprietor

We must enter a restriction in Form A whenever a sole proprietor acquires a property. Upon the sale of the property the attorney acting for the proprietor must comply with **s11(3) Conveyancing Act 1983**.

Disposal by a Survivor of a Joint Tenancy or a Personal Representative

Where we register two or more persons as proprietors of an estate in land, the survivor of the proprietors will be able to give a valid receipt for capital money arising on a disposition. As a rule, the survivor can only give a valid receipt where the proprietors were joint tenants or where the personal representative is an absolute owner by order of the Court.

Form A – Restriction on Dispositions by Sole Owner

*No disposition by a sole owner of the registered estate (except a trust corporation) under which capital money arises is to be registered unless (a) it is authorized by an order of the court or (b) the attorney acting for the seller confirms that **s11(3) Conveyancing Act 1983** has been fully complied with.*

SECTION C

1. State the relevant trigger for registration by selecting the correct box

2. List the nature of applications (transactions) in priority order, e.g.

- i. Conveyance dated 24 Mar 2012
- ii. Charge dated 24 Mar 2012
- iii. Charge dated 20 Apr 2012
- iv. Restriction in **Form R10**

3. List the names and addresses of any chargee.

SECTION D

Fill in the particulars of your firm. You must provide a postal address for correspondence. Only give an email address here if you are happy for us to contact you this way.

– Certification by attorney /date

You must certify, sign and date the form. We will **always** reject any unsigned **A1**.



3.4 Documents that must accompany Form A1 – First Registration

3.4.1 Form DL (Documents Lodged at First Registration)

This form, in duplicate, must always accompany **Form A1**. Give the address or other description of the property and list, in date order (earliest first) all the documents lodged in support of the application (**r24 LTRR 2018**).

3.4.2 Survey Plan

A survey plan should always accompany an application for first registration **r24(1)(a) LTRR 2018** (for survey plan requirements, see [Practice Guide 7 - A Guide to the Land Title Registry Index Map \(LTRIM\)](#)).

If registering mines and minerals owned separately from the surface you must provide under **r25 LTRR 2018**:

- a plan of the surface under which the mines and minerals lie,
- any other sufficient details by plan or otherwise so that the mines and minerals can be identified clearly, and
- Full details of rights incidental to the working of the mines and minerals.

3.4.3 Lease

Lessee/Tenant: Where the title is leasehold, you must lodge the original lease and a certified copy (**r24 LTRR 2018**).

Lessor/Landlord: If the title is subject to any leases you have granted, you must lodge the relevant counterpart lease.

3.4.4 Title Deeds

Send all the deeds and documents relating to the title that the applicant has or can oblige the holder to produce, including but not limited to opinions of counsel, abstracts of title, copies of documents, contracts for sale, requisitions, replies, searches and other documents relating to the title. All these documents must be listed on **Form DL** under **r24 LTRR 2018**.

Where the application is based on a purchase for value and the title has been investigated in the usual way back to a good root at least 20 years old, you should resist the temptation to edit the deed package so as to send us only a recent root of title and subsequent conveyances. Though we may not need to see very old documents, particularly if they are fragile, deeds from the 19th and early 20th centuries often contain definitive details of covenants, easements and other matters that need to be entered in the register.

You will reduce the likelihood of us sending you requisitions by lodging a complete bundle of deeds, and the examiner will have a better opportunity to frame fully informative entries, both as to the nature of any covenants or rights and the extent of the land affected.



Original deeds and documents need not be produced if they are not in the control of the applicant. For example, if they affect other land i.e. they are held by a mortgagee under a subsisting mortgage entered into before the transfer to the estate owner (note that, as we will have to register the charge, the chargee will usually have to consent to the application). In such cases, you should supply an abstract or certified copies of the relevant deeds. Abstracts should be marked by an attorney as examined against the original deeds. All particulars of wills, grants of probate or letters of administration, marriages and deaths set out in the abstract of title as separate items should also be verified and marked accordingly.

If there is no good explanation for the absence of the original deeds, we may not be able to give an absolute title. If you require further information about missing deeds, (see [Practice Guide 2 - First Registration Where Deeds have been Lost or Destroyed](#)).

The evidence required in support of your application depends on the nature of the title and the class of title sought (see [Section 4 - The Examination Process and Classes of Title](#)).

Where the application is based on a vesting assent, we will need to be satisfied that the assentee was the person entitled to have the legal estate transferred to them (see [Section 4.4 Titles based on vesting assents](#)).

Any original statutory declarations or affidavits, subsisting leases, subsisting charges, and the latest document of title (such as the conveyance to the applicant) should also be lodged. We will return the pre-registration deeds after registration. Subject to the rights of any mortgagee that wishes to hold them, the estate owners are entitled to possession of them, and they ought not to be destroyed without their authority. There are several reasons why a customer may want to keep pre-registration deeds:

- They often contain information that would not appear on the land title register. For example, details of trusts, wayleaves, licences, short leases, correspondence and old searches
- They may assist in the future if the title comes into question or on alteration applications
- The deeds can assist with the establishment of the exact line of a boundary on a property registered with indicative boundaries.

Particularly with older properties, the deeds may have considerable historical interest. Archives are usually happy to take unwanted deeds and documents, (The Bermuda Archives, Government Administration Building, 30 Parliament Street, Hamilton, HM12).

3.5 Charitable, Ecclesiastical and Public Trusts

Where a corporation or body of trustees holds land on behalf of charitable, ecclesiastical or public trusts, applies to be registered as owner of a registered estate or charge, the application must be accompanied by the document creating the trust or a certified copy of it (**r157 LTRR 2018**).

There are additional requirements for charities (see [Practice Guide 13 - Charities](#)).

3.6 Constitution of a Corporation

If the applicant is a corporate body, but is not either:



a limited partnership incorporated under the **Limited Partnership Act 1883** (as amended), or the trustee of a public, ecclesiastical or charitable trust (other than a non-exempt charity) then

You must lodge evidence of the extent of its powers to hold and sell, mortgage, lease, and otherwise deal with land, and, in the case of a charge, to lend money on mortgage (**r154(1) LTRR 2018**). The evidence must include the document(s) constituting the corporation, or a certified copy, and any further evidence the Registrar may require (**r154(2) LTRR 2018**).

3.7 Application for a Restriction and Use of Form R10

When registering an individual or a corporation as proprietor of a registered estate, whether on a dealing or on first registration, the Registrar will only enter a restriction in the following form (**Form 10**) if it is applied for.

“RESTRICTION: No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless (a) authorized by an order of the court or (b) the attorney acting for the seller confirms that **s11(3) of the Conveyancing Act 1983** has been fully complied with.”

Nevertheless, such a restriction ought to be entered on registering a sole trustee or nominee as proprietor of a registered estate; as such a person will normally be unable to give a valid receipt for capital money.

Consequently, a sole or last surviving trustee of a trust of land who applies to be registered as proprietor must at the same time apply for a **Form A - Restriction**. This applies both on first registration and on registered dispositions (**r94 LTRR 2018**). The application must be made in **Form R10**. Similarly, an applicant for first registration of a legal estate held on a trust of land where the powers of the trustees are limited must apply for a restriction in Form B. This also applies where the legal estate is vested in the personal representatives of a sole or last surviving trustee. An application must be made using **Form R10**.

Where the legal estate is held on charitable, ecclesiastical or public trusts, (see [Section 3.9 Charitable, Ecclesiastical and Public Trusts](#)).

In other situations where you wish to apply for a restriction, you must use Form **R10**. See [Practice Guide 16 - Notices, Restrictions and the Protection of Third Party Rights on the Register](#) and **Schedule B LTRR 2018**, for additional information.

3.8 The Appropriate Stamp Duty (SD)

If the application is based upon or includes a land transaction that is affected by stamp duty the deed should be stamped by the Office of the Tax Commissioner (OTC) before being submitted to the LTRO. Where the application includes a transfer that is not considered by the OTC to constitute a land transaction they will stamp the document as exempt. We will reject the application if the ‘deed inducing registration’ (DIR) has not been stamped.



3.9 Form R20

In some situations, where a document will be referred to in the register you may wish to have prejudicial information removed from that document. **r126 LTRR 2018** provides for a request to be made by any person upon application.

If you wish to apply to the Registrar to designate a document as an exempt information document, you must use form R20.

3.10 Form A2 (Dealings of Whole of Registered Estate)

Separate applications are required in respect of registered and unregistered titles. **Form A2** is the application form for dealings with registered titles. Where the transfer or assent to the estate owner includes registered as well as unregistered titles, you must complete **Forms A2** and **A1** and pay a separate LTRO fee in respect of each.

Form A2 may also be needed where there has been dealing with the land prior to first registration. (see [Section 6 - Dealings with land before first registration is completed](#)).

3.11 Land Title Registry Fees

Please see the Head 38 in the Government Fees Amendment Regulations 2018 for further details. You must show the amount of the fee on **Form A1**.

3.12 Time Limit

When first registration is compulsory (see [Section 2 - Compulsory Applications for First Registration](#)), you must apply for it within two months of the date of completion of the transaction concerned (**s25(3) LTRA 2011**).

s25A LTRA 2011 states that any application submitted after the two month period will be subject to a late penalty of \$200 for every day or part thereof during which the application remains unmade.

However, the Registrar can make an order extending the two month period, if satisfied on the application of any interested person that there is good reason for doing so under **s25(4) LTRA 2011**.

4 The Examination Process and Classes of Title

4.1 Examination of Title

In unregistered conveyancing, title is ultimately based on the estate owner's right to be in possession of the land or to receive the rents and profits of it. Showing a full documentary title commencing with a good root of title that is at least 20 years old should normally establish this right. This is in line with the requirements of the **Conveyancing Act 1983**.



The appropriate class of title available to an applicant under **ss.28(1)29** and **30 LTRA 2011** is primarily determined by the quality of documentary title lodged. An LTR Officer will assess the title deeds accompanying the application to determine if they prove a good holding title. **r30 LTRR 2018**, provides that we may have regard to any prior examination of title by a conveyancer and to the nature of the property when considering the granting of title.

To ensure that the best possible class of title is given to applicants, **r24(1)(c) LTRR 2018**, also provides for all available deeds and documents relating to the title to be lodged. If, therefore, any of the title deeds that should be in an applicant's possession are not produced, you must properly account for their absence, especially where the grant of an absolute title might be prejudiced. Where a deed that is not essential to proving title is not lodged, the Registrar may make a protective entry, for example, when it is known that the missing deed contains restrictive covenants.

Situations where relevant title deeds or documents are unavailable are covered in [Section 4.2 - Evidence of Title where the Deeds have been Lost or Destroyed](#).

As to other situations where the applicant cannot show a 20 year documentary title prior to the deed inducing registration (see [Section 4.6 - Land that has been in the same ownership for a considerable time](#)).

As to titles based on adverse possession, (see [Practice Guide 4 - Adverse Possession](#)).

The Registrar may also make searches and enquiries or require the applicant to make any further searches or enquiries he/she considers are necessary (**r31 LTRR 2018**).

- Please note we will still serve notice on third parties if we believe they may have grounds for objecting, for example, a person who has a caution against first registration of the estate concerned.

Any person may object to the application, whether or not we notify them of it (**r.19, LTRR 2018**). We will notify the applicant of any objection and the title will not be registered until the objection has been withdrawn or disposed of. Any purchaser or mortgagee should always make a prior search of the LTRO records. This will reveal any caution against first registration, as well as revealing whether any part of the land is already registered.

4.2 Evidence of Title where the Deeds have been Lost or Destroyed

The vendor's ability to produce the title deeds of the property and the absence of any unexplained memoranda of sales of part of it or other dealings with the land are important safeguards for a purchaser of unregistered land, and for the Registrar on first registration.

Where the applicants are unable to produce all the deeds that ought to be in their possession or control, the possibility of an undisclosed mortgage, of an applicant who has forgotten about a deed or other transaction taking place, or even of fraud, cannot be ruled out. As a result, we take special precautions when registering land when it is claimed that all or some of the title deeds have been lost or destroyed. Particular attention will be given to:

- the identity of the applicant
- custody of the deeds at the time of their loss



- the evidence of the loss or destruction and the circumstances in which it occurred
- any available secondary evidence of the contents of the missing deeds
- the possibility of restrictive covenants, easements or other incumbrances on the title.

For further information on class of title, protective entries and the undertakings we may require, (see [Practice Guide 2 - First Registration Where Deeds Have Been Lost or Destroyed](#)).

4.3 Classes of Title

4.3.1 Absolute Freehold Title

An application based on a purchase of unregistered land for value by the responsible estate owner (or a successor in title **s25(1) LTRA 2011**) supported by a proper documentary title commencing with a good root at least 20 years old at the date of the acquisition, will normally result in the grant of an absolute freehold title.

The Registrar may additionally disregard the fact that a title is technically flawed if the Registrar is satisfied that any defect will not cause the holding under the title to be disturbed (**s28(3) LTRA 2011**). An application based on a first mortgage of unregistered land, supported by a proper documentary title commencing with a good root at least 20 years old at the date of the mortgage, will also normally result in the grant of an absolute freehold title.

4.3.2 Absolute Leasehold Title

Absolute leasehold title will only be granted if:

- the LTRO is satisfied that title to the estate is such as a willing buyer could properly be advised by a competent professional adviser to accept, and
- it approves the lessor's title to grant the lease (**s28(2) LTRA 2011**).

The LTRO must also approve the title to any intermediate leasehold title that exists. The LTRO will not normally grant an absolute title to the lease being registered unless it is satisfied on the evidence lodged either:

- that the lease and any superior leases were validly granted, or
- that the lease is binding on the current lessors and their mortgagees, if any, and that the current lessor's title is capable of registration with absolute freehold or absolute leasehold title.

4.3 Provisional Title

Provisional titles cannot be applied for unless the Registrar has refused to grant an absolute title. They may be granted if the Registrar is of the opinion that the applicant's title to the estate has been established only for a limited period or subject to certain reservations that cannot be disregarded (**ss28(3) and 28(4) LTRA 2011**). An example would be where the title depended on a transaction that appeared to be in breach of trust. The title would then be provisional so as to preserve any interest of the beneficiaries of the trust.



Where leasehold titles are concerned, the LTRO will grant a provisional title if we think that either the applicant's title to the estate, or the lessor's title to the reversion, has been established only for a limited period subject to certain reservations that cannot be disregarded under **s28(3) LTRA 2011**.

Provisional Titles may be granted for freehold estates and leasehold estates under **s28(4) LTRA 2011**, if the Registrar is of the opinion that:

- the applicant is in actual possession of the land, or in receipt of the rents and profits of the land, by virtue of the estate, and
- there is no other class of title with which they may be registered.

An estate owner with a limited or no documentary title may still be registered with provisional title provided they comply with any procedural requirements set out in **r28 LTRR 2018**.

4.4 Titles Based on Vesting Assents

A purchaser may accept a vesting assent by a personal representative in respect of an unregistered legal estate as sufficient evidence that the assentee is the person entitled to have the legal estate conveyed to them, unless notice of a previous assent affecting that legal estate has been placed on or annexed to the probate or letters of administration. However, the Registrar does not have the protection conferred by this provision on an application for first registration.

Any application for first registration based on a vesting assent should, therefore, be accompanied by a copy of the will, or a statutory declaration or affidavit showing that the estate owner became entitled on the intestacy of the deceased. If the position is affected by a deed of variation, deed of family arrangement, or court order, a copy of that should also be lodged.

4.5 Title to Appurtenant Easements

You must not only show title to land being registered but also to any appurtenant easements. We will normally make no entry of the benefit of easements unless we are satisfied as to the title to them. However, there is usually no need to show any earlier title to appurtenant easements that are created or transferred by the root deed.

Title to the easement must be shown even where the servient land is registered and the easement is noted in the register. This notice does not guarantee the validity of the easement (**s50 LTRA 2011**) and we cannot rely on it as evidence of title. Where the servient land is registered and the easement is not already noted in the register, we can still enter it as appurtenant on first registration if we are satisfied that it exists. However, we will normally need to note the burden of the easement on the servient title at the same time if the servient title has been registered.

In all cases where we propose to note the burden of the easement on the servient title, we will serve notice on the registered proprietor, and normally on any chargee, before doing so. However, you will need to supply evidence of the consent of any registered chargee whose charge already existed when the easement was granted. You will also need to comply with any restriction, if the servient land was registered when the easement was granted.



4.6 Land that has been in the same ownership for a considerable time

Where land has not changed hands for centuries it may be impossible to deduce title in the normal way because the applicant has no satisfactory documents of title. In extreme cases there may be no record at all of the circumstances in which the land was acquired.

Applications where full documentary title cannot be produced are provided for by **r28 LTRR 2018**. You must lodge evidence:

- satisfying the Registrar that the applicant is either entitled or required to apply for first registration
- where appropriate, accounting for the absence of documentary evidence of title.

In cases involving ancient possessions, where the deeds (if any) cannot be easily identified or do not clearly identify the land, you must lodge a statutory declaration or affidavit in support of the application.

Information should also be provided as to whether or not the applicant is either in occupation of the land or receiving any rents and profits from it.

Individual arrangements for registers of title may be considered for charities and other large landowners who can provide reliable information on title.

4.7 Foreshore

If the land you are applying to register comprises or includes foreshore, or abuts Crown foreshore, we will serve notice on the Government Department responsible for the Government and Crown Estate, where appropriate, (**r32 LTRR 2018**) before we complete the registration assuming that the said Department does not object to the registration.

You should lodge any agreement as to the operation of accretion and diluvion, together with any necessary consents (**r114(1) LTRR 2018**), the terms of which we shall enter in the register under **s80(2) LTRA 2011**.

4.8 Escheat

If you are applying to register an estate where a previous freehold estate has reverted to the Crown on escheat, you should apply as normal using **Form A1** and **Form DL** in duplicate. The grant or transfer will recite the details of the escheat, including the parcel number, if the determined estate is registered. Subject to serving notice on the registered proprietor of the determined estate, we will register the applicant as proprietor of a new freehold estate and close the title of the determined estate. The new estate will be subject to all the incumbrances that previously affected the determined estate, unless you are able to lodge evidence to the contrary, such as a court order or evidence that they are unenforceable.

4.9 Enquiries in Advance of an Application

Enquiries about practice may be made at any time at the LTRO. However, until a formal application is made, accompanied by the appropriate deeds and documents and the appropriate fee has been paid, LTRO staff cannot express any opinion about a particular title.



Except where the Registrar has additional requirements, the title should be prepared for first registration as if you were preparing it for examination by a purchaser. You should give full information on any points that a well-advised purchaser would raise requisitions about. The possibility that the Registrar may already know the title or part of it should be disregarded unless the vendor produces written evidence of a special arrangement.

5. Dealings with Land Before First Registration is Completed

Sometimes an unregistered estate that has become subject to compulsory first registration (as a result of a qualifying transfer, lease or mortgage) needs to be dealt with again before registration has been applied for.

This is possible, but **s25(1) LTRA 2011** will apply to the later dealing or dealings as if the estate were already registered under **r39 LTRR 2018**.

LTRO forms must, where applicable, be used for later dealings, and the registration requirements set out in **s46** and **Schedule 4 LTRA 2011** must be met.

You can apply to register the later dealing(s) either at the same time as the application for first registration or subsequently. You cannot apply before the first registration application has been made. If the first registration application is cancelled for any reason, any application to register the later dealings will also be cancelled.

The following sections explain how disponees who are in this position can apply for registration, and what they can do, if necessary, to protect their interests by other means.

5.1 If the Dealing is a Transfer

Transferees have a choice. They can either:

- insist that a transferor who is required to apply for first registration under **s25(1) LTRA 2011** does so, and then lodge their own application (**Form A2**) at the same time or later, or
- apply for first registration themselves, which they are entitled to do because **s25(1) LTRA 2011** allows the application to be made by the successor in title of the estate owner who first became liable to make it.

If the transferees are satisfied with the title offered, it will often be best for them to make the application themselves. They should apply using **Form A1**, after paying the relevant fee. (See the current Fee Order for the fee payable for First Registration). You should note that where application is made using **Forms A1** and **A2**, separate fees are payable for each transaction.

If more than two months have elapsed between the event that triggered compulsory registration and the date of application, the transferee will be an 'interested person' who is entitled to apply to the Registrar for an extension to the period for registration under **s25(3) LTRA 2011**.

Whichever method is adopted, a transfer that takes place after the requirement for first registration has arisen must be made using the appropriate LTRO form.



5.2 If the Dealing is the Grant of a Lease

Whilst Lessees cannot register their lessor's reversionary estate, they can apply to register their own leasehold title. If the lessor is required under **s25(1) LTRA 2011**, to apply for first registration of their estate, and the lease is of a kind that will need to be registered (**s46(2)(b) LTRA 2011**) the intending lessee should insist that the lessor applies for first registration before the lease is completed.

If the Lessor has not registered their reversionary estate before the lease has been granted then the lawyer acting for the Lessee will need to review the freehold title before the lease is granted. They can rely on **paragraphs 6 and 7 in Schedule 3 LTRA 2011** to obtain information about the freehold title. They will most likely have to pay the reasonable legal fees of the Lessor in relation to the disclosure of such information.

The grant of the lease is a disposition that should be noted as an incumbrance in the register of the freehold title. This cannot happen until the freehold has been registered so it is therefore in the interests of the Lessor to register their title as soon as possible. Once a freehold title has been registered each lease will be given a separate parcel number derived from the freehold parcel number. For example if TS-1234 is the freehold title number then the first lease will be TS-1234/1 and the second TS/1234/2 etc. If there are fractional interests then they will be shown as TS-1234/1/a, TS-1234/1/b, TS-1234/1/c etc .

This is the combined effect of **s46** and **paragraph 3 of Schedule 4 LTRA 2011** and **r39 LTRR 2018**.

The Lessee should make an application to register their lease as soon as possible after it has been completed. They cannot benefit from registering a caution against first registration because they have the ability to register the lease by "virtue of ownership of or an entitlement to a registrable estate which is capable of being the subject of an application for its registration under **Part 7 (LTRA 2011)**" as stated in **s.35(3) LTRA 2011**.

5.3 Charges

5.3.1 First Legal Mortgage

The mortgagee (lender) should ensure that the mortgagor (borrower) applies for registration of the land in the name of the mortgagor and for its mortgage to be registered as a legal charge. If necessary, the mortgagee can make an application in the name of the mortgagor for the estate charged by the mortgage to be registered without the consent of the mortgagor (**s25(5) LTRA 2011** and **r21 LTRR 2018**).

5.3.2 Puisne Mortgage (Second Charge) by the Estate Owner of Unregistered Land

Please note that second charges are not registrable as they do not fall under an active trigger for registration at this time. They can be registered voluntarily by the mortgagee or the mortgagor under **s23(2) LTRA 2011**.

The mortgagee can obtain the necessary priority for their charge by making an application to register a caution against first registration. Though the caution will not give them any priority against subsequent dealings, it will ensure that they are notified when an application for first registration is made, so that they can then apply to register the charge.



5.4 Other Dealings

If a transaction other than a transfer, lease or charge (such as the grant of an easement) is affected by **r39 LTRR 2018**, then:

- we cannot register it, guarantee the benefit of it or note it (as appropriate) until application for first registration is received; and
- it will then require a separate dealing application and fee.

It can be protected in the interim by a caution against first registration.

5.5 Reservation of a Sale of Part

Vendors who have reserved to themselves a legal easement generally need take no action as their interest will automatically be noted in the register on first registration of the servient land. If the rights are overlooked by the examiner they will continue to bind the registered proprietor as overriding interests. In a few instances, however, the overriding status of these rights may be lost on a subsequent transfer of the servient land.

5.6 Dealings with Land in the Course of Registration

We cannot supply an official copy of the register until the registration has been completed. A person dealing with the estate owner should therefore investigate the title as if the land were still unregistered.

You may secure priority for such a dealing by means of an official search. Use **Form R31** for searches affecting the whole of the pending first registration and **Form R32** for searches of part. Describe the search as 'Pending first registration search' in the relevant panel of the search form. The search will disclose, among other things, details of any applications or official searches with priority pending against the title.

6. Things to Remember

- Have you lodged a fully completed and signed **Form A1 – First Registration**?
- Have you lodged all the documents of title and listed them on **Form DL** (in duplicate)?
- Can we precisely identify the extent of the land from either a plan or the postal address?
- Have you enclosed the correct fee?
- Where the applicants are joint proprietors, have you indicated whether they are beneficial joint tenants or tenants in common?
- Have you supplied the address for service of the applicant for entry in the register?
- Important: please check clerical details in all forms and deeds (especially charges and mortgages) and pay particular attention to all dates, property descriptions, parcel numbers and full names of parties, especially where they appear in more than one deed.

6.1 Submitting your Application



Applications, including accompanying documents and evidence of payment of the fee should be presented to the Land Title Registry Office at 1st Floor, Milner Place, 32 Victoria Street, City of Hamilton, HM12.

Please note that the LTRO may be unable to process applications that are incomplete or defective and your application will risk losing its priority if we have to return it to you (see [Practice Guide 30 - Return and Rejection of Applications for First Registration](#)).