

Registration of title in England and Wales

By E. John Pryer, CB

MR T. G. FONNEREAU, the London solicitor who is usually credited with first suggesting a register of title rather than a register of deeds, condemned the old deeds registries and extolled the virtues of his own proposed system in his evidence to the Royal Commission on real property in 1830:

"The registries of Middlesex and Yorkshire are worse than useless . . . The existing registries, although the registrars have, by published forms, introduced a practice of disclosing much more of the registered documents than the Acts of Parliament direct, do still fall far short of supplying information of the whole contents of a deed. And . . . the object in view; which, as it seems to me, can be done only by making the register evidence not of a deed, but of a title; in short, by providing that landed property shall be transferred like funded property; that the persons, whose names are borne on the register, shall be the absolute proprietors for all marketable purposes."

The idea of registration of title remained dormant for some 20 years but ultimately a Royal Commission was appointed specifically to consider "the subject of registration of title with reference to facilitating the sale and transfer of land". The Commission reported in 1857 and firm legislative proposals were made. In 1862 the Land Registry Act was passed but the new system had to suffer many setbacks before it was generally accepted let alone reach the stage, which indeed still has not been achieved, of being the only means of conveying land.

Between 1862 and 1875, beginning with an estate on the outskirts of

Ipswich, some 650 titles were registered; these were mostly large estates and were scattered all over the country. However, the Act was not popular and the truth of the matter is that the registration of title nearly died in infancy.

Lord Westbury's Act had a number of serious defects which were recognised by a Royal Commission whose report paved the way for the Land Transfer Act 1875. The new act overcame the principal weaknesses of the 1862 Act. In future the Registrar was required to see that no more than a good holding title rather than a perfect title had been established, the boundaries had no longer to be "fixed", that is to say, determined with precision, and the registration was confined to the ownership of the full legal freehold or leasehold estate. Registration to this day has remained on this basis which has made it possible to bring the greater part of the country within the system.

The 1875 Act, however, was not followed by a great increase in business for the Land Registry and further reform was introduced by the Land Transfer Act 1897 which established two further important features in the system: first, the concept of compulsory registration was introduced and, secondly, the Act provided that persons suffering loss owing to any mistake in the register should be indemnified and for this purpose established an insurance fund (supplemented, when necessary, by the Consolidated Fund) to be raised from the fees taken by the Registry out of which indemnity was to be paid.

Whilst the Acts of 1875 and 1897 contained the fundamental principles which were to enable registration of title to go forward effectively, a further feature essential to success was established between 1875 and

1900, namely, the use of technically accurate plans having a common base, the use of the Ordnance Survey Map becoming mandatory in 1889.

Today, the objects of the system of registration of title remain to simplify, cheapen and expedite the transfer of land, and to ensure that the register of title is conclusive and backed by indemnity provisions as provided by the Land Registration Act 1925 which is now the principal Act. For some years it has been the policy of successive governments to extend the designated areas of compulsory registration, which, at April 1988, covered about 90% of the population.

Somewhat more than one half of the land mass in England and Wales (including all the larger conurbations) is covered by compulsory registration orders and the register comprises over 11.25 million titles.

The workload of the Land Registry depends primarily on the level of property activity in England and Wales. The department is currently handling annually approximately three million sales and other transactions or dealings with land, together with approximately six million pre-contract and pre-completion searches and enquiries.

The volume of conveyancing has steadily increased over recent years, and this growth is likely to continue. The number of applications for registration has trebled in the last 10 years, and doubled in the last five years with a remarkable increase of no less than 25% in 1986-87 over the preceding 12 months.

Two "traditional" factors operate to generate this growth in conveyancing; first, the proportion of the population living in owner occupied property has grown sharply in recent years, and secondly, the frequency with which owner occupiers move

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home has also tended to increase.

Social change too — for example, regarding the protection of rights of occupation in the matrimonial home — has led to increasing registration activity which has added both to the Registry's workload and, indeed, to the importance of the register itself.

Loans can be secured on registered land in a number of different ways. The normal method is by a deed of legal charge, either in a simple statutory form (provided under the Land Registration Rules 1925) or, especially when the lender is a building society, insurance company, or similar body, by a legal mortgage or charge in the same format normally used when land is not registered.

Whatever form is used, the mortgage or charge, to be effective, must be completed by registration, a process involving the entry on the register of the lender as the registered proprietor of the security. Such a deed is then known as a registered charge and provides the fullest possible protection. Loans may also be — and, in the case of loans by banks, frequently are — less effectively secured by a lien protected by what is known as a notice of deposit on the register; equitable mortgages by deed or otherwise are protected by notice on the register.

Where a charge is registered, subsequent dispositions of it by means of transfer or of sub-charge also require to be registered. Dispositions of this nature have become much more frequent in recent years and where, as they often do, they arise as a result of modern securitisation projects, they can affect many hundreds, if not thousands, of registered titles and add greatly to be workload that the Registry has to carry.

The expenditure of the Department is met wholly by fees. Taking one year with the next the Registry is required under the terms of the Land Registration Acts to fix its fee so that it is able to meet all its outgoings. In recent years substantial surpluses have been earned and these are required to be paid into the Consolidated Fund.

New funding arrangements have been agreed with the Treasury and

these came into force on 1 April this year so that the Registry had greater freedom to make use, for registration purposes, of the surplus that arises each year. This, in future years, should enable considerable improvements to be made in the standards of service given.

At the same time it will be still possible, whilst the present activity in the property market and the rise in property prices is maintained, to continue the policy of overall reductions in Land Registry fees. In 1985 and 1986, and again this year, it has been possible to provide for a steady reduction in fees, and at the same time, to secure the simplification of the statutory instruments covering the payment of fees.

This process is helpful both to the staff of the Registry and to those who make use of the Registry's services as it has been found that complexities in earlier fee orders has led to numerous errors in the assessment of fees.

Until the substantial growth in conveyancing activity in 1986/87, the growing workload had been contained largely by improvements in productivity; the quest for further improvements in working methods is continuous and a most important aspect of this is the Department's major project of introducing computerisation. The computerised system went live at Plymouth on 29 September 1986 and is working successfully. Treasury approval has now been given for its introduction throughout the country.

The system has now been introduced at Gloucester and Swansea will follow in October; thereafter, computerisation will be introduced into the remaining offices in the course of the next few years. It is a measure of the success of computerisation at Plymouth that already some 150,000 titles out of a total of some 600,000 have been computerised and it can be shown that once a title has been computerised any subsequent application for registration can be dealt with very quickly.

In addition to the computerisation

of the register, a programme for the introduction and trial of a digital mapping system is being developed together with numerous applications of micro and small computers in the management, casework and communications fields.

Broadly speaking, the work of the Registry falls into two categories, one being concerned with time-sensitive pre-contract and pre-completion searches and enquiries and the other, substantive registrations that are necessary once completion of a purchase has been effected. Even at the present time when the Registry is under severe pressure the former category of work is almost always dealt with very expeditiously. In the case of substantive applications for registration these are seldom urgent but where, for example, a resale is in contemplation the Registry, on being informed of the position, will always do everything possible to hasten registration as much as possible.

Applications are processed through various stages by staff trained in different skills and disciplines. Where land is registered for the first time, the title is examined and the format of the register of title is drafted and checked before being typed or completed in computerised form. Applications dealing with land which is already registered are, usually, completed by clerical and executive staff. Substantial questions of law of applications in the highest value category are settled by the Department's lawyers. The whole process is organised on a production line basis and the administration of such an operation is based on a highly developed and structured approach to management.

Despite the vast increase in scale over the years the Registry's task remains the applications and fulfilment of a far sighted Victorian reform; the Registry aspires to carry out this task not only efficiently but in the same sympathetic non-bureaucratic way which, I believe, has long been a valued tradition of the Department. ■

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