

7.3 CREATION OF COMMONHOLD

7.3.1 Does my title have to be registered before I can create a commonhold?

Basically, yes: section 2 provides that an application for a commonhold registration can only be made by a registered freeholder; it cannot be made by the owner of an unregistered freehold title. In principle, it should be possible to apply for first registration of title at the same time as applying for the registration of the freehold land as commonhold. However, the draft Commonhold (Land Registration) Rules 2003 do not provide a procedure for this to be done, so it is not clear whether the Land Registry will in practice accept a simultaneous application for first registration and for registration as a commonhold (see paragraph 2.3.2 of the text). The procedure for applying for registration is dealt with in Chapter 2.

7.3.2 How long will it take for my commonhold title to be registered?

The answer to this question will depend on whether your application is supported by all the required documents (see Schedule 1 to the Act and Chapter 2 of the text); whether those documents have been correctly completed and comply with the provisions of the Act, the commonhold community statement and the memorandum and articles of association; and whether the advances in electronic conveyancing dealt with in the Land Registration Act 2002 have been implemented. The answers to preliminary enquiries of the Land Registry suggest that a period of up to some weeks should be allowed for completion of the procedure once an application has been made, assuming that all documents are in order.

7.3.3 Does each commonhold unit-holder obtain a separate registered freehold title?

Yes. The draft Commonhold (Land Registration) Rules 2003 additionally provide for the owner of the commonhold to be issued with extra official copies of the title to the common parts, so that each unit-holder will receive official copies of the unit title and also a copy of the common parts title. See Section 2.22 of the text.

7.3.4 Who owns the airspace above a unit?

The answer to this question will depend on the way in which the unit is defined in the commonhold community statement. It will be perfectly possible for that definition to allow the unit-holder to have title to the airspace, whether the unit is a free-standing house or the top flat in a block of flats. It will be more likely, however, for the airspace above the top flat to be reserved as common parts, either because the roof space houses plant servicing the units, or because there may be a prospect of redevelopment of the roof to afford extra accommodation. See paragraphs 2.17.5 to 2.17.7 of the text.