

1. Adam is the owner of unregistered freehold land. He transfers it to Bert. Is Bert obliged to register his title to the land? What will happen if he does not do so?

Bert is obliged to register his title to the land. Since 1990, the whole of England and Wales has been an area of compulsory registration, which means that land must be registered whenever a relevant event occurs. Relevant events are set out in LRA 2002, s.4(1), and include the transfer of a freehold estate in the land (s.4(1)(a) and (2)(a)).

The duty to register is imposed on Bert by LRA 2002, s.6. If Bert does not register his title within the period for registration (2 months) the legal title will revert to Adam – LRA 2002 s.7. Adam will hold the title on a bare trust for Bert.

Bert would have to pay any costs of putting this right and would be in danger of losing priority over a subsequent purchaser of the land. This would mean that his (unregistered) interest would not be binding on somebody who had subsequently bought an interest in the same land.

See 4.4

2. Catherine has a legal easement over the land that is now Bert's. There is no mention of the easement on Bert's new register of title. Is Bert bound by the easement?

Assuming that Bert is registered with absolute title, he is subject to the following interests under LRA 2002, s.11 (4):

'The estate is vested in the proprietor subject only to the following interests affecting the estate at the time of registration—

- (a) interests which are the subject of an entry in the register in relation to the estate,
- (b) unregistered interests which fall within any of the paragraphs of Schedule 1, and
- (c) interests acquired under the Limitation Act 1980 (c. 58) of which the proprietor has notice.'

Clearly, this easement is not the subject of an entry in the register, as Bert can find no mention of it. It is also not an interest under the Limitation Act. Therefore, we have to check whether it falls within any of the paragraphs of schedule 1.

Schedule 1 deals with interests which override first registration of land. This means that they are interests which are binding on a purchaser of the land even though they are not registered. One such interest, in sch.1 para 3 is a legal easement.

Therefore Bert is bound by Catherine's easement.

See: 4.4.3

3. Bert sells his registered estate to Dolly. Catherine has still not registered her legal easement. Is Dolly bound by it?

When Bert sells his registered estate to Dolly, this is a registrable disposition of the land, which must be registered under LRA 2002 s.27(2)(a). Dolly must register her title to the land, and until she does so, it will not take effect at law – LRA 2002 s.27(1).

Assuming that Dolly has been registered with absolute title, the effect of the registered disposition is that Dolly has priority over all interests in the land that are not protected at the time of the disposition – LRA 2002 s.29. Dolly takes her estate in the land subject only to existing registered charges, interests protected by a notice on the register, and interests which override registered disposition.

Clearly, the easement does not appear on the register, so the question is whether it is one of those interests which override registered disposition. These can be found in LRA 2002 sch 3.

By LRA 2002 sch 3 para 3, overriding interests include:

'(1) A legal easement or profit a prendre, except for an easement, or a profit a prendre which is not registered under the Commons Registration Act 1965 (c. 64) [Part 1 of the Commons Act 2006], which at the time of the disposition—

(a) is not within the actual knowledge of the person to whom the disposition is made, and

(b) would not have been obvious on a reasonably careful inspection of the land over which the easement or profit is exercisable.

(2) The exception in sub-paragraph (1) does not apply if the person entitled to the easement or profit proves that it has been exercised in the period of one year ending with the day of the disposition.'

Therefore, Catherine's legal easement will have priority to Dolly's estate (i.e. be binding on Dolly) unless Dolly did not know about it and it would not have been obvious on a reasonably careful inspection of the land and it has not been used within the last year before the sale of the land to Dolly. These are questions of fact, and we need to ask what Dolly knew, and whether the easement was either obvious, or had been used in the last year. The policy of the Act is to reduce the number of unused unregistered easements on the title.

If Bert had known about the easement, he should have declared it on the transfer to Dolly, so that it could be registered (LRA 2002 s.71). This is part of a policy to reduce the number of overriding interests, by registering as many interests as possible.

See: 4.5

4. If Dolly is bound by Catherine's easement:

- (a) is Catherine entitled to ask for the register to be altered to show her easement?**
- (b) is Dolly entitled to an indemnity if the value of her land with the easement over it is less than it would be without such a burden?**

(a) Yes, Catherine is entitled to ask for the easement to be entered on the register. If Catherine establishes that the easement is valid, it may be registered to bring the register up to date, either by the registrar or by the court – LRA 2002 sch 4 para 2, 5.

(b) Dolly is not entitled to an indemnity. Indemnities (compensation) are payable only if the register is rectified, that is, the alteration is one which is made to correct a mistake, and which prejudicially affects the title of the registered proprietor – LRA 2002 sch. 4 para 1. In this case, Dolly bought the land subject to both registered interests and overriding interests (LRA 2002 s.29). Therefore, she was always bound by the easement, whether she knew about it or not. It follows that Dolly has suffered no loss, even if that is not how it appears to her.

See: 4.6