

Chapter 7: Assessment question

Jerry purchased Green Lodge in 1970 which was at the time unregistered title and not in an area of compulsory registration of title. In November 2008, Jerry granted a 10 year lease to Daniel.

Consider the following:

1. Daniel is seeking your advice on the grade of title he acquires in Green Lodge.
2. If in 1970 Green Lodge was in an area of compulsory registration of title what should Jerry have done back in 1970.
3. What would be the consequences of Jerry, back in 1970, had failed to take the appropriate action?

Specimen answer

1. Daniel

Daniel has a 10 year lease. Substantive registration, under the LRA 2002, is required for leases of more than seven years (s.4 LRA 2002). This means that the lease would be registered with its own individual title number. The register of title relating to the freehold from which the lease was granted will have an entry referring to the lease in the Schedule of notices of leases (to illustrate this point, refer to the sample register on p.127). The freehold to Green Lodge remains unregistered title until it has been registered either voluntarily, or if the property is in a designated area of compulsory registration of title and a triggering event has occurred then registration is compulsory.

It is unlikely that Daniel has examined Jerry's title deeds to confirm proof of ownership of Green Lodge. In such an event, where the freehold is unregistered, the lease would be registered with good leasehold title. The registrar will only upgrade the title from good leasehold to absolute leasehold where the registrar is 'satisfied as to the title to the freehold and the title to any intermediate leasehold'.

2. Jerry

Green Lodge was in an area of compulsory registration of title in 1970 and since Jerry purchased a property which was unregistered this event came within the scope of transactions which require compulsory registration (these are now listed under s.4 LRA 2002). Before the property is registered at the Land Registry, given that the property is unregistered title Jerry would, as prudent purchaser, need to make the appropriate investigation into title and third party rights. This would involve examining the vendor's title deeds for proof of ownership, check for third party rights, for example, inspect the land and conduct a search of the Land Charges Register. Once this has been completed, Green Lodge must be registered within two months of the execution of the conveyance (s.6 LRA 2002).

3. Failure to take proper action?

If the property has not been registered within the time period then the legal title reverts with the vendor. The vendor will hold the property on trust for Jerry; consequently Jerry will only have an equitable freehold estate (see pp.131-136).