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STEP

Land Registration Rules 2012

and

Transmissions on Death, Trusts in Land and Prescriptive Easements

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Property Registration Authority

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Introduction

- Land Registration Rules 2012
- Transmissions
- Trusts in Land
- Prescriptive easements



Land Registration Rules 2012

- Acceleration in law reform in land and conveyancing law.
- Information and communication technologies introduced
- Series of interim LR Rules
- Consolidation and revision
- Signed by Rules Committee 23rd August
- Come into effect before end of year

Land Registration Rules [con]

- Consultation process
 - Conveyancing Committee
 - Revision published on www.prai.ie
- Priority entry
 - Rule 161 and 162
 - Increased from 21 to 44 days
- Forms more accessible and user friendly

Land Registration Rules [con]

- Rule and Form numbers amended
- New Rules and Forms
- In so far as practicable old Rule and Form numbers retained
 - Rules 14 – 16 and Forms 1, 2 and 3
 - Form 17
 - Form 19 basic form of transfer
- Amended to modernise, simplify and to facilitate eRegistration



Land Registration Rules [con]

- Forms stand alone documents
- Format and wording of similar forms made consistent
- Forms
 - Schedules inserted before jurat or execution clause
 - Reminders re joint tenants and tenants in common
 - More explanatory notes to assist drafting



Transmissions - Pre 1959

- Very rare – reduced number of Rules and Forms
 - ◆ Rule 85
 - ◆ Form 33 Form of application
 - ◆ Form 34 affidavit by personal representative



Transmissions – Post 1959

- Rules 86 – 89 and 91 to 94 replace old Rules 94 to 101
- Forms 35 to 46 replace old Forms 48, 50, 52 to 5, 57, 59, 61 and 63 to 65
- Forms
 - Stand alone
 - More than one applicant
 - Rule 90 and Form 34 where person dies entitled but not registered as owner
 - See Flowchart in handout



Implications of the 2009 Act

- Section 11 Life estates
- Section 18 Trust in Land [includes land vested in a minor]
- Section 19 Who are trustees in land
- Section 21 Conveyance by trustees



Implications of the 2009 Act [con]

- Section 27 of 1964 Act repealed [limited owners]
- Post 1st December 2009 an application for the registration of a person with a life estate or a minor cannot be made – trustees must apply

Implications of the 2009 Act [con]

- Registration of limited owners and minors prior to 1st December 2009 overridden by 2009 Act.
 - Trustees can apply for registration
 - ◆ Form 86 of LR Rules 2012]
 - Can be dealt with when next application for registration lodged



Implications of the 2009 Act [con]

- *“The title is subject to the provisions of the Land and Conveyancing Law Reform Act, 2009”.*
 - Form Form 85 of LR Rules 2012

Implications of the 2009 Act [con]

- Limited owners [tenants for life] registered prior to 1st December 2009.
 - Dies prior to 1st December 2009
 - Dies post 1st December 2009 remainderman entitled to legal estate
 - Dies post 1st December 2009 remainderman not entitled to legal estate



Implications of the 2009 Act [con]

- Life tenant cannot exercise a power of sale
- Tenant for life and remainderman cannot transfer legal estate to third party
- Trustees will have to transfer

Implications of the 2009 Act [con]

- Minors registered prior to the 1st December 2009
 - Description minor removed on lodgement of proof of reaching age of majority

Implications of the 2009 Act [con]

- Single trustee can apply for registration

Drafting Assents

- To 'A' for life remainder to B' (C and D being trustees).
 - Where per reps C and D Form 39 LR Rules 2012
 - Where per reps no trustees Forms 35, 37 and 40 LR Rules 2012

Drafting Assents

- Personal Representative applying as beneficially entitled
 - Form 38 Testacy
 - Form 44 Intestacy
- Intestacy and application for registration of trustees
 - Personal Representative applicant Form 44
 - Personal Representative not the applicant Forms 41 and 42 or Form 43
 - Adapt apply for registration of inhibition

Drafting Assents

- Form 86 should not be used for Transmissions
- Transfer to Trustees [trust in land including trust for sale] and no transmission involved
 - Form 29
 - Deed creating the trust should not be lodged

Drafting Assents

- ‘X’ is left an exclusive right of residence in a house which has been left to ‘B’ and ‘C’. How do you proceed?
 - No element of a trust in land
 - Section 69 burden

Drafting Assents

- Drafting inhibitions.
 - Form 88 [Form 77 of LR Rules 2012]
 - Not the duty of the Authority to advise on the suitability or otherwise of any particular form of inhibition
 - *“No registration under a disposition by or transmission from the registered owner, except a transfer on sale, is to be made without prior notice to “.*



Easements and Profits a Prendre Acquired by Prescription

- 2009 Act
- 2011 Act
- Form 68 [formerly Form 5A]
- Rule 46 [formerly Rule 46A]



Easements and Profits a Prendre Acquired by Prescription

- Applies to prescriptive rights only i.e. does not apply to:
 - Public rights
 - Customary rights
 - Easements of necessity
 - Those acquired by express grant or reservation
 - Those implied by law
- Court option still available



Easements and Profits a Prendre Acquired by Prescription

- Prescription is the acquisition of such rights by long user over a substantial period of time. Traditionally, three methods of prescription used:
 - (1) User back to 1189
 - (2) Doctrine of lost modern grant
 - (3) Prescription Act, 1932 extended to Ireland under the Prescription (Ireland) Act, 1858

Easements and Profits a Prendre Acquired by Prescription

- S.1 and S.2, lay down 2 periods of user whereby easements and profits may be acquired. Shorter period 20 years user of easement and 30 years profit
- Longer period 40 years easement and 60 years profit.
- Longer period the Act more positive, the right will be absolute and indefeasible unless enjoyed by written consent
- S.3 easements of light 20 years
- S.4 “next before some suit or action” requirement i.e. up to the time of claim



Easements and Profits a Prendre Acquired by Prescription

Section 35 of the Act of 2009 is amended by the substitution of the following subsection for subsection (1):

“ (1) An easement or *profit à prendre* may be acquired at law by prescription—
 (a) on registration of a court order under this section, or
 (b) in accordance with section 49A of the Act of 1964.”.

Section 38 of the Act of 2009 is amended, in paragraph (b), by the substitution of “within 12 years” for “within 3 years”.



Easements and Profits a Prendre Acquired by Prescription

- 49A.—(1) Where any person claims to be entitled to an easement or *profit à prendre* and the relevant requirements set out in sections 33 to 38 of the Land and Conveyancing Law Reform Act 2009 have been met, that person may apply to the Authority and the Authority, if satisfied that there is such an entitlement to the easement or *profit à prendre* concerned, may cause it, as appropriate, to be—
- (a) registered as a burden under section 69(1)(jj),
 - (b) entered in the register pursuant to section 82 or, in the case of a *profit à prendre* in gross, in the register of ownership maintained under section 8(b)(i).
- (2) Subsection (1) applies only in relation to claims in respect of which
- (a) the land benefited by the easement or *profit à prendre*, to which other land is subject, is registered land, or
 - (b) the claim is made as part of an application for first registration of that land.”.



Easements and Profits a Prendre Acquired by Prescription

- **Acquisition of easements and profits by prescription**
- 46. (1) Pursuant to Section 49A of the Act, any person claiming to be entitled to an easement or *profit à prendre* pursuant to Sections 33 to 38 of the Act of 2009, may apply for his/her registration of such right in Form 68 with such modifications as the case may require. The Authority, if satisfied that the relevant requirements of that Act have been met, and following service of notices on the servient owner, may cause, as appropriate, the claimed easement or *profit à prendre* to be entered as an appurtenance in accordance with Section 82 of the Act, as a burden pursuant to Section 69(1)(jj) and, in the case of a *profit à prendre* in gross, to be entered in the register maintained under Section 8(b)(i).
- (2) The notice shall be in Form 69.
- (3) Where the dominant title of the applicant is not registered, the application must be accompanied by an application for first registration pursuant to Rules 14 to 19.
- (4) Where the title of the servient owner is not registered, satisfactory evidence of title must be produced to the Authority.

Easements and Profits a Prendre Acquired by Prescription

- In all applications it must be shown on affidavit that the applicant has established sufficient facts to show proof of the acquisition of an easement or a profit *à prendre* by prescription. The claim is to be grounded pursuant to the law on prescription prior to the 1st of December 2009. Section 38(b) of the 2009 Act (as extended from 3 years to 12 years by Section 38 of the 2011 Act) provides for a transitional period i.e. for claims already acquired under the law, or for claims that will “ripen” and be acquired during the transitional period i.e. by the 30th November 2021. Therefore an application can be made based on the law as it existed prior to the 2009 Act, i.e. prior to the 1st December 2009 up and until 30th November 2021.
- The applicant must expressly ground the claim i.e. show how and against whom the relevant user period has been acquired. Full details must be provided in paragraph 2 of the [Form 68](#) affidavit in order to meet the required proofs. **Particular attention should be shown to the Paragraph 2.**



Main issues causing problems for registration

- Failure to ground an application in law i.e. paragraph 2 merely stating period of long user only but not establishing facts to support the acquisition of a prescriptive right.
- Right not clearly delineated on map or some of the property burdened by the right not shown.
- Nature, scope and extent of the right being claimed
- Confusion as to the extent of the scheme e.g. cases where both the tenements recently registered on one folio-sub-division-failed to provide for right and now claiming prescription.
- Public rights of way and ways of necessity not covered by the law of prescription

Issues continued

- Failure to understand the limits of the scheme i.e. applies to prescriptive rights only and not to right acquired by implication of law which continue to be a matter for court and not the Authority.
- Lodgement of applications where there is clearly a dispute between the parties in the background-the scheme is for uncontested claims only.
- Rights already acquired by prescription not lost by failure to register-continue as a Section 72 burden. Any claim post expiration of the transition period will have to apply for registration in order to establish a right (either through court or under Section 49A procedure).

Issues continued

- Insufficient details provided for servient owners i.e. clearly out of date details taken from folio. Current names and address of current owner to be established.
- If registered owner deceased, details of personal representative, next of kin to be shown
- If registered owner shown as limited, 2009 Act applies. Need to establish who are the trustees for service of notice.
- Failure to apply for first registration where dominant tenement is unregistered.

Checklist for lodgement

- Form 17
- Fees €130
- Form 68 with **particular attention paid to paragraph 2, schedules and associated notes**
- Map with the right being claimed clearly identified thereon

In summary, Land Registry take a practical approach. The issue is, in many cases, application is lodged for expedite and no proofs shown. Have to allow for time to establish case, serve notice, allow for correspondence which may not necessarily result in objections to be dealt with by the Authority arising from notice on often many parties whose land is burdened by the right, and advise any clients with a sale pending accordingly.



Easements and Profits a Prendre Acquired by Prescription

- Form 68 of LR Rules 2012
 - Moved note from foot of Form to paragraph 2 for emphasis
 - *(Describe how and when the user period began and set out such facts as are relied upon in support of the applicant's claim to have established his right. The applicant must establish that there was at all material times a capable grantor and grantee, that the right was capable of forming the subject matter of a grant, that the right claimed was acquired by prescription and was not a public right of way, customary right, franchise or licence, nor acquired by express grant or reservation nor is it an easement of necessity, that there has been the requisite period of user, that the exercise of the right has been without force, without secrecy and without permission and that the grant of the right would not have been illegal).*

QUESTIONS