



Land and Conveyancing Law Reform Act, 2009

The Land and Conveyancing Law Reform Act 2009 (“the Act”) became operative on the 1st December 2009 save for Section 132 (rent reviews) which comes into effect on the 28th February 2010.

The Act simplifies property law and conveyancing procedures.

Ownership of Land

The Act deals with ownership of land and sets about abolishing methods of landholding developed by conveyancers over the centuries to meet the needs of earlier times. In practice, the abolition of many of these methods will be of little practical relevance to landholders or conveyancers.

- Section 9 of the Act confirms that the feudal tenure, in so far as it survives, is abolished.
- Section 12 of the Act prohibits the future creation of fee farm grants and section 13 similarly prohibits the future creation of fee tails of any kind.
- Future attempts to create such instruments, will instead operate so as to vest a fee simple estate in the grantee.
- Fee farm grants in existence before the commencement of the Act will not be affected and will continue to be bound by their initiating documentation.

Future Interests

The Act seeks to abolish a series of complicated rules relating to future interests in land, chief amongst which is the rule against perpetuities.

- Section 16 of the Act provides that the rule against perpetuities is abolished.
- Section 17 makes it clear that Section 16 applies to any interest in land “*whenever created*”. As such it, and the other rules mentioned below, have been abolished retrospectively.
- The scope of the section 16 is refined somewhat by the provisions of Section 17(b). This provision serves to protect any person who has relied to their detriment on the existence and operation of the old rules – prior to the coming into effect of this section.

Section 16 also abolishes:

- the common law remainder rules;
- the old rule against perpetuities (Rule in *Whitby v Mitchell*); and
- the rule against accumulations

Trusts of Land

The Act provides for a radical overhaul and considerable simplification of the law relating to settlements and trusts of land.



- Section 21 provides that a conveyance to a purchaser of a legal estate or legal interest in land by a trustee / trustees, overreaches any equitable interest in land i.e. the purchaser will obtain clear legal title and will not be bound by the equitable interests whether or not the purchaser is on notice.
- Section 21 (3) & Section 21 (5) provides that the protection for a purchaser will not apply in a number of specified circumstances such as where fraud is involved.

Where an equitable interest is overreached pursuant to the 2009 Act, the equitable interest attaches to the proceeds of the sale.

Co-Ownership

The law relating to co-ownership of land, i.e. where the legal title to the land is vested in two or more persons concurrently.

- Section 30 (1) provides that “unilateral” severance, i.e. by one or more joint tenants without the consent of the other joint tenants, should no longer be permitted. However, a joint tenant may apply to court for an order under section 31 dispensing with consent, where such consent is being unreasonably withheld.
- Subsection (2) makes it clear that consent means the prior consent in writing of all other joint tenants.
- Subsection (3) clarifies the position in relation events which might be taken to have effected an” involuntary” severance of a joint tenancy. The registration of a judgment mortgage against the estate or interest in land of a joint tenant does not sever the joint tenancy. If the joint tenancy remains unsevered, the judgment mortgage is extinguished upon the death of the judgment debtor.
- Section 31 empowers the courts to make wide ranging orders in relation to co-owned land. Any person having an interest in land which is co-owned may apply to court for such orders. The Act makes it clear that this includes a mortgagee or other secured creditor, a judgment mortgagee and a trustee holding the land for other persons.

Appurtenant Rights

The Act provides for a substantial overhaul of the law relating to “appurtenant” rights.

Easements and profits à prendre

- Section 35 of the Act introduces a new simplified system requiring a court order before any easement or profit à prendre can be acquired at law. The minimum user period without interruption to be shown will be set at 12 years, unless dealing with State lands (30 years).
- Section 39 provides that after 12 years of continuous non-user an easement or profit à prendre acquired under the old system is extinguished except where it is protected by registration.
- Section 40 -The rule in Wheeldon V Burrows is abolished and replaced.



Rentcharges

- Section 41 prohibits the creation of future rentcharges, subject to a list of exceptions listed in subsection (2).

Party structures

- Section 44 gives a new statutory right to a landowner to carry out works to a party structure subject to certain conditions.
- Section 45 enables a building owner who is in dispute over works to a party structure to apply for a District Court order authorising the works.

Freehold covenants

The Act changes the law substantially so as to make covenants, whether positive or negative, enforceable for freehold land.

- Section 49 abolishes the rule in *Tulk V Moxhay* – which provided that freehold covenants would not bind successors in title.
- Section 50 illustrates how it will be possible to apply to court for an order discharging in whole or part or modifying a freehold covenant (created before or after the Act) on that basis that that continued compliance with it would constitute an unreasonable interference with the use and enjoyment of the land affected by it.

Contracts and Conveyances

The provisions of the Conveyancing Acts 1881 to 1911 are reformed and simplified.

Contracts for Sale

- Section 52 provides that the entire beneficial interest in land will pass to the purchaser on the making of an enforceable contract of sale or other disposition of land, regardless of how much of the purchase price is paid at that time.
- Section 53 abolishes the Rule in *Bain V Fothergill*.
- Section 54 confirms that where a court refuses to order specific performance of a contract against a purchaser, it has an unfettered discretion to order a refund of the whole or any part of any deposit paid by the purchaser.

Title

- Section 56 states that it is now only necessary for the vendor to show a good root of title that is 15 years old in an open contract, compared to the previous requirement of 40 years.

Deeds – formalities and proper execution

- Section 64 abolishes the need for a seal in the case of execution by an individual. It provides for the identification of a document as a deed by giving it an appropriate heading or otherwise making it clear on its face that it is intended to be a deed.

- Section 65 abolishes the rule that the mere affixing of a corporate seal constitutes full delivery.
- Section 67 abolishes the need for “words of limitation” in conveyances of unregistered land.
- Section 74 of the Act consolidates and clarifies the law in relation to fraudulent dispositions.

Deeds – contents and implied statutory provisions

- Section 85 provides that where any instrument makes provision for giving or serving a notice it may be given or served in accordance with the notice provision set out in this section of the Act. This applies to existing documents.

Mortgages

The Act introduces substantial simplification and modernisation of the law of mortgages. In particular it assimilates the law relating to unregistered land and registered land, by making a charge the sole method of creating a legal mortgage. The powers, rights and obligations under the 2009 Act only apply in respect of all mortgages (legal and equitable) created by deed after the commencement of the 2009 Act. These provisions relate only to housing loan mortgages and in the case of other mortgages, such as commercial mortgages, the obligations, powers and rights are subject to the terms of the mortgage.

- Section 94 gives statutory recognition to the existing equitable jurisdiction of a court to grant an order for the sale of a mortgaged property on application by a mortgagor.
- Section 96 (2) abolishes a mortgagee’s right of foreclosure.
- Section 97 states that it will not be possible for a mortgagee to take possession of the mortgaged property unless either: (i) a court order for possession has been granted (ii) the mortgagor has consented in writing to possession being taken in the previous 7 days.

A mortgage lender must wait at least 6 months from the time arrears first arise before applying to court for an order of possession.

- Section 98 provides that if the mortgagee has reasonable grounds for believing that the mortgaged property has been abandoned or its condition is deteriorating, the mortgagee may apply to the District Court for authority to take possession of the property, notwithstanding that the mortgagor dissents or does not appear.
- Under Section 100, it will not be possible for a mortgagee to exercise a power of sale, following a breach or a non payment unless 28 days prior notice in the prescribed form has been served on the mortgagor and either: (i) a court order authorizing the sale has been granted; or (ii) the mortgagor has consented in writing during the previous 7 days to the exercise of power of sale.
- Section 101 then also allows the court, where it appears that the mortgagor is likely to be able to pay his arrears and interest within a reasonable period, to adjourn the proceedings or stay the enforcement of an order, or even suspend it, or merely postpone the date for delivery of possession of the mortgaged property for such periods as the court thinks reasonable.



- Section 103 states that a mortgagee shall ensure that the mortgaged property is sold at its best price reasonably obtainable. The mortgagee must notify the mortgagor of the outcome of the sale within 28 days, failure to do so is an offence.
- Section 108 allows a mortgagee delegate any of the powers granted on them by the 2009 Act to a receiver, including the power of sale.
- Section 112 confers a general power of leasing on the mortgagor, subject to the mortgagees' written consent. Where a mortgagor leases without such consent, the lease is voidable on application to the court if the lessee had actual knowledge of the mortgage at the time of the granting of the lease and if it is prejudicial to the mortgagee.
- Section 114 states that a surrender of a lease can only be accepted where the purpose of the surrender is to grant a new lease or if it's authorized according to the terms of the existing mortgage.

Judgment Mortgages

The provisions of the Judgment Mortgage Acts 1850 and 1858 have been modified.

- In accordance with Section 116, registration of a judgment mortgage in the appropriate Registry operates to charge the judgment debtor's estate or interest with the judgment debt and entitles the judgment mortgagee to apply to the court under Section 117.
- On such an application, a court may make an order for the taking of an account of other incumbrances affecting the land and making inquiries about their respective priorities.

Lis Pendens

Any action in the Circuit or High Court where a claim is made to an estate or interest in land or any proceedings to have a deed conveying an estate or interest in land declared void may be registered as a *lis pendens*.

- Section 121 provides that a register of *lis pendens* shall be maintained in the Central Office of the High Court.
- Under Section 122 an entry in that register may be cancelled with the consent of the person on whose application it was registered or on the lodging a notice of an order under Section 123 of the Act vacating the *lis pendens*.

Amendments to Registration of Title Act 1964

The Act contains substantial consequential amendments to the 1964 Act.

- Section 127 adjusts some of the definitions in section 3 of the 1964 Act.
- Section 128 remedies a shortcoming in section 25 of the Registration of Title Act 1964, which deals with the consequences of non registration in cases where registration has become compulsory.
- Section 129 adds a new burden to the list of burdens in section 69 of the 1964 Act which may be registered as affecting registered land, namely a freehold covenant coming within section 48 of this Act.

Review of Rent

- Section 132 of the Act provides for the abolition of upwards only rent views in commercial leases.
- It will come into operation on the February 28th, 2010.

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