

Land Titles Bill  
CB1/BC/3/02

**BY HAND**

7 May 2003

Mrs. Queenie Yu  
Clerk to Bills Committee  
Legislative Council Secretariat,  
3/F., Citibank Tower,  
3 Garden Road, Central, Hong Kong.

Dear Mrs. Yu,

**BILLS COMMITTEE ON LAND TITLES BILL**

Further to my letter dated 22 April 2003 and in support of our submissions on the point regarding "*adverse possession*", I attach the relevant extracts from the UK Law Commission's Law Com No.271 published in July 2001 on the subject of "*Land Registration for the 21<sup>st</sup> Century: A Conveyancing Revolution*" for your kind attention. This gives a summary of the UK proposal on the subject.

The entire report is also available on the Internet at "<http://www.lawcom.gov.hk>." . Chapter XIV of the Paper, which contains about 50 pages, gives a very detailed account on the proposal on the subject.

I shall be grateful if you can bring this to the attention of the Bills Committee.

Yours sincerely,

Christine W.S. Chu  
Assistant Director of Practitioners Affairs

Encl.

c.c.: Mr. Kim Salkeld, the Land Registrar  
Mr. Peter Aherne, the Chairman of the Working Party on Land Titles Bill  
Mr. Vincent Liang  
Mr. Andy Ngan  
Ms. Judith Sihombing

# **LAND REGISTRATION FOR THE TWENTY-FIRST CENTURY A Conveyancing Revolution**

## **LAND REGISTRATION BILL AND COMMENTARY**

*Laid before Parliament by the Lord High Chancellor pursuant to section 3(2) of the  
Law Commissions Act 1965*

---

*Ordered by The House of Commons to be printed  
9 July 2001*

---

**LAW COMMISSION  
LAW COM NO 271**

**H M LAND REGISTRY**

*LONDON: The Stationery Office*

**The Law Commission** was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

THE COMMISSIONERS ARE:

The Honourable Mr Justice Carnwath CVO, *Chairman*

Professor Hugh Beale

Mr Stuart Bridge\*

Professor Martin Partington

Judge Alan Wilkie QC

The Secretary of the Law Commission is Mr Michael Sayers

**Her Majesty's Land Registry**, a separate department of government and now an Executive Agency, maintains the land registers for England and Wales and is responsible for delivering all land registration services under the Land Registration Act 1925.

The Chief Land Registrar and Chief Executive is Mr Peter Collis

The Solicitor to H M Land Registry is Mr Christopher West

The terms of this report were agreed on 31 May 2001.

**The text of this report is available on the Internet at:**

<http://www.lawcom.gov.uk>

---

\* Mr Stuart Bridge was appointed Law Commissioner with effect from 2 July 2001. The terms of this report were agreed on 31 May 2001, while Mr Charles Harpum was a Law Commissioner.

will the process of registration become very much easier, but the execution of the transaction in electronic form and its simultaneous registration will be inextricably linked.

- 1.10 These changes will necessarily alter the perception of title to land. It will be the fact of registration and registration alone that confers title. This is entirely in accordance with the fundamental principle of a conclusive register which underpins the Bill.<sup>9</sup>

#### **SOME KEY FEATURES OF THE BILL**

- 1.11 It may be helpful to list some of the most striking changes that the Bill will either introduce as soon as it is brought into force or allow to be introduced subsequently. Two of the main changes—in relation to the introduction of electronic conveyancing and the recasting of the law on adverse possession—call for specific comment.

#### **Electronic conveyancing**

- 1.12 The Bill will create a framework in which it will be possible to transfer and create interests in registered land by electronic means. It is envisaged that, within a comparatively short time, it will be the only method of conducting registered conveyancing. As we have indicated above,<sup>10</sup> an essential feature of the electronic system when it is fully operational is that it will be impossible to create or transfer many rights in or over registered land expressly except by registering them. Investigation of title will be almost entirely online. It is intended that the secure electronic communications network on which the system will be based, will be used to provide information about properties for intending buyers. It will also provide a means of managing a chain of transactions by monitoring them electronically. This will enable the cause of delays in any chain to be identified and remedial action encouraged. It is anticipated that far fewer chains will break in consequence and that transactions will be considerably expedited. Faster conveyancing is also likely to provide the most effective way of curbing gazumping. The process of registration under the electronic system will be initiated by solicitors and licensed conveyancers, though the Land Registry will exercise control over the changes that can be made to the register. Electronic conveyancing will not come into being as soon as the Bill is brought into force. It will be introduced over a number of years, and there will be a time when both the paper and electronic systems co-exist.

#### **Adverse possession**

- 1.13 The Bill abandons the notion that a squatter acquires title once he or she has been in adverse possession for 12 years. It creates new rules in relation to registered land that will confer greater protection against the acquisition of title

<sup>9</sup> See above, para 1.5.

<sup>10</sup> See para 1.8.

by persons in adverse possession. This is consistent with one of the objectives of the Bill—that it is registration alone that should confer title.<sup>11</sup> The essence of the new scheme is that a squatter will be able to apply to be registered as proprietor after 10 years' adverse possession. However, the registered proprietor will be notified of that application and will, in most cases, be able to object to it.<sup>12</sup> If he or she does, the application will be rejected. However, the proprietor will then have to take steps to evict the squatter or otherwise regularise his or her position within two years. If the squatter is still in adverse possession after two years, he or she will be entitled to be registered as proprietor. We consider that this new scheme strikes a fairer balance between landowner and squatter than does the present law. It also reflects the fact that the basis of title to registered land is the fact of registration, not (as is the case with unregistered land) possession.

### **Other changes**

1.14 Some of the other striking changes that the Bill makes can be summarised as follows—

- ◆ the requirement of compulsory registration of title is to be extended to leases granted for more than 7 years, with power to reduce the length of registrable leases still further;
- ◆ in favour of those dealing with them, owners of registered land will be presumed to have unrestricted powers of disposition in the absence of any entry on the register;
- ◆ the rules as to the competing priority of interests in registered land will be clarified and simplified;
- ◆ the protection for rights in or over registered land will be simplified and improved by the extension of notices and restrictions and the prospective abolition of cautions and inhibitions;
- ◆ the range of overriding interests will be significantly restricted in their scope: the ambit of particular categories of overriding interests will be narrowed, some categories will be abolished altogether and others will be phased out after 10 years;
- ◆ it will become possible to access the history of a registered title (to the extent that the Registry has it) if there is a reason to see it;
- ◆ charge certificates will be abolished and land certificates will have a much less important role;
- ◆ Crown land, including much of the foreshore around England and Wales, that is not presently registrable will become so; and

<sup>11</sup> See above, para 1.10.

<sup>12</sup> If there is no objection to the application, the squatter will be registered.

communications network could be used to provide information in relation to the transaction.<sup>131</sup>

### **Do-it-yourself conveyancing**

- 2.68 There are a number of people who prefer to undertake their own conveyancing, though they account for less than 1 per cent of all registered transactions. They will not be excluded from the benefits of electronic conveyancing. Once there is a land registry network, the registrar will be obliged to provide assistance to “do-it-yourself” conveyancers. It is envisaged that the registrar will carry out the electronic transactions on their directions, and that this service will be available from district land registries.

## **ADVERSE POSSESSION**

### **Introduction**

- 2.69 As the law stands, if a squatter is in adverse possession of land, he or she will usually extinguish the owner’s title to that land after 12 years.<sup>132</sup> At that point, the squatter’s title becomes unassailable, because no one has a better right to possess than he or she does.
- 2.70 As we have indicated above, the Bill introduces a new system of adverse possession applicable only to registered estates and registered rentcharges.<sup>133</sup> The changes that the Bill makes to the law of adverse possession are in fact scarcely less striking than those that it makes to the conveyancing process. There are two main reasons why we consider that we should introduce a new system. First, at the practical level, there is a growing public disquiet about the present law. It is perceived to be too easy for squatters to acquire title.<sup>134</sup> Perhaps precisely because it is so easy, adverse possession is also very common. Although the popular perception of a squatter is that of a homeless person who takes over an empty house (for whom there is understandable sympathy), the much more typical case in practice is the landowner with an eye to the main chance who encroaches on his or her neighbour’s land. Secondly, as a matter of legal principle, it is difficult to justify the continuation of the present principles in relation to registered land. These two reasons are in fact interconnected.

### **Why do we have a doctrine of adverse possession?**

- 2.71 The reasons why there is a doctrine of adverse possession are well known and often stated, but they need to be tested. For example, it is frequently said that the

<sup>131</sup> This would be particularly important in relation to chain sales. See above, para 2.52.

<sup>132</sup> See Limitation Act 1980, ss 15, 17. This will not always be so. If, for example, he or she has been in adverse possession of leasehold land, the tenant’s title will have been extinguished, but not the landlord’s. The squatter will have to remain in adverse possession for a further 12 years after the duration of the period of the lease.

<sup>133</sup> See above, para (3). See Part XIV of this Report for the discussion of adverse possession.

<sup>134</sup> See below, paras 14.1, 14.2.

doctrine is an embodiment of the policy that defendants should be protected from stale claims and that claimants should not sleep on their rights. However, it is possible for a squatter to acquire title by adverse possession without the owner realising it. This may be because the adverse possession is either clandestine or not readily apparent.<sup>135</sup> It may be because the owner has more land than he or she can realistically police. Many public bodies fall into this category. A local authority, for example, cannot in practice keep an eye on every single piece of land that it owns to ensure that no one is encroaching on it.<sup>136</sup> But the owner may not even realise that a person is encroaching on his or her land. He or she may think that someone is there with permission<sup>137</sup> and it may take an expensive journey to the Court of Appeal to discover whether or not this is so.<sup>138</sup> In none of these examples is a person in any true sense sleeping on his or her rights. Furthermore, even if a landowner does realise that someone — typically a neighbour — is encroaching on his or her land, he or she may be reluctant to take issue over the incursion, particularly if it is comparatively slight. He or she may not wish to sour relations with the neighbour and is, perhaps, afraid of the consequences of so doing. It may not only affect relations with the neighbour but may also bring opprobrium upon him or her in the neighbourhood. In any event, even if the policy against allowing stale claims is sound, the consequences of it under the present law — the loss for ever of a person's land — can be extremely harsh and have been judicially described as disproportionate.<sup>139</sup>

- 2.72 There are other grounds for the doctrine of adverse possession that have greater weight. Land is a precious resource and should be kept in use and in commerce. A person may be in adverse possession where the true owner has disappeared and there is no other claimant for the land. Or he or she may have acquired the land informally so that the legal ownership is not a reflection of the practical reality. A person may have innocently entered land, quite reasonably believing that he or she owned it, perhaps because of uncertainties as to the boundaries.
- 2.73 In relation to land with unregistered title, there are cogent legal reasons for the doctrine. The principles of adverse possession do in fact presuppose unregistered title and make sense in relation to it. This is because the basis of title to unregistered land is ultimately possession. The person best entitled to the land is the person with the best right to possession of it. As we explain below, the

<sup>135</sup> As where a squatter takes over a basement or a cellar: *Rains v Buxton* (1880) 14 ChD 537.

<sup>136</sup> The leading modern case — *Buckinghamshire County Council v Moran* [1990] Ch 623 — involved a wealthy businessman who enclosed a piece of land that was owned by a County Council and was being kept by them as a “land bank” for future road widening purposes.

<sup>137</sup> Particularly where the person is a neighbour.

<sup>138</sup> For a striking recent illustration, see *J A Pye (Oxford) Holdings Ltd v Graham* [2001] EWCA Civ 117; [2001] 2 WLR 1293, below, para 14.1, where the issue was whether what had initially been possession under licence (in that case a grazing licence) had ceased to be so.

<sup>139</sup> *J A Pye (Oxford) Holdings Ltd v Graham* [2000] Ch 676, 710, *per* Neuberger J (at first instance).

investigation of title to unregistered land is facilitated (and therefore costs less) because earlier rights to possess can be extinguished by adverse possession.<sup>140</sup> However, where title is registered, the basis of title is primarily the fact of registration rather than possession.<sup>141</sup> It is the fact of registration that vests the legal title in the registered proprietor. This is so, even if the transfer to the proprietor was a nullity as, for example, where it was a forgery.<sup>142</sup> The ownership of land is therefore apparent from the register and only a change in the register can take that title away. It is noteworthy that, in many Commonwealth states which have systems of title registration, these considerations have led to changes in the law governing acquisition of title by adverse possession. In some states it has been abolished altogether. In others, it has been modified.<sup>143</sup> As we have indicated above,<sup>144</sup> the doctrine of adverse possession does have benefits and we do not therefore favour outright abolition in relation to registered land. However, we consider that the balance between landowner and squatter needs to be adjusted to overcome some of the deficiencies outlined above,<sup>145</sup> while maintaining the advantages it can offer. We have therefore devised a modified scheme of adverse possession that attempts to achieve that balance and is at the same time appropriate to the principles of registered title.<sup>146</sup>

### **An outline of the new scheme in the Bill**

- 2.74 The essence of the new scheme in the Bill is that it gives a registered proprietor one chance, but only one chance, to terminate a squatter's adverse possession.<sup>147</sup> In summary, a squatter will be able to apply to be registered as proprietor after 10 years' adverse possession. The registered proprietor and certain other persons (such as a chargee) who are interested in the property will be notified of the application. If any of them object, the squatter's application will be rejected, unless he or she can establish one of the very limited exceptional grounds which will entitle him or her to be registered anyway. Of these exceptional grounds, the only significant one is where a neighbour can prove that he or she was in adverse possession of the land in question for ten years and believed on reasonable grounds for that period that he or she owned it. This exception is intended to meet the case where the physical and legal boundaries do not coincide. Even if the squatter's application is rejected, that is not necessarily the end of the matter. If the squatter remains in adverse possession for a further two years, he or she

<sup>140</sup> See below, para 14.2, and see generally Law Com No 254, paras 10.5—10.10.

<sup>141</sup> See Law Com No 254, para 10.11.

<sup>142</sup> See Land Registration Act 1925, s 69(1) (present law); Cl 58(1) (under the Bill); below, para 9.4.

<sup>143</sup> See Law Com No 254, para 10.17.

<sup>144</sup> See para 2.72.

<sup>145</sup> See para 2.71.

<sup>146</sup> Our starting point was the law applicable in Queensland, but our eventual model is very different.

<sup>147</sup> See below, Part XIV.



will be entitled to apply once more to be registered, and this time the registered proprietor will not be able to object. If the proprietor has been notified of the squatter's adverse possession and has been given the opportunity to terminate it within two years,<sup>148</sup> we consider that the squatter should obtain the land. It should be noted that our scheme places the onus on the squatter to take the initiative.<sup>149</sup> If he or she wants to acquire the land, he or she must apply to be registered. This is because the registered proprietor's title will never be barred by mere lapse of time. One point should be stressed about the provisions of the Bill on adverse possession. They are very carefully constructed to ensure that there is consistency between the way in which applications for registration are treated and what happens when the registered proprietor takes proceedings for possession against the squatter. The scheme stands or falls as an entity.

### **JUDICIAL PROVISIONS**

- 2.75 The Bill makes one striking change to the judicial provisions that are presently applicable to land registration. It creates a new office, that of Adjudicator to HM Land Registry.<sup>150</sup> The Adjudicator will be appointed by the Lord Chancellor and he will be independent of HM Land Registry. His task will be to determine objections that are made to any application to the registrar that cannot be resolved by agreement.<sup>151</sup> The Adjudicator will be subject to the supervision of the Council of Tribunals.

### **RULES**

- 2.76 Much of the process of land registration is, necessarily, conducted in accordance with rules made under the Land Registration Act 1925, of which there are several sets.<sup>152</sup> There are well over 300 such rules and they are amended regularly. They are concerned with the detail of how land registration is conducted and the flexibility that they have provided has enabled land registration to evolve from a system where transactions and searches were conducted in person at HM Land Registry in London to the present computerised system under which it is possible to search the register from a computer in an office anywhere. Rules are made by statutory instrument by the Lord Chancellor on the advice of the Rules

<sup>148</sup> Either by taking possession proceedings to recover the land or by reaching an agreement with the squatter that he or she will become the owner's tenant or licensee.

<sup>149</sup> This is a significant point in a case involving neighbours. A neighbour cannot be criticised for objecting to such an application and acting upon it, where he or she might have been regarded as a trouble maker if he or she had taken steps on his or her own initiative against the encroaching neighbour. See above, para 2.71.

<sup>150</sup> See Part 11 and Schedule 9 of the Bill; and see Part XVI of the Report.

<sup>151</sup> See Cls 73, 106. These functions are presently performed by the Solicitor to HM Land Registry.

<sup>152</sup> Land Registration Rules 1925; Land Registration (Open Register) Rules 1991; Land Registration (Official Searches) Rules 1993; Land Registration (Overriding Leases) Rules 1995; Land Registration (Matrimonial Home Rights) Rules 1997; Land Registration (Hearings Procedure) Rules 2000.