

church properties – do we need land registration?

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1 Introduction

More property transactions are registerable with HM Land Registry under the Land Registration Act 2002. This not only includes transfer of property, but also any mortgage or any lease of seven years or more. In due course it will also be necessary to register leases of three years or more. There are advantages to registering voluntarily and all trustees of charitable property need to consider sorting out any defects in their property title and ensure that they are up to date with their legal documentation.

2 Voluntary registration

Voluntary registration is possible. There are advantages in voluntarily registering title for your property, including:

- It ensures that current trustees are the registered owners of the property. Any future changes of trustees also need to be registered;
- It prevents anyone else from registering any part of the property (at least not without informing the trustees). Any further attempts by anyone else to register title for any of the property will be unlikely to succeed. The longer your title has been unchallenged the stronger your case;
- It reduces the risk of neighbours encroaching. Title registration will help prove your ownership;
- It is no longer necessary to rely on a bundle of paper deeds, which can be lost, damaged or destroyed. Your title will be recorded/registered with the Land Registry;
- The Land Registry fees for Voluntary Registration are 25% less than for Compulsory Registration. Current Registration Fee levels are shown in Appendix 1.

Registering title can be a simple and inexpensive process, particularly if this is done at the time of the property transaction.

3 Complications

Title registration however, is not always straightforward. We come across many complicated cases, all of which are best to be dealt with sooner rather than later. Here are some examples:

- The church building was conveyed 50 years ago to the trustees at the time of transfer. The property has never been registered. Although new trustees have been appointed over the years, the property has never been transferred to the new trustees. For the property title to be registered in the current trustees' names, the property would need to be transferred from the original trustees to the current ones. If none of the original trustees are still alive, or cannot be traced it may be necessary to obtain a Charity Commission order vesting the property in the current trustees.
- The original conveyance for the church property has been destroyed, lost or stolen and no copies are available. Statutory declarations will be required by

longstanding trustees or members of the fellowship. It may be that only possessory title will be granted by the Land Registry. The possessory title may be upgraded to title absolute if at any time the original documents are found or after a period of 12 years there has been no challenge to the title.

- The church had no title deeds at all. No one knew in whose name the church premises were held. After lengthy investigation it turned out that one of the well known church denominations owned the church, although they had had no contact with the church for many decades. Registration would have saved a lot of time in tracing ownership of the church property.

4 Charity registration

There is often confusion between registering a charity with the Charity Commission and registering title to the property with the Land Registry. The two registration processes are totally independent of each other. You do not have to be a registered charity to register title for the property. Likewise registering title will not make any difference to whether you need to register as a charity. The current requirement to register as a charity is complicated and there are a number of exemptions. These are likely to be reduced in the near future with the current Charities Bill. In brief any charity that is not covered by the main denominational bodies and has income of over £1,000 per year is required to register with the Charity Commission. Once the charity is registered it is necessary to inform the Charity Commission of any changes of Trustee (although in practice they are happy to be informed on your annual return).

5 Land Registry searches

In order to establish whether a property has been registered it is possible to do a Land Registry Search (of the index map). This is a fairly simple process of either completing a SIM form (see Appendix 2) or completing the property enquiry form on the Land Registry website www.landregisteronline.gov.uk. It helps to send a map of the property with the SIM form. The Land Registry will return a map showing any titles that affect the property or will give you the title number(s) online. You are then able to request by post or online the title register (details of the person(s) who has registered the title and any restriction or reservations on the register) and/or a plan using each title number. There is a small charge for this (online currently £2.00 for a title register and £2.00 for a title plan). You will need to complete form OC1 for a postal enquiry (see Appendix 3).

6 Mortgages and charges

A mortgage or legal charge is a potential claim against a property in order to discharge a debt or other obligation. The grant of a mortgage or legal charge gives rise to an obligation to register the title. Responsibility for registering a charge relating to a mortgage or loan lies with the person/body making the loan. It may save time and legal fees if the title is already registered because the title may be clearer and so require less investigation and, the less time spent on investigating the title and registering the title, the less the legal fees should be.

7 Leases

Long leases have been registerable for some time. Now leases seven years or longer must also be registered. This will extend to shorter leases in due course. When registering leases the relevant value used to calculate the registration fees is the highest annual rent receivable during the first five years of the term of the lease, plus any premium that may be paid. Fee levels are shown in Appendix 1.

8 Boundary disputes

Boundaries to the church property should be checked at least once every 10 years against the title registration to ensure that no encroachments have taken place. Any use of the registered property by another party (e.g. a neighbour maintaining a small area as a garden) should be formalised by at least a letter confirming that their use is by permission. This will prevent them claiming they occupied the property by prescriptive right.

9 Action

Action points to consider:

- a) Transfer the property into the current trustees' names and register the property title in their names. Repeat when new trustees are appointed.
- b) If there are no current trustees available arrange for trustees to be appointed and registered.
- c) Ensure all future transfers, mortgages and registerable leases are registered.
- d) Check boundaries regularly and do not allow encroachment.

10 Other options

Custodian Trusteeship is a service offered by Stewardship where the legal title for the property is held in Stewardship's name. Although the local managing trustees will still make decisions concerning the property, there will be no need to transfer the property and re-register the title every time the trustees change. We include a service to store safely your legal documents. This has two advantages:

- You are saved the expense of making the new deeds required when trustees change;
- there is no risk that the property will remain vested in people who are no longer involved with the Trust and who may be difficult to trace.

The Charity Commission offers a similar service as Official Custodian.

Transferring the ownership of the property to a Charitable Company may also be an option as the property is then held by a corporate body, rather than individual trustees. The corporate body will remain in place even if the officers/directors change. A third alternative, proposed in the latest Charities Bill, is a Charitable Incorporated Organisation (CIO). It will be possible to convert a Trust into a CIO and then hold property in the same way as with a Charitable Company. (Please see our paper "Trust or Company? – a guide to the distinctions" on our website.)

Appendix 1 – Land Registration Fee (Scale 1) as at September 2005

Value of Registerable Interest	Normal Fees	Fees for Voluntary Registration (25% less)
£0 - £50,000	£40	£30
£50,001 - £80,000	£60	£45
£80,001 - £100,000	£100	£75
£100,001 - £200,000	£150	£110
£200,001 - £500,000	£220	£165
£500,001 - £1,000,000	£420	£315
£1,000,001 and over	£700	£525

Appendix 2

Application for an official search of the index map

Land Registry

SIM

Land Registry _____ Office

If you need more room than is provided for in a panel, use continuation sheet CS and attach to this form.

1. Administrative area	
2. Property to be searched Postal number or description	
Name of road	
Name of locality	
Town	
Postcode	
Ordnance Survey map reference (if known)	
Known title number(s)	
3. Payment of fee <i>Place "X" in the appropriate box.</i>	
<input type="checkbox"/> The Land Registry fee of £ <input type="text"/> accompanies this application.	For official use only Impression of fees
<input type="checkbox"/> Debit the Credit Account mentioned in panel 4 with the appropriate fee payable under the current Land Registration Fee Order.	

4. The application has been lodged by: Land Registry Key No. (if appropriate) Name Address/DX No. Reference E-mail	
Telephone No.	Fax No.
5. If the result of search is to be sent to anyone other than the applicant in panel 4, please supply the name and address of the person to whom it should be sent. Reference	
6. I apply for an official search of the index map in respect of the land referred to in panel 2 above and shown _____ on the attached plan. <i>Any attached plan must contain sufficient details of the surrounding roads and other features to enable the land to be identified satisfactorily on the Ordnance Survey map. A plan may be unnecessary if the land can be identified by postal description.</i>	
7. Signature of applicant _____ Date _____	

Explanatory notes

1. The purpose and scope of Official Searches of the Index Map are described in Practice Guide 10 'Official searches of the Index Map' obtainable from any Land Registry office. It can also be viewed online at www.landregistry.gov.uk.
2. Please send this application to the appropriate Land Registry office. This information is contained in Practice Guide 51 'Areas served by Land Registry offices'.
3. Please ensure that the appropriate fee payable under the current Land Registration Fee Order accompanies your application. If paying fees by cheque or postal order, these should be crossed and payable to "Land Registry". Where you have requested that the fee be paid by Credit Account, receipt of the certificate of result is confirmation that the appropriate fee has been debited.

Appendix 3

Application for official copies
of register/plan or certificate
in Form CI

Land Registry

OC1

Land Registry _____ Office

Use one form per title. If you need more room than is provided for in a panel, use continuation sheet CS and attach to this form.

1. Administrative area if known	
2. Title number if known	
3. Property Postal number or description	
Name of road	
Name of locality	
Town	
Postcode	
Ordnance Survey map reference (if known)	
4. Payment of fee Place "X" in the appropriate box.	For official use only Impression of fees
<input type="checkbox"/> The Land Registry fee of £ <input type="text"/> accompanies this application.	
<input type="checkbox"/> Debit the Credit Account mentioned in panel 5 with the appropriate fee payable under the current Land Registration Fee Order.	
5. The application has been lodged by: Land Registry Key No. (if appropriate) Name Address/DX No.	
Reference E-mail	
Telephone No.	Fax No.

6. If the official copies are to be sent to anyone other than the applicant in panel 5, please supply the name and address of the person to whom they should be sent.

Reference

7. Where the title number is **not** quoted in panel 2, place "X" in the appropriate box(es).
As regards this property, my application relates to:

- freehold estate caution against first registration franchise manor
 leasehold estate rentcharge profit a prendre in gross

8. In case there is an application for registration pending against the title, place "X" in the appropriate box:

- I require an official copy back-dated to the day prior to the receipt of that application **or**
 I require an official copy on completion of that application

9. **I apply for:** Place "X" in the appropriate box(es) and indicate how many copies are required.

- ___ official copy(ies) of the **register** of the above mentioned property
 ___ official copy(ies) of the **title plan or caution plan** of the above mentioned property
- ___ a certificate in Form CI, in which case **either**:
- an estate plan has been approved and the plot number is
- or**
- no estate plan has been approved and a certificate is to be issued in respect of the land shown on the attached plan and copy
- _____

10. Signature of applicant _____ Date _____

additional information

If you found this briefing paper useful, you may also be interested in these other property-related papers produced by Stewardship:

Disability Discrimination Act: important aspects affecting churches which came into effect in October 2004

Responsibilities of managing asbestos in buildings

VAT for churches – a guide to the issues (there is a charge of £8 for this publication)

Building work to church premises – some legal and regulatory issues

Copies of the above papers can be obtained by phoning Stewardship on 08452 26 26 27 or e-mail enquiries@stewardship.org.uk The free papers are also available as downloads on our website www.stewardship.org.uk/briefing_papers.htm

If you have any queries relating to property matters please contact Giles Arnold, Property Services Manager on 020 8502 8589 or e-mail giles.arnold@stewardship.org.uk.

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