

## Notices and the Registration Gap

Speakers:



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## Leasehold and Freehold Reform Act 2024

### s.27 Removal of qualifying period before enfranchisement and extension claims

- (1) In section 1 of the Leasehold Reform Act 1967 ("the LRA 1967") (tenants entitled to enfranchisement or extension)–
- (a) in subsection (1), omit paragraph (b) and the "and" preceding it;
  - (b) in subsection (1ZC), in the words before paragraph (a), for "(1)(a) and (b)" substitute "(1)".
- (2) In section 39 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the LRHUDA 1993") (right of qualifying tenant of flat to acquire new lease)–
- (a) in subsection (1)–
    - (i) after "conferring on a" insert "qualifying";
    - (ii) omit ", in the circumstances mentioned in subsection (2),";
  - (b) omit subsection (2) (requirement to have been a qualifying tenant for last two years);
  - (c) omit subsection (3A) (right of personal representatives).
- (3) Omit section 42(4A) of the LRHUDA 1993 (notices given by personal representatives).

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## Land Registration Act 2002

### s.27 Dispositions required to be registered

(1) If a disposition of a registered estate or registered charge is required to be completed by registration, it does not operate at law until the relevant registration requirements are met.

(2) In the case of a registered estate, the following are the dispositions which are required to be completed by registration—

(a) a transfer,

(b) where the registered estate is an estate in land, the grant of a term of years absolute—

(i) for a term of more than seven years from the date of the grant...



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## Land Registration Act 2002

### s.24 Right to exercise owner's powers

A person is entitled to exercise owner's powers in relation to a registered estate or charge if he is—

(a) the registered proprietor, or

(b) entitled to be registered as the proprietor.



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## Land Registration Act 2002

### s.23 Owner's powers

(1) Owner's powers in relation to a registered estate consist of—

(a) power to make a disposition of any kind permitted by the general law in relation to an interest of that description, other than a mortgage by demise or sub-demise, and

(b) power to charge the estate at law with the payment of money.



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## Land Registration Act 2002

### s.74 Effective date of registration

An entry made in the register in pursuance of—

(a) an application for registration of an unregistered legal estate, or

(b) an application for registration in relation to a disposition required to be completed by registration,

has effect from the time of the making of the application.



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## Previous Case Law

*Appleton v Aspin* [1988] 1 WLR 410

*Pearson v Alyo* (1990) 60 P & CR 56

*Brown & Root Technology Ltd v Sun Alliance and London Assurance Co. Ltd*  
[2001] Ch 733

*Pye v Stodday Land Ltd* [2016] EWHC 2454 (Ch); [2016] 4 WLR 168

*Sackville UK Property Select II (GP) No. 1 Ltd v Robertson Taylor Insurance  
Brokers Ltd* [2018] EWHC 122 (Ch)



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## **RM Residential Ltd v Westacre Estates Ltd [2024]** **UKUT 56 (LC); [2024] L & TR 19 per Judge Cooke**

38. There is almost invariably a gap – **known as the registration gap** – between the completion of a purchase of land by the execution and delivery of a transfer, and its registration at HM Land Registry. The length of the gap will vary with HM Land Registry's workload, and with other factors such as the need to answer requisitions. But there will always be a gap, and until the purchaser's title is registered, as the FTT said, the legal estate does not pass to the purchaser.

39. During the gap **the vendor holds the legal title on a bare trust for the purchaser**. As a bare trustee the vendor has no power to make decisions about the property and must act at the direction of the purchaser...



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41. The practical effect of that is well known to anyone who has bought a house and to conveyancers: on completion day the transfer is signed and dated, the keys are handed over, and the purchaser moves. **The property belongs in equity to the purchaser, and to say that at that stage it is not the owner of the property both flies in the face of everyday reality and betrays a failure to understand equitable ownership.** True, there are just a few things the equitable owner cannot do in the registration gap, **such as giving notice to quit;** but entering the property is not one of them.



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# ***Avon Freeholds Ltd v Cresta Court E RTM Co Ltd [2024] UKUT 335 (LC)***

**(on appeal to the CoA – by November  
2025)**



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## Right to Manage – Qualifying Criteria

(1) Qualifying premises ss.72 and 112

(2) Qualifying tenant

- S.75(2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.
- S.75(5) **No flat has more than one qualifying tenant at any one time**; and subsections (6) and (7) apply accordingly.

(2) Long Lease – ss.76 and 77

- E.g. 21+ years (including where lease has been extended)
- E.g. Shared ownership lease (and tenant's share 100%)
- Excluded e.g. Part II Landlord and Tenant Act 1954



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## Definitions

s. 112

- “flat” means a separate set of premises (whether or not on the same floor)–

- (a) which forms part of a building,
- (b) which is constructed or adapted for use for the purposes of a dwelling, and
- (c) either the whole or a material part of which lies above or below some other part of the building,

(2) In this Chapter “lease” and “tenancy” have the same meaning and both expressions include (where the context permits)–

- (a) a sub-lease or sub-tenancy, and
- (b) **an agreement for a lease or tenancy (or for a sub-lease or sub-tenancy),**

but do not include a tenancy at will or at sufferance



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## Procedure – ss.78 and 79

“It is a melancholy fact that whenever Parliament lays down a detailed procedure for exercising a statutory right, people get the procedure wrong.” *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89; [2018] QB 571

### Service of notice inviting participation

s.78(1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given—

(a) **is the qualifying tenant of a flat contained in the premises**, but

(b) neither is nor has agreed to become a member of the RTM company.

Contents and form of notice – s.78(2) to (7) (“not invalidated by any inaccuracy”)



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## s.79 Notice of claim to acquire right

**(2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.**

...(6) The claim notice must be given to each person who on the relevant date is—

- (a) landlord under a lease of the whole or any part of the premises,
- (b) party to such a lease otherwise than as landlord or tenant, or
- (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as “the 1987 Act”) to act in relation to the premises, or any premises containing or contained in the premises.



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## Avon v Cresta Court E RTM Co

### Facts

- UT judgment [17-21], [29]
- Avon = registered freehold proprietor of Cresta Court
- April 2020 – long lease granted to resident of Flat 17 Cresta Court, Ms O'Connor
  - First grant out of registered estate – not assignment of an existing lease
- July 2021 – Ms O'Connor applies for registration of long lease (registration backdated to this date)
- January 2022 – claim notice given by RTM Co
- Agreed no notice of invitation to participate given to Ms O'Connor before the giving of the claim notice



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## Avon v Cresta Court E RTM Co

- (1) Is a tenant under an unregistered long lease a qualifying tenant within the meaning of s. 75?
  - FTT = Yes. [32] Section 112(2) defines "lease" as including an agreement for lease. As a lease which has been completed but not yet registered takes effect as an agreement for lease (or an 'equitable' lease) it follows that a qualifying tenant can include the holder of a completed but as yet unregistered lease
- (2) If so, does the failure to serve a NIP on such a qualifying tenant invalidate its claim to acquire the right to manage?
  - Upper Tribunal case law binding on the FTT gave the answer as YES ([2020] UKUT (LC) 358 and [2016] LTR 23) but this was distinguished on the facts by the FTT
  - FTT = No



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## Upper Tribunal Submissions – Qualifying Tenant

Avon (judgment [31-37])

- Importance of qualifying tenancy status points away from restrictive interpretation
- New block of 10 flats all on long leases – delays at HMLR – why shouldn't they be allowed to claim RTM?
- S.112(2) puts beyond doubt that equitable leases included – “lease” includes an “agreement for a lease”. *Walsh v Lonsdale* (1882) = an agreement for a lease is an equitable lease. Not all equitable leases are agreements for leases. A lease which takes effect in equity pending registration is not an agreement for a lease, but simply an equitable lease
- Depriving Ms O'Connor of QT status fails to appreciate the status of the landowner during the “registration gap” – see e.g. Judge Cooke in *RM Residential Ltd v Westacre Estates Ltd* [2024] UKUT 56 (LC); [2024] L & TR 19



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## Upper Tribunal Submissions – Qualifying Tenant

RTM Co (judgment [38-46])

- *Assethold Limited v 7 Sunny Gardens Road RTM Company Ltd* [2013] UKUT 509 – Martin Rodger QC at [29] “the tenant...is the person in whom, for the time being, the legal estate created by the lease is vested”
- Notices to terminate a tenancy must be served by legal titleholder
- S.112(2) only encompasses *Walsh v Lonsdale* agreements for lease, not all equitable leases
- “Where the context permits” in s.112 = impracticable and statutory scheme unworkable if required to serve NIPs on equitable tenants – unknown and unidentifiable, their interests not being registered



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## Upper Tribunal Decision

(1) Is a tenant under an unregistered long lease a qualifying tenant within the meaning of s. 75?

**Yes [55-70]**

- s112(2) includes equitable leases following *Walsh v Lonsdale*; s.75(2) capable of including legal and equitable leases
- The tenant under a newly granted but unregistered long lease is in the “registration gap”; this tenant has an equitable lease – s.27 Land Registration Act 2002
- “Where the context permits” = can only be one QT, and so the equitable tenant is only the QT if there is no legal lease too (e.g. assignment of existing leasehold interest).
- If both legal and equitable tenants, the QT = legal tenant
- Not unworkable – ordinarily tenant will be registered legal QT, and mitigates risk of HMLR delays for new blocks

(2) If so, does the failure to serve a NIP on such a qualifying tenant invalidate its claim to acquire the right to manage? **No [124-145]**

- Applying *A1 Properties*: RTM claim was only voidable and not void. QT directly affected by this procedural failure had not herself challenged the validity of the claim; freeholder sought to take advantage. Cannot be Parliament’s intention

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## Equitable landlord?

***159-167 Prince of Wales Road***  
***RTM Co Ltd v Assethold Ltd***  
**[2024] EWCA Civ 1544**

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## Facts

- 2019 – Assethold purchased headlease and freehold interest in block of flats from Millcastle
- 2021 – RTM Co served claim notice on Assethold, but Assethold was not registered yet – was still Millcastle. Assethold in the ‘registration gap’
- Assethold served counter notice objecting to the acquisition of RTM, RTM Co applied to FTT for determination but withdrew application the day before the hearing
- Assethold applied for costs pursuant to s.88 Commonhold and Leasehold Reform Act 2002 (nb will be repealed from 3 March 2025)

(1) A RTM company is liable for reasonable costs incurred by a person who is—  
 (a) **landlord under a lease** of the whole or any part of any premises,....  
 in consequence of a claim notice given by the company in relation to the premises.



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## FTT and UT decisions

- **FTT**
  - Assethold not a “landlord” per s.88(1) because it had no legal interest in the property
- **UT – Judge Cooke**
  - Appeal allowed on Ground 1 – RTM Co estopped from denying that Assethold was not a “landlord”.
  - It was obviously unfair for the RTM Co to pursue Assethold in the FTT on the basis that it was “the landlord” and then to deny liability for costs on the basis that it was not “the landlord”
  - Relying on *Benedictus v Jalaram* (1989) 58 P&CR 330– Court of Appeal, abuse of process/estoppel in Part 2 Landlord and Tenant Act 1954 context
  - Did not consider Grounds 2 and 3 – that Assethold nevertheless was a “landlord”, taking into account s.112(2)



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## Court of Appeal

- Estoppel not made out on the facts (potentially an abuse of process, but this was not pleaded)
- Assethold not the "landlord" for the purposes of s.88 – equitable ownership did not suffice – inconsistent with the RTM legislation as a whole [44]
- [28] In its ordinary and natural meaning, a "landlord under a lease" means the landlord as a matter of law. Both the freehold and headlease interest were existing registered estates. Their legal owners at the relevant time were..Millcastle
- [30] Reliance on *7 Sunny Gardens* and consistent with general approach of courts to property statutes – e.g. *Brown & Root*
- [31] *Section 112(2) provides for a specific extension of the concept of a lease to include, where the context permits, an agreement for a lease, but nothing is said there that indicates that agreements to transfer existing interests may have the effect of treating the transferee as a landlord either in place of or in addition to the transferor. That is so irrespective of whether such an agreement has been completed by an unregistered transfer.*
- [41-43] distinguished Cresta Court
  - *The UT's conclusion related a) to an interest in land which existed only in equity, and b) in the context of the specific provision for agreements for lease. In contrast, in this case there are existing legal interests that were vested in Millcastle and there is no equivalent to s.112(2)(b) that applies to an agreement to transfer them.*



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47... It is open to a buyer in Assethold's position to mitigate the potential risks by ensuring that the terms of its acquisition make appropriate provision for the seller to pass on notices or take other steps in relation to leases, including acting as the buyer directs following completion and prior to registration. A properly drafted provision of that nature would not only have required Millcastle to pass on any claim notice but would have permitted Assethold to instruct Millcastle how to respond to it and to take other steps on its behalf.

48. ...the solution for buyers in the position of Assethold lies in their own hands



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## Solution? Be proactive

- Example clauses for conveyances produced by City of London Law Society's Land Law Committee, the Law Society's Conveyancing and Land Law Committee, the Property Litigation Association, the Property Bar Association, law firms and barristers
  - <https://clls.org/resource/example-clauses-to-cover-the-registration-gap-issue--dec-2024-pdf-2.html>
- Example clause 1: Seller to assist buyer until buyer registered
  - E.g. Seller appoints buyer as its agent to sign in the seller's name and to serve or provide any break notice, LTA 1954 notice, or any other notice served under or in relation to the tenancy or otherwise in connection with the property
- Example clause 2: Seller's co-operation with the buyer during the registration gap (cf being the seller's agent)
  - E.g. Seller at the buyer's request and cost sign notices, counter-notices, applications etc reasonably required by the buyer
  - E.g. Seller at the buyer's request and cost take action which the buyer cannot take due to not being registered proprietor

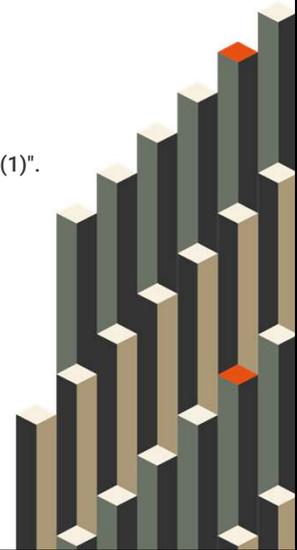


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## Administration of Estates Act 1925

### s.1 Devolution of real estate on personal representative

(1) Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as before the commencement of this Act chattels real devolved on the personal representative from time to time of a deceased person.



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## Land Registration Act 2002

### s.27 Dispositions required to be registered

(5) This section applies to dispositions by operation of law as it applies to other dispositions, but with the exception of the following—

- (a) a transfer on the death or bankruptcy of an individual proprietor,
- (b) a transfer on the dissolution of a corporate proprietor, and
- (c) the creation of a legal charge which is a local land charge.



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