



Adverse possession of registered land

Update – This edition of the guide replaces the November 2008 edition. The guide has been amended as a result of a review of our practice on general boundaries.

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Land Registration Act 2002

Scope of this guide

This guide explains Land Registry's approach to adverse possession applications in respect of registered land under the new regime set out in Schedule 6 to the Land Registration Act 2002, the procedures for making such applications, and the options available to those served with notice of such applications.

It is aimed at solicitors and other legal advisers and you should interpret references to 'you' accordingly.

Practice Guide 5 deals with adverse possession of (1) unregistered land, and (2) registered land where a squatter was in adverse possession for the requisite limitation period so as to have acquired a right to be registered as proprietor before 13 October 2003.

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1 Abbreviations and definitions

In this guide:

'LRA 2002' means the Land Registration Act 2002;

'LRR 2003' means the Land Registration Rules 2003, as amended;

'Fee Order' means the current Land Registration Fee Order;

'Law Com 271' means Law Commission Report No 271: *Land Registration for the Twenty-First Century, A Conveyancing Revolution*;

'adjudicator' means the Adjudicator to Her Majesty's Land Registry;

'squatter' is used to refer to anyone in, or claiming to be in, adverse possession.

2 Introduction

2.1 The new regime – a brief overview

Prior to the coming into force of the LRA 2002, a squatter could acquire the right to be registered as proprietor of a registered estate if they had been in adverse possession of the land for a minimum of 12 years. However, the doctrine of adverse possession did not fit easily with the concept of indefeasibility of title that underlies the system of land registration. Nor could it be justified by the uncertainties as to ownership which can arise where land is unregistered; the legal estate is vested in the registered proprietor and they are identified in the register.

The LRA 2002 has created a new regime that applies only to registered land. This new regime is set out in Schedule 6 to the Act. It makes it more likely that a registered proprietor will be able to prevent an application for adverse possession of their land being completed. The following paragraphs provide a brief overview of the new regime; the remaining sections of this guide discuss it in more detail.

- Adverse possession of registered land for 12 years of itself will no longer affect the registered proprietor's title.
- After 10 years' adverse possession, the squatter will be entitled to apply to be registered as proprietor in place of the registered proprietor of the land.
- On such an application being made the registered proprietor (and certain other persons interested in the land) will be notified and given the opportunity to oppose the application.
- If the application is not opposed¹, the squatter will be registered as proprietor in place of the registered proprietor of the land.
- If the application is opposed, it will be rejected unless either:
 - it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the squatter and the squatter ought in the circumstances to be registered as proprietor
 - the squatter is for some other reason entitled to be registered as proprietor, or
 - the squatter has been in adverse possession of land adjacent to their own under the mistaken but reasonable belief that they are the owner of it, the exact line of the boundary with this adjacent land has not been determined and the estate to which the application relates was registered more than a year prior to the date of the application.
- In the event that the application is rejected but the squatter remains in adverse possession for a further two years, they will then be able, subject to certain exceptions, to re-apply to be registered as proprietor and this time will be so registered whether or not anyone opposes the application.

2.2 The transitional provisions

There are important transitional provisions in the LRA 2002 covering cases where a squatter was in adverse possession of registered land for the requisite limitation period under the Limitation Act 1980 so as to have acquired the right to be registered as proprietor before 13 October 2003. This will usually have happened if the squatter was in adverse possession

¹ By 'opposed' we mean that a counter notice is served; see section 8 *Giving counter notice to the registrar in response to notice*. Instead, or at the same time, the registered proprietor may object to the application on the ground that there has not been the necessary 10 years' adverse possession: see section 7 *Objecting to the squatter's application* for the implications of such an objection.

for at least 12 years before 13 October 2003, though sometimes a longer period will be necessary². The transitional provisions preserve this right to be registered as proprietor, although the right can be lost.

A squatter may be able to apply under either the transitional provisions or the new regime. If they make applications both under the new procedure and under the transitional provisions, we will ask for confirmation as to which application should proceed first.

Practice Guide 5 explains the transitional provisions in more detail and how to make an application for adverse possession under these provisions. **This guide deals only with the new regime.**

3 Adverse possession – the essentials

Adverse possession requires factual possession of the land, with the necessary intention to possess and without the owner's consent.

You must show:

- that the squatter and any predecessors through whom they claim have been in adverse possession for at least 10 years (or at least 60 years for Crown foreshore³) ending on the date of the application⁴, or
- that the squatter has been evicted by the registered proprietor, or a person claiming under the registered proprietor, not more than six months before the date of the application, that this eviction was not pursuant to a judgment for possession, and that on the day before the eviction they and any predecessors through whom they claim had been in adverse possession of the land for a period of 10 years ending on that date⁵.

3.1 Factual possession

In *Powell v McFarlane*,⁶ Slade J said:

“Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so.”

Where the land was previously open ground, fencing is strong evidence of factual possession, but it is neither indispensable nor conclusive.

3.2 The intention to possess

What is required is “not an intention to own or even an intention to acquire ownership but an intention to possess”⁷. This means “the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as reasonably practicable and so far as the processes of the law will allow”⁸.

Where the squatter has been able to establish factual possession, the intention to possess will frequently be deduced from the acts making up that factual possession. But this deduction will not always be made, as Slade J explained in *Powell v McFarlane*⁹:

“In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner.”

2 For instance, if the land was owned by the Crown or an ecclesiastical corporation sole, when the period is 30 years, or was held in trust or by someone under a disability. See Practice Guide 5 section 4 *The limitation period*.

3 ‘Foreshore’ here means “the shore and bed of the sea and of any tidal water, below the line of the medium high tide between the spring and neap tides” (LRA 2002, Sch 6, para 13(3)). In this context ‘Crown’ includes the Duchy of Lancaster and the Duchy of Cornwall (LRA 2002, Sch 6, para 13(1)).

4 LRA 2002, Sch 6, para 1(1).

5 LRA 2002, Sch 6, para 1(2).

6 (1979) 38 P & CR 452. The House of Lords approved this statement of the law in *J A Pye (Oxford) Ltd v Graham* [2002] UKHL 30.

7 *Buckinghamshire County Council v Moran* (1988) 86 LGR 472, per Hoffman J, approved by House of Lords in *J A Pye (Oxford) Ltd v Graham* [2002] UKHL 30.

8 *Powell v McFarlane* (1979) 38 P & CR 452, 471-472, per Slade J, approved by House of Lords in *J A Pye (Oxford) Ltd v Graham* [2002] UKHL 30.

9 (1979) 38 P & CR 452, 476, cited with approval by Lord Hutton in *J A Pye (Oxford) Ltd v Graham* [2002] UKHL 30.

Use of land for access purposes is an example of an equivocal act. Such use over time might give rise to an easement by prescription but is not, by itself, sufficient to establish an intention to possess the land.

3.3 Possession without the owner's consent

In *Buckinghamshire County Council v Moran*,¹⁰ Slade LJ explained: *"Possession is never 'adverse' within the meaning of the 1980 Act if it is enjoyed under a lawful title. If, therefore, a person occupies or uses land by licence of the owner with the paper title and his licence has not been duly determined, he cannot be treated as having been in 'adverse possession' as against the owner of the paper title."*

4 Restrictions on making an application for registration based on adverse possession

The following circumstances prevent an application being made for registration based on adverse possession.

- The registered proprietor is an enemy or detained in enemy territory, or has been an enemy or detained in enemy territory in the 12 months before the date of the application¹¹.
- The registered proprietor is unable because of mental disability to make decisions about issues of the kind to which an application for adverse possession would give rise, or is unable to communicate such decisions because of mental disability or physical impairment¹².
- The squatter is a defendant in proceedings which involve asserting a right to possession of the land, or judgment for possession has been given against them in the last two years¹³.
- The estate in land was held on trust at any time during the period of 10 years ending on the date of the application, unless the interest of each of the beneficiaries in the estate was an interest in possession¹⁴.

The title plans of all registered titles show only the general position of the boundaries, unless they are shown as having been determined as exact boundaries pursuant to s.60, LRA 2002. This means that it is possible for an area of land to be within a registered title, even though it falls outside the red edging on the title plan. Conversely, it is possible for an area of land not to be included within the registered title, even though it is within the red edging on the title plan. In other words, it is not possible for Land Registry to define the precise position of the boundary in question. Public Guide 19 – *Title plans and boundaries* provides further information on this.

If it turns out that the squatter, in fact, has documentary title to the land and what is really required is an alteration to the squatter's and/or the squatter's neighbour's title plan to show the general boundary more accurately, then an application based on adverse possession is not appropriate. In these circumstances, the squatter should consider an application to alter either:

- their title plan
- their and their neighbour's title plan, or
- their neighbour's title plan

to show the boundaries more accurately.

Such an application would need to be made in form AP1 identifying the title(s) to be altered. The applicant would need to make clear the nature of the alteration sought and the basis for the claim. A fee would be payable assessed under the Fee Order.

The determined boundary procedure, as discussed in Public Guide 19, could also be considered.

¹⁰ [1990] Ch 623, 636.

¹¹ LRA 2002, Sch 6, para 8(1).

¹² LRA 2002, Sch 6, para 8(2).

¹³ LRA 2002, Sch 6, para 1(3).

¹⁴ LRA 2002, Sch 6, para 12.

5 Making an application for registration on the basis of adverse possession

You must make the application on form ADV1 accompanied by a statement of truth or statutory declaration which:

- is made by the squatter not more than one month before the date of the application
- provides evidence (together with any supporting statements of truth or statutory declarations) of adverse possession for not less than 10 years (or 60 years for Crown foreshore)
- if the application relates to part only of the land in a registered title, exhibits a plan enabling the extent of the land to be identified on the Ordnance Survey map, unless the part is referred to by reference to the title plan and this enables it to be identified
- if the squatter is applying under paragraph 1(2) of Schedule 6, LRA 2002 (where they have been evicted during the previous six months, but this eviction was not pursuant to a judgment for possession), contains the facts relied on with any appropriate exhibits
- contains confirmation that paragraph 1(3) of Schedule 6, LRA 2002 does not apply (no current possession proceedings or judgment for possession given against the squatter in the last two years)
- contains confirmation by the squatter that to the best of their knowledge none of the restrictions on applications contained in paragraph 8 of Schedule 6, LRA 2002 applies (the proprietor is not an enemy or held in enemy territory or suffering from mental disability or physical impairment), and
- contains confirmation by the squatter that to the best of their knowledge the estate is not, and has not been during the period of adverse possession, subject to a trust (other than one where the interest of each of the beneficiaries is an interest in possession)¹⁵.

Very importantly, the squatter must decide what they will do if the registered proprietor, or someone else served with notice of the application, serves a counter notice requiring the registrar to deal with the application under paragraph 5 of Schedule 6, LRA 2002. If the squatter wants to rely on one of the three conditions in that paragraph, you must ensure that this is stated in the form ADV1 and that the statement of truth or statutory declaration contains the facts that enable the squatter to rely on the condition¹⁶.

You should also send any additional evidence which is thought necessary to support the claim¹⁷.

You should enclose the result of a company search if the registered proprietor of the title affected is a company.

You must list all the documents accompanying the application on form ADV1 and pay the appropriate fee under the Fee Order. If you do not complete the form correctly, the form ADV1 may be returned to you.

If a statement of truth is used it may be in form ST1. Form ST1 is designed to provide a framework for the information that must be included within an ADV1 application relating to land¹⁸. Its use is not obligatory: any statement of truth that meets the requirements of r.215A, LRR 2003¹⁹ will be acceptable, as will a statutory declaration. However, using form ST1 should help you to ensure that nothing has been overlooked. If you do not use form ST1, you need to provide all the information requested by that form – such as the dates the adverse possession started and finished, the acts relied on as establishing the necessary factual possession and intention to possess, and so on.

15 LRR 2003, r.188(1)(a) & (2).

16 LRR 2003, r.188(2)(g).

17 LRR 2003, r.188(1)(b).

18 Form ST2 is the equivalent form for rentcharge applications.

19 See section 14 Appendix – statement of truth.

The statements of truth or statutory declarations should be factual and, ideally, the person making the statement or declaration will use their own words rather than language copied from precedent books. The person should expressly state how the facts are known to them, if this is not implicit

in the statement or declaration. Information from third parties who have observed the position on the ground but may have no knowledge of the squatter's intentions or dealings with the owner will usually carry less weight than the squatter's own statement or declaration. However, statements of truth or statutory declarations from neighbours and other third parties, sent in with the squatter's statement of truth or statutory declaration, may be useful as corroborative evidence.

We can never say what the outcome of an application will be before it is made. We can only make this decision after all the evidence has been produced by the applicant, we have received responses to requisitions and the time period relating to the notices we have served has expired. For this reason, and to avoid putting words into people's mouths, please do not send us draft statements of truth or statutory declarations for approval.

Finally, the Department for Environment Food and Rural Affairs has published a *Guidance note on adverse possession of common land and town or village greens*. This can be accessed via www.defra.gov.uk/wildlife-countryside/protected-areas/common-land/guidance.htm. (Land Registry does not necessarily share all statements of opinion as to the law that are expressed in the guidance note.)

6 Land Registry's response and registration

6.1 Land Registry inspection

Often the statements in statements of truth or statutory declarations, while not untrue, do not give a complete picture. For example, the person making the statement or declaration may have forgotten to mention a gate in a feature that appears, from the Ordnance Survey map, to bar access from adjoining land. Usually, therefore, we will arrange for one of our surveyors to inspect the land and we will need to see their report before we can consider the application further.

You, the squatter and the registered proprietor will be informed of the inspection before it takes place.

6.2 Case law

We examine each application on its own merits. We bear in mind the case law on adverse possession but you need to remember that the court will have heard evidence and arguments from both sides, while we will normally at this stage only be hearing the squatter's version of events. And although the facts in any application may be superficially similar to those in a reported case, they are unlikely to be identical.

6.3 Notices

If, from the evidence we have seen, we believe it to be more likely than not that the squatter is entitled to apply to be registered, we will give notice of the application, under paragraph 2 of Schedule 6, to:

- the registered proprietor of the estate affected
- the registered proprietor of any registered charge on that estate
- the Treasury Solicitor or the relevant Duchy where the registered proprietor is, or may be, a company which is dissolved²⁰
- where the estate is leasehold, the registered proprietor of any superior registered estate, and
- any person who has been registered as a person to be notified under paragraph 2 of Schedule 6, LRA 2002.

A person given such a notice may:

- consent to the application
- object to the application²¹
- give counter notice in form NAP to the registrar requiring the registrar to deal with the application under paragraph 5 of Schedule 6, LRA 2002,²²

or

20 LRR 2003, r.188A.

21 LRA 2002, s.73(1).

22 LRA 2002, Sch 6, para 3(1).

— both object to the application *and* give counter notice.

The notice will allow 65 business days for a reply and we will enclose a copy of form NAP for the recipient to use²³. Form NAP must be used for a counter notice (whether or not the recipient also wants to object). It can be, but need not be, used to give consent or to object (though any objection must be in writing²⁴).

The registrar may also give notice to any other person considered appropriate²⁵. Therefore, we will normally give notice to successors in title to the registered proprietor, known or suspected from other available information or our local knowledge to have become entitled to the estate affected, such as a trustee in bankruptcy or a successor local authority. This notice will allow 15 business days for a reply as it is not a notice that the registrar is required to give under paragraph 2 of Schedule 6, LRA 2002. A person receiving such a notice will only have two options: either to consent or to object to the application. They cannot serve a counter notice in form NAP, and therefore we will not enclose form NAP with this notice.

6.4 Registration

If we do not receive a counter notice from any of the people given notice under paragraph 2 of Schedule 6, LRA 2002, or any objection, we will register the squatter as proprietor once the time limit has expired²⁶. If the squatter's application relates to the whole of an existing registered title, we will register them as proprietor of that title. If their application relates to part of an existing registered title, then we will remove that part from the existing title and register them as proprietor of that part under a new title number.

As a general principle, the registration of a squatter does not affect the priority of any interest affecting the estate²⁷. Therefore, when a squatter is registered as proprietor of the whole or part of an existing registered title, they will take subject to the same estates, rights and interests that bound the previous proprietor. This means that existing subjective entries will be carried forward to the squatter's new title. This general principle is subject to what we say in section 6.5 *Charges*.

6.5 Charges

The general rule is that a squatter is automatically entitled to be registered free of any registered charges (but not charges protected by a notice on the register) affecting the title immediately before their registration²⁸.

There is an exception to this general rule. This is where any person receiving notice has given a counter notice and the squatter's registration as proprietor follows an application determined by reference to whether any of the conditions in paragraph 5 of Schedule 6, LRA 2002, apply²⁹.

Where the exception operates and the charge affects additional property, the squatter will be able to require the chargee to apportion the amount secured by the charge between the land in the squatter's new registered title and the remainder of the property subject to the charge³⁰. The apportionment will be on the basis of (1) the amount of debt secured by the charge at the time the squatter applies for apportionment and (2) the respective values of the land that was adversely possessed and the rest of the property that is subject to the charge. The chargee must discharge the squatter's estate on payment of the amount apportioned to that estate and their costs. The chargor's liability to the chargee will be reduced accordingly. Rr.194A – 194G, LRR 2003 set out in detail the procedures relating to apportionment. The procedures can only be instigated once the squatter has been successfully registered. Land Registry plays no part in them. They require the squatter to give notice to the chargee requesting that the charge be apportioned. The squatter is required to provide valuations of the land comprising the new registered title and the other property subject to the charge.

However, the exception may itself be qualified. Law Com 271 suggests that if the squatter's right to be registered preceded the registered charge and the squatter was in actual occupation of the land at the time the charge was

23 LRR 2003, rr.189 & 190.

24 LRR 2003, r.19.

25 LRR 2003, r.17.

26 LRA 2002, Sch 6, para 4.

27 LRA 2002, Sch 6, para 9(2).

28 LRA 2002, Sch 6, para 9(3).

29 LRA 2002, Sch 6, para 9(3) & (4).

30 LRA 2002, Sch 6, para 10.

created, that right to be registered might be an overriding interest³¹ and so take priority over the charge³², with the result that the estate is vested in the squatter free of the charge.

Where the charge is not a registered charge (a common example would be a charging order), then the general principle set out in section 6.4 *Registration* applies. But if the squatter's right to be registered is a proprietary interest, as Law Com 271 suggests may potentially be the case³³, and the right precedes the charge, then the 'basic rule' as to priority³⁴ would allow for the squatter, on registration, to take free of that charge. If, however, the squatter takes subject to the charge and it affects other property as well, then the squatter may require apportionment³⁵.

7 Objecting to the squatter's application

Any person wishing to object to the squatter's application must deliver to the registrar a written statement signed by them or their conveyancer. It must state that the objector objects to the application, state the grounds for the objection and give the objector's full name and an address for service³⁶. This must be a postal address, whether or not in the United Kingdom. Further postal, email or DX addresses may be given as well, but there can be no more than three addresses for service in total³⁷. Form NAP may be used for this purpose. The objection might be on the grounds that the squatter is not entitled to apply under Schedule 6 because, for example, there has not been adverse possession (ie factual possession, with the requisite intention and without the owner's consent) or that the possession has not been for the necessary period of time (normally 10 years)³⁸. Sometimes the registered proprietor (or other recipient of notice) will want both to object, for example on the grounds that there has not been 10 years' adverse possession, and to ensure that, if they lose that argument, they can take advantage of paragraph 5 of Schedule 6, so that the squatter's application will be rejected unless any of the three conditions in that paragraph is met. In such a case, the objector must return the form NAP with two boxes ticked. They must both object, and require the application to be dealt with under paragraph 5 (see section 8 *Giving counter notice to the registrar in response to notice*). They must give the grounds of their objection. They do not need to say at this stage why they believe that none of the three conditions applies, but it would usually be convenient to do so if the squatter's application indicates an intention to rely on one of them.

If a person given notice by the registrar³⁹ objects to an application but does not indicate on form NAP that they require the application to be dealt with under paragraph 5, they will lose the opportunity to request that the application be dealt with under paragraph 5 once the 65 business day notice period has expired. In that case, it becomes immaterial whether or not the squatter can prove one of the three conditions. The squatter will be entitled to be registered as proprietor unless the objection is successful⁴⁰.

If an objection is received, whether in response to the registrar's notice or otherwise, then the application cannot be determined until the objection is disposed of, unless the registrar is satisfied that the objection is groundless⁴¹. If the registrar decides that the objection is not groundless, notice of the objection must be given to the squatter or their conveyancer⁴². The registrar will then ask both parties whether they wish to negotiate and whether they consider that it may be possible to reach an agreement. If all parties respond positively, the registrar will allow them time to settle the matter by agreement. However, as soon as it becomes clear that the two sides are unable to reach an agreement, the registrar must refer the matter to the adjudicator⁴³. This will be done immediately if the parties do not wish to negotiate.

The adjudicator will then either set a date for hearing and determining the matter or direct one of the parties to start proceedings in court. Further details of the procedure to be followed and of the position as to costs will be supplied by the adjudicator's office at that stage.

31 LRA 2002, Sch 3, para 2.

32 Law Com 271, para 14.64 & 14.76.

33 Law Com 271, para 14.64 & 14.76.

34 LRA 2002, s.28.

35 LRA 2002, Sch 6, para 10, and LRR 2003, rr.194A – 194G, apply equally to charges that are not registered charges.

36 LRR 2003, r.19.

37 LRR 2003, r.198.

38 See section 3 *Adverse possession – the essentials*.

39 Under LRA 2002, Sch 6, para 2.

40 LRA 2002, Sch 6, para 4.

41 LRA 2002, s.73(5) & (6).

42 LRA 2002, s.73(5).

43 LRA 2002, s.73(7).

8 Giving counter notice to the registrar in response to notice

A person receiving the 65 business day notice sent under paragraph 2 of Schedule 6, LRA 2002 may choose to give counter notice to the registrar, requiring the application to be dealt with under paragraph 5 of Schedule 6, LRA 2002. The counter notice has to be in form NAP, a copy of which is sent out with the notice: it must be completed and returned to the registrar within 65 business days⁴⁴.

While form NAP must be used for giving counter notice, it is not necessary to use the particular copy originally sent by us. Suppose, for example, that the registered proprietor is notified by us of an application by a squatter and responds by lodging an objection using the copy of form NAP enclosed with the notice. They then decide, before the 65 business days have expired, that they wish also to give counter notice. They should do this using another copy of form NAP (which they can obtain from us if they wish).

If the squatter has not stated in their form ADV1 that they are relying on one of the three conditions in paragraph 5, then their application will be rejected when we receive the counter notice.

If the squatter is relying on one of the three conditions and counter notice is given, we will at this point (*and not before*) consider whether or not they have shown an arguable case for reliance on the condition. If we decide that they have not shown an arguable case, the application will be rejected. If we are satisfied that an arguable case has been shown, we will contact the people who gave the counter notice. If they dispute that the condition has been met, they can then object to the application on this ground (if they have not done so already). Unless the objection is groundless or disposed of by agreement, the registrar will refer the matter to the adjudicator for resolution as described above in section 7 *Objecting to the squatter's application*. If the people who gave the counter notice do not object, the squatter will be registered as proprietor.

9 The three conditions in paragraph 5 of Schedule 6

Even if the registrar receives a counter notice stating that the recipient of the notice wishes the application to be dealt with under paragraph 5 of Schedule 6, LRA 2002, the squatter is still entitled to be registered if any one of the following three conditions is met⁴⁵.

44 LRR 2003, rr.189 & 190.

45 LRA 2002, Sch 6, para 5.

9.1 The first condition

The first condition is that it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the squatter and the circumstances are such that the squatter ought to be registered as the proprietor.

This condition is intended to embody the equitable principles of proprietary estoppel as these have developed. The squatter will have to establish that an equity has arisen in their favour. To this end, they will need to show that:

- in some way the registered proprietor encouraged or allowed the squatter to believe that they owned the land in question
- in this belief, the squatter acted to their detriment to the knowledge of the proprietor, and
- it would be unconscionable for the proprietor to deny the squatter the rights which they believed they had⁴⁶.

Examples where this condition might apply are:

- where the squatter has built on the registered proprietor's land in the mistaken belief that they were the owner of it and the proprietor has knowingly acquiesced in their mistake, and
- where neighbours have entered into an informal sale agreement for valuable consideration by which one agrees to sell the land to the other. The 'buyer' pays the price, takes possession of the land and treats it as their own. No steps are taken to perfect their title and there is no binding contract⁴⁷.

9.2 The second condition

The second condition is that the squatter is for some other reason entitled to be registered as the proprietor.

Examples where this condition might apply are:

- where the squatter is entitled to the land under the will or intestacy of the deceased proprietor, and
- where the squatter contracted to buy the land and paid the purchase price, but the legal estate was never transferred to them⁴⁸.

9.3 The third condition

The third condition is that the squatter has been in adverse possession of land adjacent to their own for at least 10 years under the mistaken but reasonable belief that they are the owner of it, the exact line of the boundary with this adjacent land has not been determined under section 60, LRA 2002 and the estate to which the application relates was registered more than a year prior to the date of the application.

An example of where this condition might apply is where the dividing walls or fences on an estate were erected in the wrong place⁴⁹.

10 Further application by the squatter for registration

If the squatter's application was rejected as a result of a counter notice being given and none of the three conditions in paragraph 5 of Schedule 6, LRA 2002 being met, they will be able to reapply to be registered as proprietor, provided they remain in adverse possession for a further two years from the date of rejection of the previous application⁵⁰. This time the squatter will be entitled to be registered as proprietor except where:

- the squatter is a defendant in proceedings for possession
- there has been judgment for possession given against the squatter in the last two years, or
- the squatter has been evicted pursuant to a judgment for possession⁵¹.

This means that the registered proprietor, registered chargee and any other people given notice of the rejected application have at least two years in which to take steps either to evict the squatter (or at least to start proceedings to do so) or to legitimise their occupation by, for example,

46 Law Com 271, para 14.40.

47 Law Com 271, para 14.42.

48 Law Com 271, para 14.43.

49 Law Com 271, para 14.46.

50 LRA 2002, Sch 6, para 6.

51 LRA 2002, Sch 6, paras 6 & 7.

negotiating a licence under which the squatter can stay as licensee.

10.1 Making the application

You must make the application in form ADV1 accompanied by a statement of truth or statutory declaration which:

- is made by the squatter not more than one month before the date of the application
- provides evidence (together with any supporting statements of truth or statutory declarations) of adverse possession for not less than two years from the date of rejection of the original application to the date of the present application
- if the application relates to part only of the land in a registered title, exhibits a plan enabling the extent of the land to be identified on the Ordnance Survey map, unless the previous rejected application related only to that part, or that part is referred to by reference to the title plan and this enables it to be identified
- contains full details of the previous rejected application
- contains confirmation by the squatter that to the best of their knowledge the restriction on applications in paragraph 8 of Schedule 6, LRA 2002 does not apply (the proprietor is not an enemy or held in enemy territory or suffering from mental disability or physical impairment)
- contains confirmation by the squatter that to the best of their knowledge the estate is not, and has not been, subject to a trust (other than one where the interest of each of the beneficiaries is an interest in possession), and
- contains confirmation by the squatter that paragraph 6(2) of Schedule 6, LRA 2002 does not apply (no possession proceedings, judgment for possession or eviction under a judgment for possession)⁵².

You should also send any additional evidence which is thought necessary to support the claim⁵³.

You must list all the documents accompanying the application on form ADV1 and pay the appropriate fee under the Fee Order. If you do not complete the form correctly, the form ADV1 may be returned to you.

If a statement of truth is used it may be in form ST1. The comments made in respect of this form in section 5 *Making an application for registration on the basis of adverse possession* apply equally here. In particular, using the form should help you to ensure that nothing has been overlooked.

10.2 Notices

We will give notice of the further application, under r.17, LRR 2003, to:

- the registered proprietor of the estate affected
- the registered proprietor of any registered charge on that estate
- where the estate is leasehold, the registered proprietor of any superior registered estate
- any person who has been registered as a person to be notified under paragraph 2 of Schedule 6, LRA 2002, and
- any other person the registrar considers appropriate to notify.

The notice will allow 15 business days for reply. A person given notice may either:

- consent to the application, or
- object to the application.

If no objection is received within the time limit from any of the persons given notice, the squatter will be registered as proprietor of the estate of which they were in adverse possession.

10.3 Objecting in response to notice

A person may object to the further application by the squatter where they do not accept that the squatter has remained in adverse possession for at least two years or where they are able to challenge any of the statements that the squatter is required to make in their second statement of truth or statutory declaration – see section 10.1 *Making the application*.

52 LRR 2003, r.188(1)(a) & (3).

53 LRR 2003, r.188(1)(b).

The objection must be made by written statement delivered to the registrar signed by the objector or their conveyancer. It must state the grounds for the objection and give the objector's full name and an address for service⁵⁴. This must be a postal address, whether or not in the United Kingdom. Further postal, email or DX addresses may be given as well, but there can be no more than three addresses for service in total⁵⁵.

If an objection is received, then the application cannot be determined until the objection is disposed of, unless the registrar is satisfied that the objection is groundless⁵⁶. If not groundless, the registrar must give notice of the objection to the squatter⁵⁷. If the matter cannot be settled by agreement between the two parties, the registrar will refer the matter to the adjudicator for resolution as described in section 7 *Objecting to the squatter's application*⁵⁸.

10.4 Registration

If the squatter's application is approved, they will be registered as proprietor as described in section 6.4 *Registration*.

11 Application to be registered as a person to be notified of a squatter's application

A person who has an interest in a registered estate that would be prejudiced by the registration of a squatter may apply to the registrar to be registered as a person to be notified under paragraph 2(1)(d) of Schedule 6, LRA 2002⁵⁹.

You must make the application in form ADV2 and pay the correct fee under the Fee Order. The applicant must satisfy the registrar they have such an interest.

If the application is approved, we will make the following entry in the proprietorship register:

"[Name] of [address] is a person entitled to be notified of an application for adverse possession under paragraph 2 of Schedule 6, Land Registration Act 2002."

To remove the entry, you may make an application in form AP1 at any time. No fee is payable. As a safeguard, if the application is not made by a solicitor or licensed conveyancer, we will give notice of the application to the person named in the entry allowing 15 business days for reply.

12 Leasehold matters

12.1 Adverse possession of registered leasehold land

As soon as the squatter takes possession of land that is leased, time runs against the tenant.

Time does not run against the landlord until the lease expires – unless the adverse possession started before the lease, in which case time will continue to run against the landlord during the term of the lease.

Non-payment of rent before the lease expires is irrelevant. However, if a stranger wrongfully continues to receive the rent of leasehold land for 10 years, and provided that the lease is in writing and not granted by the Crown and the rent is at least £10 a year, the stranger becomes entitled to apply under paragraph 1 of Schedule 6⁶⁰.

12.2 Encroachments onto registered land from leasehold land

As explained above⁶¹, adverse possession requires "the intention, in one's own name and on one's own behalf, to exclude the world at large". There is a legal presumption that a tenant who encroaches onto other land does so for the benefit of his or her landlord⁶². At least on one view, this

54 LRR 2003, r.19.

55 LRR 2003, r.198.

56 LRA 2002, s.73.

57 LRA 2002, s.73(5).

58 LRA 2002, s.73.

59 LRR 2003, r.194.

60 LRA 2002, Sch 6, para 11(1); Limitation Act 1980, Sch 1, Part 1, para 6.

61 3.2 *The intention to possess*

presumption means that there is no adverse possession by a tenant and that any application under Schedule 6 to the Act should be by the tenant's landlord⁶³.

However, the presumption, by its nature, can be rebutted by evidence that the tenant actually intended the encroachment to be for his or her own benefit; and we are prepared to treat the fact that the application has been made as sufficient evidence of this intention for us to proceed with the application. Furthermore, there is another view, which is that the presumption is only concerned with who might have acquired title at common law to the estate concerned and does not alter the fact that the tenant is in adverse possession, and so is irrelevant where the application is one under Schedule 6.

If an application is made under Schedule 6 by a tenant and it is not clear from the application that the applicant is aware of these points, we shall write to make them and ask if they still want to proceed with the application.

If the application proceeds and the stage is reached where notices are served, notice will be served on the tenant's landlord that refers to the presumption and to the points made above.

13 Enquiries and suggestions

If you have a particular concern that is not covered by this guide, please contact us in advance of the transaction – see the *Contact details* panel on the front cover of this guide. If the transaction is particularly complex, it may be better if you make your enquiry in writing at the Land Registry office that will process your application.

If you have any comments or suggestions about our guides, please send them to:

Registration Change Group
Land Registry
Lincoln's Inn Fields
London
WC2A 3PH
(DX 1098 London/Chancery Lane)

You can obtain further copies of this and of all our guides free of charge from any Land Registry office or you can download them from our website.

14 Appendix – statement of truth

A statement of truth is a method of providing evidence in support of an application. As a result of changes made by the Land Registration (Amendment) Rules 2008, it can be accepted for land registration purposes instead of a statutory declaration.

Its adoption by Land Registry follows the precedent set by the civil courts in accepting a statement of truth as evidence in place of an affidavit or statutory declaration.

14.1 Requirements

For land registration purposes, a statement of truth is defined as follows⁶⁴.

- It is made by an individual in writing.
- It must be signed by the person who makes it (unless they cannot sign – see section 14.3 *Statement of truth made by an individual who is unable to sign it*).
- It need not be sworn or witnessed.
- It must contain a declaration of truth in the following form: *'I believe that the facts and matters contained in this statement are true'*.
- If a conveyancer makes the statement or signs it on someone's behalf, the conveyancer must sign in their own name and state their capacity – see section 14.4 *Signature by a conveyancer*.

62 *Smirk v Lyndale Developments Ltd* [1974] 3 WLR 91. The Court of Appeal approved what was said by Pennycuik V-C on the encroachment by a tenant point: [1975] Ch 317, 337. See also *Tower Hamlets v Barrett* [2005] EWCA Civ 923.

63 See the decision of the deputy Adjudicator in *Dickenson v Longhurst Homes Ltd* (REF/2007/1276); the decision can be downloaded from www.ahmlr.gov.uk/.

64 LRR 2003, r.215A.

14.2 Statement of truth signed by an individual who is unable to read

Where a statement of truth is to be signed by an individual who is unable to read, it must:

- be signed in the presence of a conveyancer, and
- contain a certificate made and signed by that conveyancer in the following form:

'I [name and address of conveyancer] certify that I have read over the contents of this statement of truth and explained the nature and effect of any documents referred to in it and the consequences of making a false declaration to the person making this statement who signed it or made [his] or [her] mark in my presence having first (a) appeared to me to understand the statement (b) approved its content as accurate and (c) appeared to me to understand the declaration of truth and the consequences of making a false declaration.'

14.3 Statement of truth made by an individual who is unable to sign it

Where a statement of truth is to be made by an individual who is unable to sign it, it must:

- state that individual's full name
- be signed by a conveyancer at the direction and on behalf of that individual, and
- contain a certificate made and signed by that conveyancer in the following form:

'I [name and address of conveyancer] certify that [the person making this statement of truth has read it in my presence, approved its content as accurate and directed me to sign it on [his] or [her] behalf] or [I have read over the contents of this statement of truth and explained the nature and effect of any documents referred to in it and the consequences of making a false declaration to the person making this statement who directed me to sign it on [his] or [her] behalf] having first (a) appeared to me to understand the statement (b) approved its content as accurate and (c) appeared to me to understand the declaration of truth and the consequences of making a false declaration.'

14.4 Signature by a conveyancer

Where a statement of truth is made by a conveyancer, or a conveyancer makes and signs a certificate on behalf of someone who has made a statement but is unable to read or sign it, the conveyancer:

- must sign in their own name and not that of their firm or employer, and
- must state the capacity in which they sign and where appropriate the name of their firm or employer.

14.5 Form ST1

Land Registry

Statement of truth in support of an application for registration based upon adverse possession

ST1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

If a joint statement is made by two or more persons, consequential amendments can be made to the text in the panels (for example, 'I' can be changed to 'we').

Land Registry is unable to give legal advice but our website www1.landregistry.gov.uk provides guidance on Land Registry applications. This includes public guides and practice guides (aimed at conveyancers) that can also be obtained from any Land Registry office.

Insert full name.

Insert full address.

Place 'X' in one box only.

This is for cases where the squatter is a company or firm, someone who has died, or is otherwise incapable of making the statement personally. Insert the name and address of the squatter.

Insert reasons and describe the relationship of the person making the statement to the person on whose behalf it is made. Enclose any relevant documentation (for example, office copy grant of probate).

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Place 'X' in the appropriate box(es) and complete the relevant statement.

State reference, for example 'edged red'.

Insert title number(s) if the land is already registered. If only part of a registered title is affected the affected land should be clearly identified on an attached plan or by means of an existing reference on the title plan.

Insert the dates the adverse possession started and finished. Any 'gaps' must be specified if the period is not continuous. Only include the period of adverse possession by the person making this statement or on whose behalf it is made.

1 I:

of:

make this statement in support of an application to Land Registry for registration based upon adverse possession.

2 Status

I am

- the person currently in adverse possession
 a person who was previously in adverse possession
 making this statement on behalf of:

who is currently or was previously in adverse possession but who cannot make this statement for the following reasons:

3 Property:

- The land is clearly identified on the attached plan and shown:
 The land is currently registered under title number(s):

4 Period of adverse possession:

Insert details of the acts relied on as establishing the necessary factual possession and intention to possess. Include details of the use made of the land by the owner and others.

5 Acts of adverse possession:

Insert details of the extent, if any, to which the land has been and/or is enclosed by fences or other boundary features. Specify the nature of these features, who erected them and when, and by whom they have been maintained. If there is a gate, specify whether there is a lock for it and, if so, who has the key. If any previous boundary features have been removed, specify when, by whom and in what circumstances this was done.

6 Enclosure of the land:

Place 'X' in the appropriate box(es) and complete the statement if applicable.

7 Permission to possess

The possession has been

without the consent, licence or permission of anyone at any time

by virtue of the following consent, licence or permission, which has expired or determined:

by virtue of the following consent, licence or permission:

Insert details of, for example, any tenancy or licence under which possession has been enjoyed, including the date of its expiry or determination.

Insert details.

<p>Insert name and address of any known freehold owner of the land or person thought to be the freehold owner (such as the person having the unregistered documentary title to the land or being the registered proprietor of registered land) and/or any tenants and/or mortgagees. If not known, please state this by inserting 'not known'. If the land is unregistered, copies of any title deeds or other relevant documentation should be lodged, if available.</p>	<p>8 Details of any known freehold owner of the land or person thought to be the freehold owner and related persons:</p>
<p>Insert details of any past or present contact with the freehold owner of the land or person thought to be the freehold owner and/or any tenants and/or mortgagees, including dates. If none, please state this by inserting 'none'. If there has been any dispute concerning the adverse possession, insert details, including dates. Attach copies of all available correspondence or other documents relating to the contact or dispute.</p>	<p>9 Contact with freehold owner of the land and related persons:</p>
<p>Insert details of such property. Where the title to this other property is registered, please quote the relevant title number(s) and provide copies of the relevant pre-registration title deeds. Where the title to this other property is unregistered, please confirm whether this is freehold or leasehold and provide copies of the relevant title deeds.</p>	<p>10 Other property owned during the period referred to in panel 4 by the person making this statement or the person on behalf of whom this statement is made:</p>
<p>Insert other relevant details, (if any).</p>	<p>11 Other relevant details</p>

Place 'X' in the box against each of the statements being made, and complete one or both of the final statements if they are being made.
You must make the first three statements, otherwise your application may be cancelled.

Insert details of the facts.

Insert details of the facts.

Place 'X' in the box against each of the statements being made, and complete the final statement.
You must make all these statements, and complete the final statement, otherwise your application may be cancelled.

Insert full details.

- 12 If the application is under paragraph 1 of Schedule 6 to the Land Registration Act 2002 AND you are the applicant
- Paragraph 1(3) of Schedule 6 to the Land Registration Act 2002 does not apply
 - I confirm that to the best of my knowledge the restriction on applications in paragraph 8 of Schedule 6 to the Land Registration Act 2002 does not apply
 - I confirm that to the best of my knowledge the estate is not, and has not been during any of the period of claimed adverse possession, subject to a trust (other than one where the interest of each of the beneficiaries is an interest in possession)
 - Should a person given notice under paragraph 2 of Schedule 6 to the Land Registration Act 2002 require the application to be dealt with under paragraph 5 of that Schedule, the facts supporting my reliance on one or more of the conditions set out in that paragraph are as follows:
-
- I am relying on paragraph 1(2) of Schedule 6 to the Land Registration Act 2002 and the facts supporting such reliance are as follows:
-
- 13 If the application is under paragraph 6 of Schedule 6 to the Land Registration Act 2002 AND you are the applicant
- Paragraph 6(2) of Schedule 6 to the Land Registration Act 2002 does not apply
 - I confirm that to the best of my knowledge the restriction on applications in paragraph 8 of Schedule 6 to the Land Registration Act 2002 does not apply
 - I confirm that to the best of my knowledge the estate is not, and has not been during any of the period of claimed adverse possession, subject to a trust (other than one where the interest of each of the beneficiaries is an interest in possession)
 - The full details of the rejected application are as follows:

If the person making the statement is unable to sign it, this wording will need to be amended to comply with rule 215A(5) and (6) of the Land Registration Rules 2003. In addition, and in cases where the person making the statement is unable to read, there will need to be an appropriate certificate: see rule 215A(4) and (5).

Where the application is being made under Schedule 6 and the person making this statement, or on whose behalf it is made, is the applicant, the statement must be made not more than one month before the date of the application.

WARNING

If the application proceeds, notice of the application (accompanied by a copy of this statement of truth) may be sent by the Registrar to the owner of the land or any person thought to be the owner and/or any other person upon whom the Registrar considers it necessary or desirable to serve notice.

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

14 I believe that the facts and matters contained in this statement are true

Signature (of person making this statement): _____

Print full name:

Date:

Land Registry advisory policy

We offer advice to our customers through our publications and enquiry services and through the day-to-day handling of applications.

We provide factual information including official copies of registers, title plans and documents, searches and details of our forms and fees.

We provide procedural advice to explain how the land registration system works and how to make applications correctly. This includes:

- advice in advance of an application, where this is requested
- where an application is defective, advice as to the nature of the problem and what options, if any, are available to put it right
- an approval service for estate layout plans and certain other land registration documents.

There are limits to the advice that we will provide. We will not provide legal advice.

This means that:

- we will not approve the evidence to be produced in support of a registration application before we receive the application
- apart from procedural advice, we will not advise on what action to take
- we will not recommend a professional adviser but can explain how to find one.

We provide advice only about real cases, not about theoretical circumstances. We will not express a view on questions where the law is complex or unclear except where the question arises on a live registration application.

In providing this factual information and procedural advice we will:

- be impartial
- recognise that others may be affected by what we say
- avoid any conflict of interest.

Information in this guide

The information in this publication is for the purpose of providing general guidance about Land Registry's procedures and policies. It is intended only as a guide and does not cover every situation that may arise. It also does not limit Land Registry's ability to use its discretion when appropriate to do so, within the land registration legislation.

Remember

Please note that Land Registry may be unable to process applications that are incomplete or defective and your application will risk losing its priority if we have to return it to you – see Practice Guide 49 – *Return and rejection of applications for registration* for more information.

Peter Collis
Chief Land Registrar

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