

# LAND REGISTRATION ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS

#### **Part 5: Charges**

#### **Realisation of security**

#### ***Section 54: Proceeds of sale: chargee's duty***

101. This provision is new. It deals with the following issue. Where a mortgagee exercises its power of sale the proceeds are held in trust. After satisfying certain payments, any surplus is held on trust for “the person entitled to the mortgaged property” (section 105 of the Law of Property Act 1925). The effect is that a mortgagee will hold the surplus on trust for any subsequent mortgagee of whose mortgage it has notice, actual, constructive or imputed. Where the mortgage relates to unregistered land, the mortgagee should search the Land Charges Register to discover the existence of any subsequent mortgages because registration constitutes actual notice. Under the Land Registration Act 1925 registration does not confer notice. Therefore, under the present law, a chargee should pay any surplus to the chargor unless he has been notified of the existence of a subsequent charge. Section 54 changes the law. As a result of the provision, the chargee will have to consult the register to determine who is entitled to the surplus.

#### ***Section 55: Local land charges***

102. Local land charges arise under a variety of statutory provisions and usually relate to costs of repairing a property or the amenities in the immediate vicinity of the property, such as roads. Local land charges bind a subsequent owner of registered land even when they are not registered at the Land Registry, although they normally appear on the local land charges register kept by the local authority. Some local land charges are charges on land to secure the payment of money, such as a charge to recover expenses incurred by a local authority because of non-compliance with a repair notice. Section 55 provides that although a local land charge binds the owner, powers to realise the money due cannot be exercised until the charge is registered at the Land Registry. The intention is to ensure that it is clear on the face of the register if someone has powers of disposal over registered land.