

# LAND REGISTRATION ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS

#### **Part 2: First Registration of Title**

##### *Chapter 1: First registration*

#### **Classes of Title**

##### *Section 9: Titles to freehold estates*

38. Where a person applies to be registered as proprietor of a freehold estate, he or she may (as now) be registered with an absolute, qualified or possessory title. A person may be registered with absolute title if the registrar considers that the title is such as a willing buyer could properly be advised to accept. Defective titles may still be registered as absolute if the registrar considers that the defect will not cause the holding under the title to be disturbed. Almost all freehold titles are, in practice, absolute. A person may, however, be registered only with qualified title, if the registrar considers that the applicant's title can only be established for a limited period, or subject to certain reservations. Qualified title is extremely rare but it might be appropriate, where, for example, the transfer to the applicant had been in breach of trust. Possessory title is only appropriate where the applicant is either in actual possession or in receipt of the rent and profits from the land, and there is no other class of title which may be registered. In practice, land is registered with a possessory title where the basis of the application is adverse possession, or where the applicant's title cannot be proved (usually because the title deeds have been lost or destroyed).

##### *Section 10: Titles to leasehold estates*

39. A person applying to be registered as proprietor of a leasehold estate may be registered (in substance, as now), as proprietor with an absolute, good leasehold, qualified or possessory title. Absolute title may be given if the registrar considers that the title is such as a willing buyer could be properly advised to accept, and approves that the lessor had good title to grant the lease. It is, therefore, only appropriate where the superior title is either registered with absolute title, or, if unregistered, has been deduced to the registrar's satisfaction. Again, even defective titles can be registered as absolute, if the registrar considers that the defect will not cause the holding under it to be challenged. A good leasehold title is such that a willing buyer could properly be advised to accept. It will be appropriate where the superior title is neither registered nor deduced. It can be given in the case of a defective title, if the defect will not cause the holding to be challenged. Qualified title may be registered if either the applicant's title or the lessor's title to the reversion can only be established for a limited period, or is subject to reservations. The circumstances for registration of a possessory title are the same as with freehold.