

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 6: Registration: General

Quality of title

Section 62: Power to upgrade title

109. **Section 9** sets out the three grades of title which with freehold title can be registered and section 10 sets out the four grades of title with which leasehold land may be registered. Section 62 empowers the registrar to upgrade to absolute any of the lesser titles when he is satisfied as to the title to that estate or, in the case of good leasehold title, satisfied as to the title to the superior estate. The registrar may also upgrade possessory title to absolute for either leasehold or freehold land if the proprietor is in possession and at least 12 years has elapsed since possessory title was first registered. The length of this period coincides with the length of the period after which most classes of landowner would have lost their right to reclaim the land under the Limitation Acts. There is power in *subsection (9)* for the Lord Chancellor to change that period by order, for use if limitation periods should change. The section lists the persons who have a right to apply for the upgrading of the title but also provides that if there is a claim outstanding at the time that the power to upgrade would be exercised, which is protected by the fact that a lower grade of title has been awarded, then the registrar cannot exercise his power.

Section 63: Effect of upgrading title

110. **Section 63** spells out the effect of upgrading title, which is merely left to be inferred by the current legislation. A possessory title preserves the rights of any person with a superior estate that might come forward, and a qualified title the rights of any person which are covered by the qualification (see sections 9 and 10). When freehold or leasehold title is upgraded to absolute, the registered proprietor ceases to hold the estate subject to those rights. A similar effect occurs when possessory or qualified leasehold title is upgraded to good leasehold, although this does not affect the rights of the superior owner to allege that the lease was not validly granted. There is another possible effect of upgrading title – some risk that an estate, right or interest may thereby be defeated, and the person who previously had the benefit might, therefore, suffer loss. In such circumstances, there would be entitlement to be indemnified for loss by reason of the rectification of the register (under paragraph 1 of Schedule 8).

Section 64: Use of register to record defects in title

111. **Section 64** deals with a situation not currently catered for under the land registration system, where something happens in the course of the ownership of the property that itself makes the title bad. The most obvious examples are: (1) when a lease is subject to a right of re-entry for breach of covenant and the tenant commits a breach of covenant entitling the landlord to end the lease; and (2) where a freehold title is subject to the payment of a rentcharge (with a right of re-entry if that payment is not made) and the

*These notes refer to the Land Registration Act 2002
(c.9) which received Royal Assent on 26 February 2002*

rentcharge is not paid. Section 64 enables the registrar to record in the register the fact that a right to determine a registered estate has arisen. Rules will govern when the registrar is under a duty to make the entry, and how such entries are made and removed.