

Family matters

The work of residential property solicitors can often overlap with that of family lawyers, especially in relation to protecting third-party interests at Land Registry, through either notices or restrictions. **Stephen Harker** explains

As the conveyancing partner in a niche family law practice, I am often asked to advise on how to protect third-party interests on the register at Land Registry arising from matrimonial, children- and civil partnership-created disputes. There are two ways of doing this – notice or restriction. The rest of this article looks at how each of these work.

NOTICES

There are two types of notice (under section 32(1) of the Land Registration Act 2002 (LRA 2002)) capable of registration – agreed notices and unilateral notices. In both cases, the notice records the burden of an interest of one party against the registered estate of another.

Agreed notices tend to be used to protect things such as a contract for the purchase of land where there is a longer than usual period of time between exchange and completion, or where a conditional contract or option has been granted to a buyer.

In matrimonial, children and civil partnership proceedings, however, there is invariably a dispute, so the type of notice used will be a unilateral notice.

HOME RIGHTS

As with all such scenarios, there is an exception – the protection of home rights. This is achieved as follows, by way of agreed notice. The Family Law Act 1996, as amended by the Civil Partnership Act 2004 (CPA 2004), makes detailed provision for the protection of home rights by way of registration. These largely repeat the protection previously afforded by the Matrimonial Homes Acts 1967 and 1983.

Sections 3 1(1) and (2) (as amended by section 82 of the CPA 2004) state that, where one party to a marriage or civil partnership has a beneficial interest in the family home, the other party's right of

occupation is a charge on that estate or interest. Home rights are defined in section 30(2)(a) and (b) (as amended by section 82 of the CPA 2004) and grant to the party with no beneficial interest in the family home the right to occupy it.

The right of occupation of registered land is protected by registration of a notice of home rights at Land Registry on form HR1 (rule 82(1) of the Land Registration Rules 2003 (LRR 2003) as amended by rule 12(2) of the Land Registration (Amendment) (No 2) Rules 2005). No fee

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is payable. All Land Registry forms are available on the Land Registry website at www.landregistry.gov.uk.

Home rights come to an end on the death of either party, or on the termination of the marriage or civil partnership (under section 32 of the Family Law Act 1996, as amended by section 82 of the CPA 2004), unless the court has ordered otherwise. In a disputed property case, because home rights effectively come to an end on the issue of the decree absolute or other court order, the protective steps mentioned later in this article should be taken.

UNILATERAL NOTICES

A unilateral notice can be entered without the consent of the owner of the property, and is particularly useful in the kind of circumstances envisaged in this article. An applicant is not required to convince the registrar that he or she has a valid claim to an interest in the property, but Land Registry will check that the kind of interest specified in the application is capable of protection by

notice. In all cases, the registered proprietor is not notified of the unilateral notice until after it has been registered. After such notification, the proprietor can apply at any time to have the notice cancelled, at which point the applicant would be required to prove the validity of their claim.

In a situation where home rights have come to an end (and the transfer of the property has not yet been registered) or where the property concerned is not the former family home, then a unilateral notice must be registered (under section 34 of the

LRA 2002) by using Land Registry form UN1. Form UN1 incorporates a statement of truth, which must be signed either the applicant or his or her solicitor, disclosing the nature of the applicant's interest. A fee of £50 is payable. In the case where a court order has not yet been made, the nature of the applicant's interest may be shown as: "the former [wife / husband / civil partner] of the registered proprietor having made application for a property adjustment order under section 24 of the Matrimonial Causes Act 1973 by proceedings in the [] County Court between [names of parties], bearing number []".

In the case where the court order in favour of the applicant has been made, but the transfer has not yet been executed and lodged at Land Registry, and no earlier notice has been registered, this might read:

"the registered proprietor [husband / wife / civil partner] has been ordered to transfer all [his / her] estate and interest in the property to [wife / husband / civil partner] by an order made in the [] County

Court dated in proceedings between [names of parties], bearing number []."

The effect of the registration of such a unilateral notice is that the registrar will not, without the consent of the applicant, register any dealing by the registered proprietor until the period of notice specified in the notice to the applicant of the proposed dealing has expired.

Unilateral notices can also be used wherever the interest to be protected can be described as a pending land action – that is, where there are court proceedings which relate to land or an interest in it. In this context, these can include property adjustment orders, particularly where the proceedings involve a number of properties in addition to the family home, and situations where a property is offered as security for the return of a child by order of the court.

RESTRICTIONS

A restriction (under section 40(1) of the LRA 2002) prevents a dealing or a specific type of dealing with a registered property. Such prevention may be restricted in time or be for an indefinite period, and it may be conditional (perhaps on the obtaining of the consent of a third party) or entirely unconditional.

Restrictions appear in the charges register of the official entries for any property held at Land Registry. They inform the outside world that the registered proprietor of the land is inhibited in the way in which he or she deals with it.

Schedule 4 of the LRR 2003 sets out certain standard form restrictions, each of which prevents the owner of the land from registering a particular type of transaction. Interestingly, none of these restrictions prevent the registration of a notice.

SEVERANCE

Where family proceedings are pending, one option to consider is severance. This is not the place to rehearse this issue in detail, but solicitors must have regard to both the advantages and disadvantages of this option. Where the home stands in the joint names of the parties as beneficial joint tenants, severance has the advantage of preventing the transferor acquiring the whole property, by operation of law, in the event of the other party's death before the determination of the family proceedings (see section 394 of the Administration of Estates Act 1925, and *Barton v Morris*

[1985] 2 All ER 1032). However, case law suggests that the actual claims are likely to be accrued to be equal, with no assumption of implied resulting or constructive trusts. If a party has contributed more than 50%, it is vital that they are advised accordingly; otherwise, there is likely to be a negligence claim against the solicitor acting.

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parties to the family proceedings as beneficial joint tenants, a notice of severance will need to be served by one party on the other; this will then need to be registered at Land Registry in form SEV, as required by rule 92 of the LRR 2003.

Severance results in the obligatory entry of a form A restriction under section 40 of the LRA and schedule 4 of the LRR 2003; such registration incurs no fee. An application of this nature will result in the following restriction being entered on the register:

"No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court."

It will be appreciated that the registration of a restriction does not specify the shares in which the net proceeds of sale of the property are to be held, so if there is an agreement on this issue, there should be a document (such as a declaration of trust) specifying those shares. However, registration of a restriction protects the share of any deceased former joint tenant while the future of the family home is being clarified.

FREEZING ORDERS

There are other forms of restriction registered as a result of family proceedings, depending on the wording of the court order. One of the more common types of order is a freezing order, whereby one of the parties owns assets including property, and is ordered not to sell or otherwise deal with such property. In cases where a court order states that a restriction is to be registered, the registrar is obliged to make the entry on the register (section

46 of the LRA 2002). Application will be in form RX1, and the fee payable will be £50. An application for the following restriction can be made where a freezing order has been applied for, but not yet made:

"Pursuant to an application made on [date] to the [name of court] for a freezing order to be made under [statutory provision], no disposition by the proprietor of the registered estate is to be registered

except with the consent of [name of the person applying] of [address], or under a further order of the Court."

When a freezing order has been made by the court, then the following restriction may be entered:

"Under an order of the [name of court] made on [date] (Court reference [number]), no disposition by the proprietor of the registered estate is to be registered, except with the consent of [name] of [address], or under a further order of the Court."

Any application will need to be accompanied by a certified copy of the order of the court, in addition to form RX1 and the fee.

HOW TO FIND OUT MORE

I hope I have managed to touch on some of the more common uses of the notice and restriction in family proceedings, but if you feel that this article has only served to muddy already clouded waters, then please refer to Land Registry Practice Guide 19, which deals with the subject in much more detail. ■



Stephen Harker is a partner in niche family law firm Dawson Cornwell. Property Section members can purchase his latest publication, *Matrimonial Conveyancing*, for only £67.73 – a saving of 20%. To order, contact the Sweet and Maxwell customer services team on sweetandmaxwell.orders@thomson.com or 0845 600 9355 and quote the reference 0641301A.