Browne Jacobson

Real estate quarterly update – July to September 2019

The latest real estate update aimed at in house lawyers (and other professionals) practising in the property / real estate sector.

07 October 2019

Cases

The David Roberts Art Foundation Limited v Riedweg [2019] EWHC 1358

A contract was not automatically void for failing to comply with the rules governing disposals of land by charities.

Read our case update

London Kendal Street No3 Ltd v Daejan Investments Ltd [2019] 7 WLUK 589

The first reported case in which a court has had to apply the 'new' test on ground (f) set out by the Supreme Court last year.

Read our case update

EE Ltd and Hutchison 3G UK Ltd v the Trustees of the Meyrick 1968 Combined Trust of Meyrick Estate Management [2019] UKUT 164 (LC)

Landowners were unable to show that they had a genuine intention to redevelop land to enable them to oppose the imposition of code rights under the Electronic Communications Code 2017.

Read our case update

Stanning v Baldwin and another [2019] EWHC 1350 (Ch)

Issues about prescriptive rights of way and drainage arose on the redevelopment of dominant land.

Read our case update

York House (Chelsea) Ltd v Thompson & Thompson [2019] EWHC 2203 (Ch)

Leases granted from joint landlords to one of them did not trigger the tenants' rights of first refusal under Part I of the Landlord and Tenant Act 1987.

Read our case update

Neocleous and another v Rees [2019] EWHC 2462 (Ch)

A name automatically added to an email by a 'footer' was signed for the purposes of satisfying section 2 of the Law of Property (Miscellaneous Provisions) Act 1989.

Read our case update

Legislation, consultation and guidance

Implementing reforms to the leasehold system in England

The Ministry of Housing, Communities & Local Government has published a response to the consultation that it launched in October 2018. The response sets out the intended measures to be implemented. The key points are as follows:

1. Subject to certain exemptions, it will be unlawful to grant a new long lease of a house out of freehold land or out of leasehold land acquired on or after 22 December 2017 (the day after the government first announced its proposals). The ban will also apply to assignments of leasehold land, if a house or houses have been developed on the land after the ban comes into force.
2. If a lease is granted in breach of the ban, the tenant will be entitled to enfranchise at no cost with no time limit. In addition, the Secretary of State will be permitted to introduce civil penalties for breach of the ban.
3. There will be no transitional period following the legislation coming in to force. In particular, there will be no exemption for options to acquire leasehold land entered into on or before 21 December 2017.
4. Draft regulations will provide a definition of a house. However, it will not include a property that lies above or below another structure.
5. Shared ownership properties, community-led housing, inalienable National Trust sites and excepted properties of the Crown Estate, retirement properties, home reversion plans and home purchase plans will be exempt from the ban.
6. The Right of First Refusal currently available to flat tenants under the Landlord and Tenant Act 1987 when a freehold is being sold will be extended to tenant house owners (both those falling within the exceptions to the ban and existing tenant house owners).
7. Subject to certain exemptions, ground rents in future long residential leases will be restricted to a peppercorn (i.e. £0) (rather than £10 as initially proposed in the consultation).
8. Ground rent provisions in excess of the cap will be unenforceable and tenants will be able to apply to the First-tier Tribunal to claim a refund of any incorrectly paid ground rent plus costs. Also, the courts will be able to impose civil fines on landlords who breach the cap.
9. The cap will not apply to community-led housing, retirement properties (although a buyer must be given a choice between a ground rent or a higher purchase price), mixed-use leases (i.e. a single lease covering commercial and residential property), home reversion plans and home purchase plans.
10. Again, there will be no transitional period in relation to the cap following the legislation coming in to force.
11. Freeholders on private and mixed tenure estates will have rights to challenge the reasonableness of estate service charges and to apply to the First-tier Tribunal to appoint a new manager (replicating statutory rights already available to tenants).
12. The government will consider introducing a Right to Manage for residential freeholders after the Law Commission has reported on its review of the Right to Manage for tenants.
13. Landlords and managing agents must provide leasehold information within 15 days when a home is being sold and the maximum fee for providing that information will be capped at £200 (plus VAT) (although the government expects a fee to be charged which reflects the reasonable cost of producing this information). Fees charged to update a set of replies will be capped at £50 plus VAT. Tenants will be able to challenge unreasonable fees in the First-tier Tribunal.

A copy of the government's response to the consultation can be viewed from here. No indicative timetable is given for the implementation of this legislation.

Government response to the House of Commons and House of Lords Joint Committee (the Committee) report on the draft Registration of Overseas Entities Bill (the Bill)

The Department for Business, Energy and Industrial Strategy has published its response to the recommendations set out in the Committee report on the Bill, which will establish, from 2021, a public register of beneficial owners of overseas entities that own or buy UK property to be maintained by Companies House.

In its response, the government states (amongst other things) as follows:

1. It considers that the definitions of 'overseas entity' and 'legal entity' in the Bill are sufficient, although it intends to publish guidance to help parties understand the requirements. It does not believe it to be appropriate for a UK agency to make decisions on the legal personality of a foreign entity and so does not consider that a pre-clearance mechanism (to indicate whether entities are registrable) is required.
2. It does not intend to lower the 25% ownership and voting threshold for the definition of beneficial ownership, although the thresholds will be kept under review.
3. It considers that listing the types of entities which may be eligible for exemptions could limit the ability to respond to changing circumstances.
4. It agrees with the Committee's recommendation that the register should include a mechanism to allow users to flag suspicious or potentially incorrect information to Companies House.
5. It will consider further how to ensure that the register is as accurate as possible at the point at which dispositions of land take place (the Bill currently only requires information to be updated annually).
6. It accepts the Committee's recommendation to explore the viability of requiring regulated professionals to verify beneficial ownership information submitted to Companies House.
7. It will consider further the idea of civil penalties in addition to criminal sanctions for breaches.

A copy of the government's response can be viewed from here.

A New Deal for Renting: Resetting the balance of rights and responsibilities between landlords and tenants

This consultation has been launched by the Ministry of Housing, Communities & Local Government and follows the government's announcement in April 2019 that it intends to repeal section 21 of the Housing Act 1988 (the 1988 Act). Section 21 broadly allows a landlord to terminate an assured shorthold tenancy (AST) without giving a reason at the end of the contractual term by giving at least two months' notice.

The main points to note are as follows:

1. As well as repealing section 21, the government intends to abolish ASTs entirely (on the basis that section 21 is the main distinguishing factor between ASTs and assured tenancies). All future tenancies granted under the 1988 Act will be assured tenancies (which cannot be terminated unless the landlord can prove a ground under Schedule 2 of the 1988 Act).
2. The government seeks views on whether there should be a minimum term for fixed term tenancies and whether the parties' use of break clauses should be restricted.
3. The government intends to carry over the protections for tenants introduced by the Deregulation Act 2015 and the Tenant Fees Act 2019 into the new regime (they currently only apply to ASTs).
4. The government intends to prohibit tenancy agreements from containing any rent review after the end of a fixed term tenancy. If a fixed term assured tenancy becomes a statutory periodic tenancy, the landlord can use the procedure under section 13 of the 1988 Act to adjust the rent.
5. The government seeks views on whether the proposed changes should apply to social housing landlords.
6. The government suggests amending ground 1 of Schedule 2 of the 1988 Act so it can be used if a family member of the landlord wishes to use the property as his/her home (this is currently restricted to the landlord). The government also suggests removing the requirement for a landlord (or his/her spouse or civil partner) to have lived in the property previously. It will still be necessary for a landlord to give notice at the beginning of a tenancy if it may want to rely on this ground. The government suggests allowing termination on this ground during a fixed term tenancy, but only after two years.
7. The government also suggests introducing a new mandatory ground under Schedule 2 of the 1988 Act where a landlord wishes to sell the property with vacant possession. This will be subject to the same prior notice requirement as ground 1 and, again, the government suggests allowing termination on this ground during a fixed term tenancy, but only after two years.
8. The government also seeks views on other amendments to the Schedule 2 grounds for possession (e.g. restructuring ground 8

(significant rent arrears) to allow a quicker outcome and to balance the needs of the parties).

9. The government wishes to explore whether the accelerated possession procedure (currently used for possession claims under section 21 of the 1988 Act) could be extended to applications for possession under section 8 of the 1988 Act for some or all of the mandatory grounds for possession under Schedule 2.
10. The government does not intend any legislation to be retrospective and proposes a six month transition period once the legislation is in force.

The consultation runs until 12 October 2019. A copy of the consultation can be viewed from here.

Government response to consultation on conservation covenants

A conservation covenant is a voluntary agreement that a landowner enters into with a conservation organisation or public body to do (or not do) something on its land for a conservation purpose (e.g. to conserve the natural or historic environment of the land). Conservation covenants are used in many common law jurisdictions, but not currently in England and Wales.

The Department for Environment, Food & Rural Affairs has published its response to the consultation that it launched earlier this year on a new statutory scheme of conservation covenants.

Subject to a few minor amendments, the government intends to proceed in England with the Law Commission's recommendations published in 2014 and intends to implement the reforms as part of the upcoming Environment Bill.

The main features of the Law Commission's recommendations are as follows:

1. A conservation covenant will be a private legally-binding agreement entered into between a landowner and a 'responsible body' (i.e. a limited class of organisations specified by the Secretary of State, such as a local authority, a government body or a conservation charity).
2. A conservation covenant can contain positive or negative obligations and will run with the land and bind future owners. The covenant will be registrable as a local land charge.
3. A conservation covenant relating to freehold land will last indefinitely unless the parties agree otherwise. A conservation covenant relating to leasehold land cannot last longer than the duration of the lease. To enter into a covenant, a tenant will need a lease originally granted for more than seven years.
4. A conservation covenant can be modified or discharged by agreement between the parties or by an application to the Upper Tribunal (Lands Chamber).
5. A conservation covenant can be enforced through the courts. A court can grant an injunction preventing breach, order specific performance to deliver the conservation outcomes or require the payment of damages (including exemplary damages).

The government's response to the consultation can be viewed from here.

Law Commission report on the electronic execution of documents

The Law Commission (LC) has published this report following the consultation paper it launched in August 2018.

The key points to note are as follows:

1. LC has confirmed that, based on existing law, an electronic signature is capable of being used to execute a document (including a deed), provided that the signatory intends to authenticate the document and that any relevant formalities (e.g. the signature being witnessed) are satisfied. However, despite this, LC recommends that the government may wish to consider codifying the law on electronic signatures to improve the accessibility of the law.
2. LC recommends that the government convenes an industry working group (with multi-disciplinary membership) to consider the practical and technical issues around electronic signatures and to provide best practice guidance for their use in different types of transactions.
3. LC believes that the requirement for a deed to be signed in the presence of a witness currently requires the physical presence of that witness. It therefore recommends that the industry working group looks at solutions to the practical and technical obstacles that exist

to video witnessing of electronic signatures on deeds and that, following this work, the government considers legislative reform to allow for video witnessing (assuming that is still considered to be an attractive option).

4. LC recommends that the government should ask it to carry out a review generally of the law on deeds to consider broad issues about the effectiveness of deeds and whether the concept remains fit for purpose.

LC's report does not cover registered dispositions under the Land Registration Act 2002 as they are being considered by a separate project conducted by HM Land Registry (at present, documents submitted to the Land Registry still require a wet-ink signature).

A summary paper and the full report can be downloaded from here.

Land Registry

Applications dealing with part of the land in a registered title

The Land Registry has announced that, from 15 July 2019, it is tightening up its procedures on the signing of plans in relation to documents dealing with part of land in a registered title.

If the document submitted is a deed, the plan must be signed by the disponor (e.g. the seller or the landlord). If the document submitted is an application form (e.g. a UN1), the plan must be signed by the applicant.

In both instances, plans signed by a party's conveyancer are acceptable.

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