

IT'S YOUR DUTY!

On 1st December 2003 stamp duty is replaced by Stamp Duty Land Tax ("SDLT"). Rather than being a tax on documents transferring a legal interest in land, SDLT is designed as a tax on the transaction itself.

One of the more important changes introduced by SDLT is the introduction of the "effective date", that is the date that SDLT liability arises. Traditionally, tax liability arose on documents, for example, the completion of a land transfer or a lease. However, SDLT is triggered on substantial performance of the transaction, for example where a tenant takes possession of the whole or substantially the whole of the premises to carry out repairs prior to completion or where substantially the whole of the sale price, say 90%, has been paid by the Purchaser.

This occurrence of "substantial performance" means that the Purchaser/Tenant needs to submit a SDLT return and pay the appropriate SDLT to the Inland Revenue before the transaction has actually completed!



Another important change by the SDLT regime is the increase to the nil band rate to £150,000 for commercial property purchases.

The calculation of SDLT in relation to leases is substantially different from the existing regime and will be based on the net rental value over the whole term of the lease rather than the average rent. Generally speaking, where the net rental value is below £150,000.00, no SDLT is payable. For high value leases the SDLT liability is likely to be significantly more than the existing regime. For example, it is estimated that a tenant that is currently liable to pay £1,000.00 stamp duty would, for a lease of 5 years, have an SDLT charge of approximately £4,000.00 - £5,000.00.



It is important to remember that the SDLT regime will apply to all contracts entered into on or after 11 July 2003 that are completed after 30 November 2003. Therefore, the implications of SDLT will need to be considered thoroughly in all land transactions even before the regime actually comes into force.

Finally, whilst it was previously the solicitor that submitted the Stamp Duty form to Inland Revenue, under the SDLT regime, the responsibility has become that of the taxpayer. A correct SDLT return signed by the taxpayer must be delivered to the Inland Revenue within 30 days of the effective date to avoid penalties and fines. It must also be noted that the Inland Revenue's powers for SDLT avoidance are also far greater than that under the existing regime.

INFORMATION

**If you have any queries on any aspect of Property Law please contact:
Adrian West at Hull on (01482) 323239 or Carol Bailey at York on (01904) 625790**

This bulletin is for the use of clients and will be supplied to others on request.

It is for general guidance only. It provides useful information in a concise form.

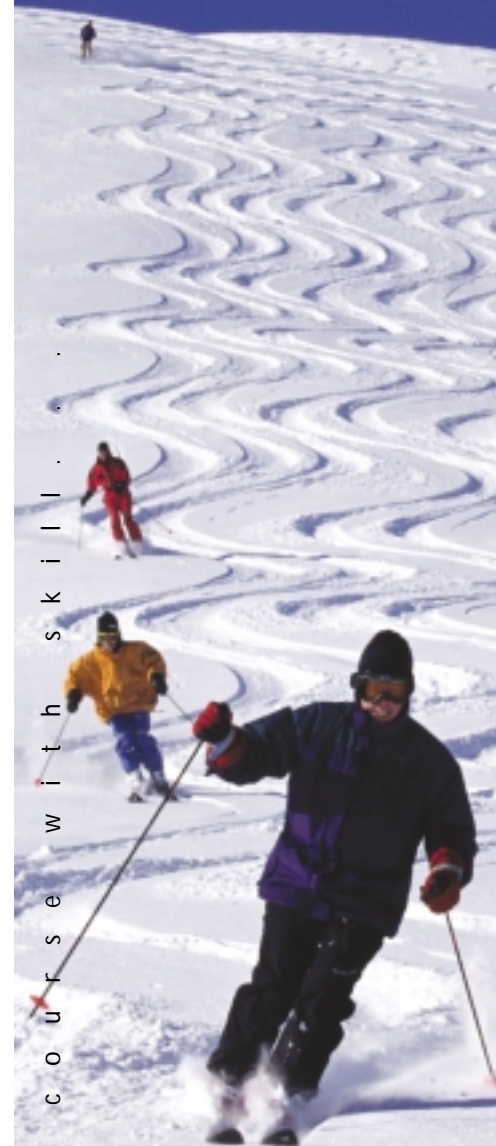
Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle,

Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

The law is stated as at 1 November 2003.

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KEEPING CONFIDENTIAL INFORMATION OFF THE REGISTER

Since 13 October 2003 anyone can apply to the Land Registry for a copy of a document that is kept by the Registry, if it relates to an application. Leases, charges, correspondence and forms can all be viewed. However, certain documents will be classified as "exempt commercial information documents" ("Exempt Documents"), on the basis that they disclose information that could prejudice somebody's commercial interests. Anyone submitting a "commercially sensitive" document to the Land Registry should apply to the Land Registrar on the appropriate application form, and list the grounds on which all or part of the document should be exempt from public scrutiny.

For those documents that were registered before 13 October 2003, they will be exempt from viewing until 13 October 2005 and if anyone wants the document to become an Exempt Document, he/she must apply to the Land Registry for the exempt status.

Copies of Exempt Documents will be left with the Land Registry, and they will be made available for viewing in an expurgated form (i.e. a copy omitting the

confidential information). If a third party wishes to see the whole Exempt Document, that party may apply for a complete copy by claiming that the omitted information is not sensitive or it is in the public interest to disclose that information.

If a lease does not become an Exempt Document, anybody will be able to discover details of concessionary rents, rent free periods, break clauses and other lease terms. Scrutiny of a non-exempt mortgage deed would reveal, among other things, the size of the loan and the repayment date. The impact of the proposed changes is greatly enhanced when taking account of the fact that from 13 October 2003 leases with more than 7 years to run will be registrable when granted or assigned or charged.

A number of professionals have expressed the view that the Land Registry will be overburdened by registration applications and requests to classify documents as exempt. Only time will tell. What is important is that landowners should consider reviewing their registered properties to determine whether they need to apply to the Land Registry to classify certain documents as exempt.

ADVERSE POSSESSION - NEW RULES FOLLOWING THE LAND REGISTRATION ACT 2002

Since 13 October 2003 owners of registered land have been in a better position to protect their property from squatters. Applications for adverse possession are possible after 10 years of possession (as opposed to the previous requirement of 12 years), and in such circumstances the registered proprietor will be notified that such an application has been made and given the opportunity to oppose the application.

The warning for registered proprietors is that if they do not oppose the application within 65 business days of it being made, the claim will be successful.

There are steps that registered proprietors can take to ensure a copy of any application for adverse possession is also served on their solicitors.

Where the registered proprietor does oppose the application, it will always be rejected, unless

- the squatter was encouraged to take up possession by the registered proprietor
- the squatter is for some other reason entitled to be registered as proprietor (e.g. if the proprietor holds the property as the squatter's trustee)
- there has been a mistaken belief as to the boundary of the land with adjacent land, provided that the land that the application relates to has been registered for more than a year

However, the squatter's rights do not automatically end when the application has been rejected. If the squatter remains in occupation for a further two years after the rejection of the application, he may apply using the same method as before; but in this situation the registered proprietor will not be able to reject the application. The squatter will then become the registered proprietor.

Owners of unregistered land will not be protected by the Land Registration Act 2002. Land owners should seriously consider an application for voluntary registration of their property.

COMPULSORY REGISTRATION OF LEASES

Under the new Land Registration Act 2002 which came into effect on Monday 13 October, new leases granted for more than 7 years and transfers of a current lease with more than 7 years left to run must be registered at HM Land Registry. Originally only leases of more than 21 years required registration, but under the new regime the vast majority of commercial leases will now need to be registered to protect the lease from being deemed void. Furthermore, leases of any length which take effect more than 3 months after they are granted, or discontinuous leases (i.e., timeshare agreements) of any length must also be registered.

In addition to the extra legal requirement the Act imposes, there is inevitably also a financial imposition in that a sliding scale registration fee will be payable to the Land Registry based on the length and value of the lease. Combined with the imposition of the new Stamp Duty Land Tax, it is likely that many commercial landlords and tenants will consider entering into leases which are 7 years or less in duration. However, this is only likely to be of assistance in the short term as it is the ultimate goal of the Land Registry to make all leases of over 3 years subject to registration.

There will undoubtedly be many pitfalls with the new rules, many of which will not become evident until many months, or even years, have passed. Of most immediate concern however, are the practical difficulties which will arise, such as the need for landlords and tenants to agree and prepare accurate plans for registration, as frequently low-quality plans or no plans at all are prepared for unregistered leases. Also of concern is the fact that the Land Registry is unlikely to be able to cope with the increased number of registrations and this will inevitably lead to increased costs, complication and delay. It is more important than ever to seek legal advice when faced with a leasehold transaction.

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