



PROPERTY OCCUPIED ON ULTRA LONG LEASES

The majority of property in Scotland is held on an ownership Title recorded in the Register of Sasines or registered in the Land Register. However, a small number of properties are held on what are referred to as ultra-long Leases (sometimes referred to as Tacks). These Leases are often for hundreds of years and are treated very similarly to ownership Titles. Legislation has now been passed by the Scottish Government to the effect that some ultra-long Leases will become ownership Titles automatically on the appointed day which is 28th November 2015.

It is important that if any of a Congregation's titles are held on ultra-along Leases, that action is taken to ensure that they are automatically converted to Ownership Titles.

What is a Qualifying Lease

The Lease may be referred to either as a Lease or a tack in the Deed itself.

It will have been granted for an initial period in excess of 175 years and the rent will be less than £100 per year.

The Lease has to be registered in either the Land Register or recorded in the Register of Sasines. If the Lease is in respect of a private dwelling house there must be at least 100 years of Lease still to go. Included in the calculation for the 100 years, is any period under which the Landlord would be obliged to continue the Lease at the Tenant's request.

Where the Lease is not for a private dwelling house the then expired period including any compulsory extension must be at least 175 years.

There are a number of special Leases which will not fall within the definition of qualifying lease such as a harbour let or one for the sole purpose of allowing the installation and maintenance of pipes or cables.

Compensation to Landlords

The legislation provides for a Landlord serving notice on a Tenant in order to obtain compensation payment based on the rent payable. The Landlord requires to do this within two years from the appointed day, that is 28th November 2015.

There is provision in the Act for any payment over £50 to be paid by instalments with a maximum compensation payment of £500. The Tenant can opt out of the automatic conversation but I can see little reason to do so other than to avoid paying compensation.

Consequences of Changes

Any rent that is payable in terms of the Lease will cease to be payable on the appointed day.

Servitudes may be created in certain circumstances and some of the Lease conditions may be converted into real burdens affecting the ownership title.

What You Need To Do

Although the appointed date is more than a year away, it is necessary to check any ultra-long Lease now to ensure that it is appropriately registered or recorded and to decide what effect the appointed day will have on the Lease. If you know that any of a Congregation's properties are held on a long Lease or were conveyed to them by a document called an Assignment rather than Disposition, contact should be made with the Law Department so that the matter can be discussed and the Lease document examined to identify the effect of the legislation. This can then be discussed with the Congregation and provision made for the appointed day and any compensation which may be payable to the Landlord.

After the Appointed Day

Long Leases which are not recorded in the Sasines Register or registered in the Land Register one year before the appointed day will be exempt from conversion on the appointed day. However, there is a mechanism for recalling the exemption. The conversion to an ownership title will occur on 28 November or 28 May six months after the recall of exemption notice is registered.

If a Congregation feel that they may be Landlords under an ultra-long Lease they should also make contact so that any notice for compensation can be served at the appropriate time.

Contact should be by email to Lawdept@cofscotland.org.uk or by telephoning 0131 225 5722 and asking for the Law Department.