



## 10 TRICKY ISSUES AND HOW TO DEAL WITH THEM

## PROFESSIONAL CONFERENCES

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## USEFUL WEBSITES

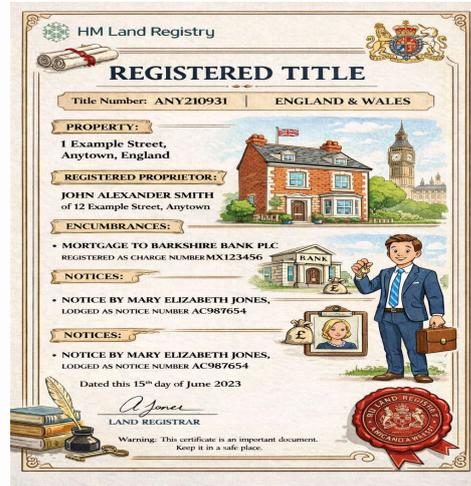
- The Property Litigation Association.
- Property Protocols – Boundary Dispute Protocol.
- RICS
- RICS Professional Standard – Boundaries: procedures for boundary identification, demarcation and dispute resolution.
- RICS Boundary disputes mediation service.



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# NOTICES ON REGISTERED TITLES

- The Basics
- Protecting an interest in land
- Drawing attention to an interest in land
- But not validating the interest
- It is important to audit the title



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# AUDITING THE TITLE

## Unilateral Notice

- What is it protecting?
- Should it be removed
- Who can remove it?

## Agreed Notice

- What is it protecting?
- Should it be removed
- Who can remove it?



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# REMOVING NOTICES

## Unilateral Notices

- Does it protect an interest in land?
- Cancellation under Section 36 LRA 2002.
- Challenge under Section 36 LRA 2002.

## Agreed Notices

- Does it protect an interest in land?
- Cancellation under Section 36 LRA 2002.
- **Section 77 LRA 2002** - the applicant requires reasonable cause to lodge an application.



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# THE LAND REGISTRATION ACT 2002

## Section 35 Land Registration Act 2002

- 1) If the registrar enters a notice in the register in pursuance of an application under section 34(2)(b) (“a unilateral notice”), he must give notice of the entry to:
  - a) The proprietor of the registered estate or charge to which it relates, and
  - b) Such other persons as rules may provide.
- 2) A unilateral notice must:
  - a) Indicate that it is such a notice, and
  - b) Identify who is the beneficiary of the notice.
- 3) The person shown in the register as the beneficiary of a unilateral notice, or such other person as rules may provide, may apply to the registrar for the removal of the notice from the register.

## Section 36 Land Registration Act 2002:

- (1) A person may apply to the registrar for the cancellation of a unilateral notice if he is:
- a) The registered proprietor of the estate or charge to which the notice relates, or
  - b) A person entitled to be registered as the proprietor of that estate or charge.



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## KEY ISSUES

- Rule 34(3) (a)-(c) of the Land Registration Rules 2003 provides for the circumstances in which an agreed notice can be registered:
  - a) The applicant is the registered proprietor, or the person entitled to be registered as proprietor of the estate or charge that is burdened by the interest to be noted.
  - b) Either the registered proprietor or the person entitled to be registered as proprietor of the estate consents to the entry of the notice.
  - c) The registrar is satisfied as to the validity of the applicant's claim.



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## BOUNDARIES – RESOURCES

HM Land Registry Practice Guide 40 + supplements

Emmet & Farrand on Title Chapter 17

RICS Professional Standard

Boundaries: procedures for boundary identification, demarcation and dispute resolution

PLA Boundary Disputes Protocol

Guidance Note  
Supplementary Guidance Note



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## THE BOUNDARY DISPUTE PROTOCOL

- Check the Register, not the title plan
- Find the unregistered deeds and documents and the old root of title.
- Check potential sources of information – statutory declarations, photographs, and tenancy agreements.
- Be careful when instructing Chartered Land Surveyors
- Check for previous adverse possession claims
- Promote and attempt negotiation



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## SETTING REALISTIC CLIENT EXPECTATION

- Title plans cannot be relied upon.
- Explain the problem with identifying the legal boundary.
- Give the client information as to how the property is described.
- Beware of relying on legal presumptions.
- Consider the use of a boundary agreement or a determined boundary application.



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## BOUNDARIES: A 7 POINT GUIDE

### 1. Point 1

- Start with the operative Conveyance.
- Detective work from the office copies/pre-registration title deeds.
- If you can't find it – best evidence rule (Steward v Gallop [2010] EWCA Civ 823 per Lloyd LJ at [68]).



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## BOUNDARIES: A 7 POINT GUIDE

### Point 2.

#### **Can you reliably determine the position of the boundary from the Conveyance?**

- Look at the description used in the conveyance (parcels clause) having regard to the plan and any other provisions of the conveyance.
- Different weight may be attached to a plan depending on the quality and scale, and whether it is expressed to be “for the purpose of identification only” or whether the land is expressed to be “more particularly delineated” on the plan.



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## BOUNDARIES: A 7 POINT GUIDE

### Point 3.

If not, consider extrinsic evidence:

- Physical features on the ground at the time of the conveyance
- Maps, plans, photographs, estate agents' particulars
- Post-conveyance conduct provided it is of probative value
  - Performance of covenants in conveyance
  - Subsequent conveyancing
  - Subsequent boundary features



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## BOUNDARIES: A 7 POINT GUIDE

### Point 4.

The use of evidential presumptions

- Hedge and ditch presumption
- Ownership of a road (ad medium filum)
- Non-tidal rivers and streams (ad medium filum aquae)
- HM Land Registry Practice Guide 40, supplement 3



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## BOUNDARIES: A 7 POINT GUIDE

### Point 5.

Overall – the question is one of interpretation (construction)

- A commonly used practice in construing the conveyance against the background of its surrounding circumstances is to ask where a reasonable purchaser, looking at the evidence of the actual and known physical condition of the land at the date of the conveyance, and having the attached plan in hand, would think the boundary would be.
- *Pennock v Hodgson* [2010] EWCA Civ 873 per Mummery LJ under the heading “How to construe a conveyance” and *Acco Properties Ltd v Severn* [2011] EWHC 1362 (Ch) under the heading “Principles”.



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## BOUNDARIES: A 7 POINT GUIDE

### Point 6.

The legal boundary has to be somewhere

- However difficult it is, the court’s task is to determine the position of the legal boundary as best it can from the available evidence. It cannot simply say the boundaries are too uncertain and leave the land conveyed “fuzzy at the edges”.
- *Neilson v Poole* (1969) 20 P & CR 909 per Megarry J at 915.



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## BOUNDARIES: A 7 POINT GUIDE

### Point 7.

Remember that a boundary may move over time.

- Boundary agreements
- Adverse possession
- Proprietary estoppel



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## BOUNDARY AGREEMENTS

- Land Registry Guidance.
- Is the agreement binding on the parties to the agreement?
- Is the agreement binding on subsequent owners?
- White v Alder and another [2025] EWCA Civ 392; [2025] EGCS 61.
- Demarcation agreements are binding on subsequent owners.



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## BOUNDARY OR DEMARCATION AGREEMENTS

- White v Alder and another [2025] EWCA Civ 392; [2025] EGCS 61 the agreement is binding on the parties to the agreement and subsequent owners.
- The agreement is created solely for the purposes of agreeing or demarcation of the boundary.
- Requires a Practice Guide 40 compliant Plan which should be signed by the parties.
- HMLR should note the agreement in the relevant titles

### • **Boundary Agreement OR Demarcation Agreement**

This agreement is made on .....between (Owner 1 of .....)title to which is registered under title number XX12345 and (Owner 2 of .....)title to which is registered under title number XX67891.

The parties agree that the legal boundary between the land within their respective registered titles and running from the point marked 'A' to the point marked 'B' on the plan attached is as shown by the red line drawn between those points.

Signed

[Witness (Signature, name and address)]

Signed

[Witness (Signature, name and address)]”



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## DETERMINED BOUNDARY APPLICATIONS

- Section 60 Land Registration Act 2002.
- What does a determined boundary show?
- It is not mediation or a means of dispute resolution.
- It is of limited application particularly where the boundary is in dispute.
- Where an objection is lodged the likelihood is the matter will be referred to First Tier Tribunal unless the parties can reach agreement as to the location of the boundary or the withdrawal of the application.
- This form of application can stop the clock ticking with regard to an adverse possession claim.



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## COMBINING REGISTERED TITLES

### Section 3(4) Land Registration Rules

- “The registrar may amalgamate two or more registered titles or add an estate which is being registered for the first time to an existing registered title if the estates are of the same kind and are vested in the same proprietor:
  - a) On the application of the proprietor of the registered estate and of any registered charge over it, or
  - b) If he considers it desirable for the keeping of the register of title.”



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## CONDITIONS FOR AMALGAMATION

- a) Titles must be owned by the same person and must be owned by them in the same capacity.
- b) Titles must have the same class of title and be the same tenure.
- c) There must be a specific need and legitimate reason for the amalgamation to take place.
- d) The amalgamation must be beneficial from the Land Registry’s perspective and be worth the time it takes to create the new title.



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## PRIORITIES FOR AMALGAMATION

- Amalgamation addresses a boundary discrepancy.
- Amalgamating areas of land comprising a housing development.
- Amalgamation assists in identifying a right of way that benefits land registered under several titles but only abuts one of them.



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## AMALGAMATION IS UNLIKELY WHERE:

- A request to amalgamate isolated plots of land, which would better be dealt with as a single, multi-title application.
- An amalgamation that would result in a very complex register and title plan with a multitude of title plan references.
- Where amalgamation would lead to a very large title plan. Plans larger than A3 can create printing problems for customers.



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## PRACTICAL PROBLEMS

- a) The potential to extinguish easements where dominant and servient tenements merge.
- b) The potential to extinguish restrictive covenants for the same reason in that burdened and benefiting land cannot be within the same registered title.
- c) The risk due to inaccurate HM Land Registry mapping for the titles to be conjoined, but Land Registry title plans fail to abut.
- d) Ensuring the position with regard to legal charges on the respective titles is clarified, with the obvious position being that existing charges are discharged and a new charge taken over the newly conjoined title.



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## ADVISING ON SEARCH RESULTS

### **PRE EXCHANGE SEARCHES**

- Essential Searches
- Necessary Searches
- Location Specific Searches
- Essential Reports



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## ADVISING ON ADVERSE ENTRIES

- Do you report on all entries or adverse entries only?
- Are further investigations required to quantify or assess risk?
- Who is going to undertake additional investigations or enquiries?
- What will be reported on?



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## PRE-COMPLETION SEARCHES

- The official search
- Adverse entries
- Land Charges searches
- Company searches
- Bankruptcy searches



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## DEALING WITH ADVERSE ENTRIES

- What is the nature of the adverse entry?
- Does it affect the property or the title?
- Can the adverse entry be removed?
- How can it be removed?
- Be careful with undertakings?



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## PROTECTING CONTRACTS

- When should a contract be protected?
- An exchange of contracts creates an equitable interest in favour of the Buyer.
- When there is a likely delay between exchange and completion.
- When the contract is vulnerable or likely to be challenged.
- Completion is delayed.



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## HOW SHOULD THE CONTRACT BE PROTECTED ?

- Unilateral Notice
- Agreed Notice
- Restriction
- What is the best form of protection?



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## RESTRICTIVE COVENANTS

- Client Objective.
- Identifying the existence of the covenant.
- Should you investigate enforceability?
- How should it be investigated?
- Can we obtain defective title insurance?
- What should the policy cover?



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## DEFECTIVE TITLE INSURANCE

- Be aware of client objective
- What is the title problem?
- Is defective title the correct solution?
- For the client
- For future land use or development



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## TIPS

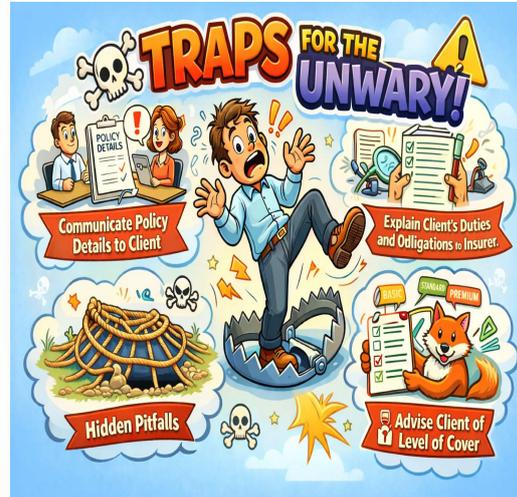
- Does the client understand the defect?
- Is there an off the shelf policy?
- Does it need to be bespoke?
- Can the policy be assigned?
- Can the level of cover be topped up?



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# TRAPS

- Ensure the client is aware of the cover provided.
- Is the extent of the financial cover sufficient.
- Have you explained the duties and obligations owed to the insurer?
- AND that those duties and obligations are ongoing!!!



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# TRAPS

- Should an investigation of the defect in title be investigated?
- YES – to see what solutions might be available.
- Yes – so that sufficient information can be provided to the insurer to obtain cover.
- Yes – to see if there are factors that might drive down the premium.



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# TRAPS

- Should an investigation of the defect in title be investigated?
- **NO** – there is a risk that investigation creates a disclosure issue to third parties making it impossible to insure and which invalidates cover if obtained.
- **CHECK WITH THE INSURER BEFORE UNDERTAKING INVESTIGATIONS WHICH RISK DISCLOSURE.**
- **IF IN DOUBT DON'T INVESTIGATE.**



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# PRACTICAL ISSUES

- Be careful with auction sales particularly online auctions and auction packs.
- **BECAUSE:**
  - a) If the auction pack indicates a use for the property being sold the pack should contain information about any title issues that could impact on that use – see *SPS Groundworks & Building Ltd v Mahil* [2022] EWHC 371 (QB).
  - b) A disclosure of a defect in title or the existence of a defective title insurance policy could invalidate the policy.



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## DEALING WITH DEFAULT AT COMPLETION

- Avoiding Problems.
- The problems with undertakings.
- Essential for the conveyancing process but there are risks.
- The PM Law Saga.
- In exceptional circumstances a Buyer's Conveyancer could be negligent in accepting an undertaking.



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## UNDERTAKINGS

- Have we assessed the risk?
- Who is providing the undertaking?
- Does the amount to redeem exceed the level of the providers professional indemnity cover?
- Remember to record undertakings and be careful about giving undertakings on the "hoof".



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## DELAYED COMPLETION

- Are the parties communicating?
- If not, why not.
- Ensure your client is kept informed and ensure proper instructions are obtained.
- Consider which remedies are appropriate.
- If you are acting for the defaulting party check if there might be any basis to defend any potential proceedings.



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## WHAT HAPPENS WITH THE DEPOSIT?

- If a reduced deposit has been paid the balance is payable if the buyer defaults.
- The Seller should normally be entitled to retain the deposit.
- BUT be aware of S49(2) LPA 1925 the Court has a discretion what is to be done.
- It is an unusual jurisdiction as the Court can only order the retention or return of the deposit and cannot apportion it between the parties.



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## CO-OWNERSHIP

- Extract as much information as possible from the client.
- Ensure clients are aware of the choices available to them.
- Assume Nothing.
- Beware being instructed to draft documentation which is inconsistent with the contributions of the parties and their actual beneficial interests.



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## CO-OWNERSHIP

- Explain to the client's choice.
- Explain the consequences of choice.
- Provide advice on choice.
- Remind clients of choice when they are asked to sign the transfer.
- Advise clients to keep documentation under review particularly if the beneficial interest changes.



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## WHO OWNS THE PAPER TITLE?

- This is an important issue
- Dissolved overseas companies
- Dissolved British Companies where title has been disclaimed
- Persons lacking capacity



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## FACTUAL POSSESSION

- An appropriate degree of physical control
- Single and exclusive possession
- Dealing with the land as **AN OCCUPYING OWNER**
- Unequivocal use



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## AN INTENTION TO POSSESS

- Enclosure is not necessary
- Must be unequivocal
- Intention to exclude the world at large
- Does NOT require an intention to own or to acquire ownership



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## POSSESSION WITHOUT THE OWNERS CONSENT

- Does the adverse possessor have lawful title?
- Yes – cannot claim adverse possession?
- Except if title is within registered title and within another title.



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## RESTRICTIONS ON APPLICATIONS

- Proprietor is an enemy or is detained in enemy territory or has been so in preceding 12 months before application.
- Proprietor due to mental disability cannot make relevant decisions.
- Applicant is party to relevant court proceedings.
- Estates held in trust at any time during the period of ten years ending on the date of application (unless interests of each of the beneficiaries was an interest in possession).



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## PROCEDURE

- Presumes intervention by registered proprietor
- Ensure clients are reminded to keep addresses for service up to date
- Watch out for rejected applications
- What happens if the proprietor objects?



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## PROCEDURE CONTESTED APPLICATIONS

- Proprietary estoppel
- Some other reason (interests of justice)
- Neighbour ground (adjacent land) and reasonable belief land belonged to applicant.
- When is the reasonable relief held?



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## BEWARE

- Applications relating to land that could be highway
- Beware applications that relate to land that is common land or village green
- Neighbour encroachment claims
- Second applications
- The danger of adverse possession claims for landowners



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## ADVERSE POSSESSION AND BOUNDARY ISSUES

- Property Protocols – The Boundary Dispute Protocol
- The Determined Boundary Application Process
- Be careful with the accuracy of plans
- The Boundary Condition and reasonable belief the applicant owns the land



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## BOUNDARY DISPUTES

- Contested applications to HMLR
- Jurisdiction of First Tier Tribunals
- County Court and High Court Proceedings



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## ADVERSE POSSESSION

- The reasonable belief in ownership dilemma
- When must the belief exist?
- Why would you apply for adverse possession if you had a reasonable belief it belonged to you?
- Brown v Ridley - Decision of the Supreme Court awaited



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## LOST OR MISSING TITLE DEEDS

- Land Registry Practice Guide 2
- Problems with first registration
- What title can you acquire?
- Can you cover risk with title indemnity cover?
- What about the registration gap



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## UPGRADING POSSESSORY TITLE

- Section 62(1)-(5) of the Land Registration Act 2002.
- Possessory title in existence for at least 12 years
- AND
- Land Registry is satisfied that the proprietor is in possession



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# FRAUD

- Problems with the open register
- Seller identity fraud is still an issue
- Does the Law Society Code for Completion by Post exonerate the solicitor for the buyer?
- What is good practice?
- Warn the buyer about risk
- Protect with an indemnity policy



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# PROPERTY FRAUD

- Addresses for Service
- Fraud Alert Services
- LL Restrictions
- Warn the client about risk



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