

A guide to Northern Irish property law and practice - as compared to England and Wales

PART 2 - Land Registration and Searches



Land registration and property searches

The Northern Ireland system of land registration is similar to the English system, but there are also substantial differences.

There is a Land Registry and a registration of title system. Title "absolute" is the best class of title available in the case of freehold land. Compulsory first registration only applied wholesale from 2003. Many areas remain unregistered. Inevitably the interests at the top ends of the title "pyramids," which we mentioned in part 1 of this guide, will remain unregistered too.

In respect of leases, only those with a term exceeding 21 years are capable of registration in their own right. Given the unregistered pyramids issue, many leases are registered with "good" leasehold title. This is considered acceptable.

Registered titles are called "folios." Title plans are called "maps."

Land Registry title registers are not as comprehensive as they would be in England. Therefore it is still good practice for the unregistered root of title and other documents to be deduced by the seller and reviewed separately.

First registration at the Land Registry can take a considerable time; over a year in some cases. Also the Land Registry will not survey the boundaries itself; so boundary mistakes are more prevalent. Boundary inspections/surveys by local agents are advisable.

In some instances (usually when historical agricultural land is involved), unusual types of legal and beneficial ownership still exist, and in Northern Ireland legal title can also be held as tenants in common. Generally, legal title is otherwise held as joint tenants (with the beneficial interest being instead held as tenants in common if required) as it can be in England.

There is however, no concept of full title guarantee in Northern Ireland. Rather, the Conveyancing Act 1881 implies similar covenants when a seller sells as "beneficial owner." This was also the case in England prior to the Law of Property (Miscellaneous Provisions) Act 1994.

When it comes to registering certain protections against the title, only Cautions or Inhibitions can be registered in Northern Ireland. There is not the same detailed list of Land Registry prescribed Restrictions as in England. The forms used, including the standard forms of transfer (Form 9, 10 or 11 as opposed to a TR1 or TP1) are entirely different in Northern Ireland. Unless witnessed by a solicitor, the deed must also be witnessed by 2 people (neither of whom is a party to the deed).

Possessory Title can be claimed in much the same way as in England pursuant to the Limitation Order (NI) 1989, after possession for the prescribed time period which is 12 years in most cases; with the ability to then upgrade the title after 15 years as well.

The system which applies to unregistered land is much like the English Land Charges system. Summaries of essential features of deeds and other

conveyancing documents are lodged in the Registry of Deeds in Belfast, which can be searched against, and such registration governs priorities.

Property searches

The searches available are not as comprehensive as in England.

Generally, searches of the Environment Agency cannot be requested. Although it may be possible to enter into correspondence with the Environment Agency on specific issues.

Chancel Repairs (Chancel Check) do not apply.

Plans can be requested in respect of Water & Drainage, Local Highways and other utilities locations. Only certain limited areas of Northern Ireland are served by mains gas however; although the network is expanding.

An equivalent Index Map search can also be carried out to ascertain if land is registered; as can priority searches. These are usually done along with a search of the Enforcement of Judgments Office. It will reveal orders charging land and is an essential additional search to carry out in Northern Ireland.

Due to the history of direct rule from Westminster and that fact that certain powers have yet to be devolved from central government, the Northern Ireland equivalent of a Local Authority search actually comprises 3 separate searches:

Department of the Environment Property Search

This Central Government Department search deals with such matters as planning history, road adoption, public sewers and mains (but does not provide plans), planning enforcement notices, listed buildings and compulsory purchase;

Statutory Charges Register Search

This search of a centrally maintained register deals with such matters as conservation areas, planning restrictions, notices relating to roads and notices relating to sewerage;

Local Borough Council Property Search

This search deals with what is under the responsibility of relevant local council, which as things currently stand in Northern Ireland is more limited than the English equivalents. It covers such matters as compulsory acquisition, building control notices and public & environmental health notices.

Reporting procedures

We can adapt any funding or investing institutions' standard title reports to deal with these Northern Ireland specific differences. In addition, the widely used City of London Law Society Certificate of Title has also been adapted for use in Northern Ireland, and can be produced in a form acceptable to all major lending institutions when required.

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This commentary is current as at 9 September 2013 and is intended for guidance only. Full legal advice should be obtained in relation to your particular circumstances and commercial objectives on a case by case basis.