

**CLLS LAND LAW COMMITTEE
KEY POINTS FROM EMERGENCY MEETING
HELD ON 27TH MARCH 2020**

1 Statutory declaration for contracting out etc – one option is for a solicitor to do this on the tenant’s behalf before an independent adult family/household member who is a solicitor with a practising certificate. The tenant’s authority should come from a director of the company or be evidenced by a Board minute. Or a simple declaration can be used if there is at least 14 days between the warning notice and the point of contractual commitment.

2 Land Registry –

Land Registry produces general published guidance on COVID-19 impacts and the guidance will be updated as needed. Land Registry has also on 27 March circulated to the PSLs answers to a number of questions. The following are some of the more important ones in tabular form:

<i>Does HM Land Registry plan to relax its rejection policy during this unprecedented time?</i>	<i>We are not currently relaxing our rejection policy or our requirements for registration. However, as part of our COVID19 business planning, we are reviewing many areas of policy and will inform customers if this changes.</i>
<i>Will applications be cancelled on the dates stated in requisitions, or will they be automatically extended? Will we be informed when a cancellation date is extended?</i>	<i>In view of the issues caused by COVID-19, we have decided to extend all current cancellation dates until 1 June 2020. No warnings of cancellation will be issued in the interim. Our position on cancellations will be reviewed before the extension period ends, we will share further information as soon as an update is available.</i>
<i>Is there anything we/law firms can do to make the lives of the HMLR employee’s any easier?</i>	<i>Please review online guidance notes before contacting the Customer Support Centre. Please be assured that we will not cancel applications without warning, and we will grant extensions of time to deal with outstanding requisitions.</i> <i>Business e-services customer can check their current applications using Application Enquiry in Portal.</i>
<i>Would be possible to relax the rules about firms submitting applications on behalf of another firm via the portal? I can see situations where the landlord/seller completes a transaction on the basis that they hold all the completion documents. However, they are not able to send the completed documents to the tenant/buyer because they are working from home.</i>	<i>Applications can be lodged in portal on behalf of another firm. Please note however that it will be the lodging firm’s account from which payment of our fee will be taken, who will receive any requisitions raised and will need to give any certificates needed.</i>
<i>Can I still submit a request for my application to be expedited?</i>	<i>Yes. You can still request expedition of your application. We may not be able to give an accurate completion time as our caseworker resource is reduced due to the current coronavirus</i>

	<p>(COVID-19) situation, but we will aim to process your application as a priority.</p> <p>Please use the Portal Application Enquiry service to make a request to expedite an application. Please do not use our 'Reply to Requisition' service to make these requests.</p>
<p>Will HM Land Registry give more time in which to respond to notices?</p>	<p>Yes, where we can. If customers are concerned that they will be unable to respond to notices due to COVID-19 we will look favourably on any request to extend or allow a further period for making an objection. However, there are a number of circumstances where we cannot offer an extension, the most commonly encountered include where:</p> <ul style="list-style-type: none"> • the relevant rule under the Land Registration Rules 2003 prescribes a period or a maximum period and whilst this maximum period itself cannot be extended, we may be able to delay determining the application concerned to allow for late responses. An example of where we could do this would be to allow for a late objection to an application for the entry of a restriction (s.45(2) and r.92(9)). • the registrar serves notice of an application to cancel a caution against first registration (s.18(4) and r.53) or to cancel a unilateral notice (s.36(3) and r.86) on the expiry of the prescribed period, which cannot be extended, the registrar is obliged to cancel the caution or unilateral notice in the absence of an objection. • The period for serving counter notice to an application for registration as proprietor by a squatter under Schedule 6 to the LRA 2002 cannot be extended (para.3 of Sch.6 and r.189). Counter-notice is ineffective once the notice period has expired: paragraphs 3(2) and 4 of Schedule 6. Rule 189 deals with the notice period for giving counter-notice: no provision is made for the period to be extended.
<p>Will HMLR accept documents that have been signed electronically where it was not possible to have them signed in wet ink?</p>	<p>At this time, we are only able to accept electronic signatures for digital mortgages created and registered under a rule 54C Notice. We are currently unable to put in place additional arrangements to authorise electronic signatures</p>

	<p><i>for specific customers or for other dispositions. However, we are liaising with key stakeholders to explore other possible options. Customers will be informed of any changes.</i></p> <p><i>The position set out in the ministerial statement on the conclusions of the Law Commission report on electronically signed deeds having legal force in England and Wales has not changed. This expressly excluded transfers and other registrable dispositions, and conveyances and other deeds triggering first registration. The Commission explained in its report that section 91 of the Land Registration Act 2002 “sets out a regime for the registration of electronic documents which are deemed to be deeds”, that the regime was now being implemented by land registration rules “enabling electronic conveyancing for registered estates and charges to take place, as and when specified by HM Land Registry.”</i></p>
<p><i>While we have staff working from home, we are unable to scan original documents and would therefore give them a status of ‘not certified’ when lodging them in the eDRS service for registration. How would HM Land Registry deal with this?</i></p>	<p><i>All dispositional forms must be certified, so a status of ‘not certified’ would not be appropriate for registration purposes as a copy of the original document is required. In this instance we would raise a request for information (requisition).</i></p> <p><i>We will also accept clear photographs of original documents, in place of scanned versions, provided the usual certification is given.</i></p>

The Committee’s view was that pragmatism may need to be adopted when submitting applications to Land Registry, with the hope that Land Registry responds in a similar way.

3 Execution

Does document have to have wet ink?

Yes, for Land Registry – Consider the use of Power of Attorney granted by clients to partners at the law firm with processes for approval by the client of the documents and other measures designed to protect the attorney.

Practical arrangements for wet-ink execution need to be put in place. An example is Print room at law firm produces physical document and couriers it to Partner A for execution where witness (independent adult) is available. Courier waits while document is executed and then takes it to Partner B who similarly executes while courier waits. Courier then takes the document to relevant solicitor dealing with completion. This is just an example and may be impractical depending on parties’ locations. Bear in mind one attorney may suffice depending on situation. Couriers clearly can also take documents to client.

Or clients may have their own specific arrangements for executing physical documents.

Alternatives to wet ink:

Mercury: Photo of whole signature page can be used as an alternative to scanned signature page (if no scanner is available). Also there is the ability to insert date in a PDF using PDF Docs (or other supplier) or to type in the date where practical.

Can Mercury be used as an original? Yes. Plans are potentially an issue in practical terms and remember that plans for Land Registry have to be signed/initialled. If the solicitors cannot assemble hard copies, they can agree that will be done at a later date when the wet ink signed pages can be used (which was seen by the Committee as another duplicate). The solicitors may agree that, if the hard copy document does not arrive, the parties will commit to execute a replacement in wet-ink.

If a solicitor about to do a Land Registry Portal application does not have a wet ink original, the Land Registry application form has the option for the applying solicitor to give the following:

"we certify that this attachment is a true copy of a document which is certified by a conveyancer to be a true copy of the original".

The signing party's solicitor certifies that the PDF version it emails to the solicitor applying for registration is a true copy of the original on the basis that:

(a) when the PDF engrossment is assembled by electronically attaching the execution pages and initialled plans, this is an original document (see Mercury procedure – point 3); or

(b) when the constituent parts are assembled they form an original hard document. The constituent parts are in existence but not in the same place.

Both solicitors acknowledge this is the basis of the certification.

Firms are encouraged to adopt this approach. It should be noted that some firms will require sight (or will require another firm to have had sight) of the wet ink signed pages before they give the certificate.

Solicitors should remember to keep wet ink documents in fireproof safe/cabinet according to the firm's insurance requirements.

The City of London Law Society will petition the Land Registry on accepting the Mercury pdf completed process and e-signed documents, as an alternative to wet-ink.

E-signatures

Can be used for deeds as well as documents but caution on witnessing. Not for Land Registry at the moment.

4 Effect on market

Residential property

The Government is discouraging residential completions where people are living in the property. So not problematic where there is vacant possession and, therefore, helpful for new properties, but chains might cause a problem. Removals may also cause a problem because of social distancing. Depends on circumstances. What about contractual obligations? If say the completion date is to be adjusted, the contract would need to be varied in the usual way.

Commercial

Lenders being pragmatic. Deals still going ahead. Some leases (leisure clients/investment deals) put on hold or not proceeded with.

5 Local and utility Searches

Some not being provided such as Thames Water. Talk to brokers and search providers about insurance products.

6 Contracts

Force majeure provisions will, where necessary, be amended to make it clear pandemics etc are covered.

7 Landlord and Tenant

Rent suspension where access prevented but no damage. Usually it does not apply because damage or destruction is required. However, tenant's amendment may allow for this.

Insurance (such as business interruption insurance) usually does not cover pandemic unless it has been added on.

8 Forfeiture moratorium

It does not extend to Commercial Rent Arrears Recovery (CRAR) or statutory demands or other enforcement options. It is a moratorium for **non-payment of rent for 3 months**. It does not amount to waiver. Forfeiture is available for other grounds, so can peaceably re-enter after the "section 146 notice period" – but a sheriff cannot do it.

9 Undertakings

Take care over undertakings relating to delivery of original deeds. Caveating undertakings due to COVID-19. Be practical as to what cannot be done – so for example undertake to deliver only when it comes into solicitor's possession. Keep track of undertakings, for example, for documents being held to order of third party.

10 Material valuation uncertainty

This may be relevant to a loan to value covenant. There is [guidance](#) on the RICS website.

11 Committee Projects

The Certificate of title, Rent deposit deed and Undertakings projects should be continued to maintain momentum.

12 Meeting

Next emergency meeting 3 April at 11am, appointment now received.

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