SUBMISSION FROM MCGREGORS LLP

1 Introduction

We support the introduction of the Land Registration (Scotland) Bill and particularly:

- the introduction of advance notices
- changes to the rules on inaccuracies and rectification.

2 Section 108

We are concerned at the introduction of a new offence under section 108 of the draft bill. We support any legislation to reduce fraud in connection with property transactions but section 108 would appear to have the effect of making professional negligence a criminal offence in certain circumstances. We have read the written submission made by the Law Society of Scotland in advance of them giving oral evidence to the Committee and endorse the views expressed in that submission.

3 Prescriptive acquisition

We share the Registers' concerns to prevent fraud and protect owners of land from title raiders by ensuring that there are rigorous steps in place before someone other than the owner can acquire title to land. However this needs to be balanced against the importance from a commercial developer's perspective of being able to bring back into economic use an area of land for which no owner can be identified despite rigorous title examination.

We might use an *a non domino* disposition when we discover a gap in historic titles when we are piecing together a site for redevelopment. In such title examinations we may encounter a gap in the title caused by, for example:

- an error in previous conveyancing many years ago (for example, that area having been wrongly excluded, or a map having been inaccurately drawn so as not exactly to coincide with the boundary of property which it is intended to adjoin) or
- the gap site being the solum of a stopped up road, close or pend.

We carry out extensive investigations to find the owner but if no owner can be found the development has sometimes been able to proceed by using an *a non domino* disposition of the area of ground together with a title indemnity policy for the 10 year prescriptive period. This unlocks the potential development and enables property to be brought back into use which may have lain unused for years.

The proposals in sections 42-44 of the Bill will be extremely difficult to comply with. It is not clear what evidence would be required to show that the owner has been out of occupation for 7 years (and we would echo the concern of others that it is very difficult if not impossible to demonstrate conclusively that something has
not happened) or that the applicant has been in occupation for 1 year. Where no owner can be identified it appears that the only option will be to negotiate with the Crown. We are concerned that these proposals will stand in the way of property development, in particular where brownfield sites are proposed to be brought back into economic use.

We would submit that the requirement to notify the owner, which was not contained in the SLC's proposals, should (if suitably rigorous) suffice to ensure that land which is clearly in existing ownership is not acquired by others by prescriptive acquisition. The notification requirement could perhaps be extended to ensure maximum publicity for the benefit of absent owners, eg newspaper advertisement or affixing notices to/at the property – such procedures are already a feature of other aspects of Scots property law such the provisions for termination of older real burdens in ss.20-21 of the Title Conditions (Scotland) Act 2003.

It could be a requirement that the notification requires to be made a period (say, 8 weeks) before the application for registration of the a non domino disposition can be submitted, and the notice could even encourage interested parties to contact the Keeper direct if they are concerned about the proposals. In those cases where there is some actual mischief at work and which have been a source of concern to the Keeper, we would imagine that there will generally be an identifiable owner of the property, and the need to notify them should be sufficient to flush out any mischief without the need to establish both 7 years' prior non-occupation by the owner and one year's occupation by the applicant, which requirements could well stand in the way of genuine non-abusive property development.

McGrigors LLP
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