



Conversion of “ultra-long” leases takes effect



Emma De Saily

emma.desaily@shepwedd.co.uk

Laura McKinnon

laura.mckinnon@shepwedd.co.uk

Tenants under “ultra long leases” in Scotland may have woken up this week to find themselves the owner of the property they formerly tenanted. On 28 November, legislation came into effect by which the rights of certain tenants automatically converted into ownership. Former landlords may now however benefit from the automatic conversion of some lease conditions into title conditions.

The Long Leases (Scotland) Act 2012 converts “qualifying leases.” If your lease qualifies, you don’t need to take any action to make conversion happen, but there are a number of practical steps that you must take to ensure that your ‘new’ title is properly shown on the property register.

Do I have a qualifying lease?

Automatic conversion to ownership will only have occurred if your lease meets certain conditions:

- it must be registered in the Land Register or recorded in the General Register of Sasines;
- it was originally granted for a term of more than 175 years;
- if it is a lease of commercial property, it still has more than 175 years left to run;
- if it is a lease of residential property, it still has more than 100 years left to run;
- the annual rent is £100 a year or less; and

It cannot be:

- a lease which includes a harbour (where there is a harbour authority);
- a lease the only purpose of which is to allow the installation and maintenance of cables or pipes;

- a lease of or including minerals of a property.

What do I need to do?

The good news is that, if conversion has taken place (which also means that the landlord’s right of ownership of the land over which the lease is held will be extinguished), you do not need to do anything immediately. Although the staff at the Property Registers will not update the relevant Register, and will continue to show your lease title and the landlord’s title, conversion will have happened.

Most new owners will however be well advised to take steps to regularise the position, in broadly, one of two ways:

1. submission of a request to the Registers for amendment of the Sasine titles or rectification of former tenants’ Title Sheet in the Land Register; or
2. by waiting until the property changes hands. At that point, the Registers should be alerted to the conversion, so that the relevant Title Sheets can be created or updated for the new owner.

In either case, evidence that the lease was a qualifying lease, which is considered to have converted to ownership, and that nothing has occurred, such as irritancy of the lease which would prevent conversion, will be required.



Now that I own the property, have all the lease conditions gone?

Not necessarily. When a qualifying lease converts to ownership, certain types of lease conditions convert into title conditions (burdens) affecting the title to property, and so will continue to apply to the property. Generally these will be conditions that also affect other properties.

Lease conditions that were imposed on the property:

- regulating the maintenance, management, reinstatement or use of other land, automatically become facility burdens which will continue to apply those maintenance and management arrangements;
- regulating the provision of services to other land, automatically become service burdens requiring that supply of services to be maintained;
- conferring a power of management over a group of related properties, automatically become manager burdens entitling the new owner to be, or appoint a manager of the related properties;
- under a common scheme on a group of related properties automatically become real burdens affecting the title of those related properties.

This automatic conversion of some lease conditions could good be news for former landlords, who may own adjoining land that will now benefit from these burdens.

Other lease conditions affecting the property may convert into title conditions, but only if the landlord has served a notice prior to the conversion date. Such notices had to be registered against the property and served on you when you were the tenant.

Conversion to ownership will not operate if, not later than 2 months prior to 28 November, you had voluntarily opted out of conversion by registering either a Notice Seeking Exemption or an Agreement (with the landlord) for Exemption from conversion.

Guidance on steps to take following conversion to make sure your title is updated is available from the [Registers of Scotland](#).

If you are the tenant under a qualifying long lease which may have converted to ownership on 28 November 2015 and you require further advice on rectification, please contact Emma De Saily or Laura McKinnon in our rural team, or your usual Shepherd and Wedderburn contact.

[For further information or advice on any of the issues discussed in this briefing note, please get in touch with your usual Shepherd and Wedderburn contact.](#)