

Are Deeds Louder than Words? Keeping Title Deeds Up to Date

SFHA

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What are Title Deeds?

- Title deeds comprise the ‘story’ of the ownership of a property or an area of ground.
- Title to a property is
 - Recorded in the Sasines Register
 - Registered in the Land Register of Scotland

What Information does Title Deeds provide?

- A description of the Property
- Who is the Registered/Recorded owner of the property
- Is there are Charge over the property?
- The burdens affecting the property

Can you rely on the titles?

- Well.....
 - Title deeds are a snapshot in time
 - Scotlis can be checked to see if any further applications have been made.
 - A search can be obtained re the Sasine register

Title Issues...

Unless registered title deeds have been updated they are only as good as the date they were issued

What wont be picked up?

- Unrecorded changes in ownership
- Property Amalgamations
- Change of use
- Prescriptive rights
- Unrecorded deeds eg wayleaves
- Changes to the property on the ground

Unrecorded changes in ownership

- Why?
 - Application never submitted
 - Application been rejected by the Land Register and never resubmitted
 - Owner beneficiary in Certificate of Confirmation
 - Company ceases to exist

Unrecorded changes in ownership

- Practical Implications
- Appears that the property is still owned by a third party
- Debt recovery becomes difficult if true owner cannot be ascertained
- QLTR or Crown will not contribute towards common maintenance

Unrecorded changes in ownership

- Resolution?
 - Alert owner to lack of title
 - Obtain certificate of confirmation & raise action
 - Become appointed as executor creditor in estate & administer the estate (costly!!)
 - Acquire property through QLTR at value
 - NOPL?

Property Amalgamations

– Why?

- Would require a pro-active amendment to titles.

This would generally only be picked up by on site scrutiny or knowledge of the stock

Property Amalgamations

Practical Implications.....

- where is the property located? Is amalgamation limited to one block or through blocks?
- can provisions of the titles still be used?
- if not how can costs be allocated?

Property Amalgamations

Resolution...

- Thorough understanding of what is on the ground
- Communication with owners
- New Deed of Conditions (!!!)
- Application of Tenements Act
- Factoring Agreements

Change of Use

- Why?
 - Former Commercial units now being used as residential dwellings with no indication that this is the case from the titles

Change of Use

- Practical Implications
 - Often commercial owners bear a higher share of costs if allocation is by way of rateable value/gross annual value
 - Commercial owners having greater voting rights
 - Often commercial owners have no right of access or use of the backcourt or requirement to pay

Change of Use

Resolution...

- Application to Lands Tribunal to vary condition in deed of conditions.
- Agree a new deed of conditions.
- Factoring agreements

Are owners realistically going to agree to this?

Prescriptive rights

- Why?
 - Prescriptive right can be created by an owner who has exercised this right for a period of 20 years

This right is **not** included in the titles and would only be identified by on site scrutiny

Prescriptive rights

- Implications
 - Prescriptive rights may limit the use of a property or give a property far wider that expected.
 - Owner with prescriptive right not obliged to contribute to the cost of maintaining the right ie to a common footpath

Unrecorded Deeds

- Why?
 - Not all deeds are (or have to be) registered/recorded eg wayleaves
 - Wayleave is a contractual document between the two parties and does not have to be registered unlike a servitude.
 - Lease arrangements may or may not be able to be registered in the Land Register

Unrecorded Deeds

- Implication....
 - It is not easily identifiable what rights can be exercised over ground and by whom.
 - This can be important in relation to the grant of access for the purposes of service installation and maintenance.
 - If not registered there is likely to be no plan...where are the pipes/cables etc located?

Unrecorded Deeds

- Resolution
 - When granting deeds an obligation should be included obliging the grantee (recipient) to record the deed in the land register as appropriate.
 - Good record keeping.
 - Only the owner (not tenant) is responsible for costs

Changes to property on the ground

- Why?
 - Environmental Works eg bin stores/paths no longer fit for purpose
 - Access
 - Failing walls/fences

Changes to property on the ground

- Implications
 - Inability to allocate costs correctly
 - Rights of owners/tenants are not accurately reflected in the titles.
 - May be picked up by sellers who will require corrective conveyancing
 - May be picked up by lenders

Changes to property on the ground

- Resolution
 - Acquisition of share back from owner
 - New deed of condition
 - Factoring agreement

New Deed of Condition?

- All owners must participate
- Letter of consent from Lenders
- Cost/Time Implication
- Are owners likely to agree to vary if it is to their detriment?

Application to Lands Tribunal?

- Title may provide that title conditions can be varied by certain number of owners. If not Lands Tribunal Application can be made, again this is costly and time consuming

Factoring Agreements

- A two party contract setting out each parties obligations in relation to property maintenance
- requires to be signed for each and every owner where services are provided and invoices rendered
- Requires to be signed by each new owner when the property changes hands, only binding on the signing party

Worked Examples

- Association managing the block identify owner is deceased
 - Obtain copy death certificate
 - Obtain Certificate of Confirmation & raise action against executor /estate
 - Meanwhile register NOPL

Worked Examples

- Association demolish building then identify neighbour had prescriptive rights re drainage
 - HA needed to either reinstate drainage or connected owner to mains

Worked Examples

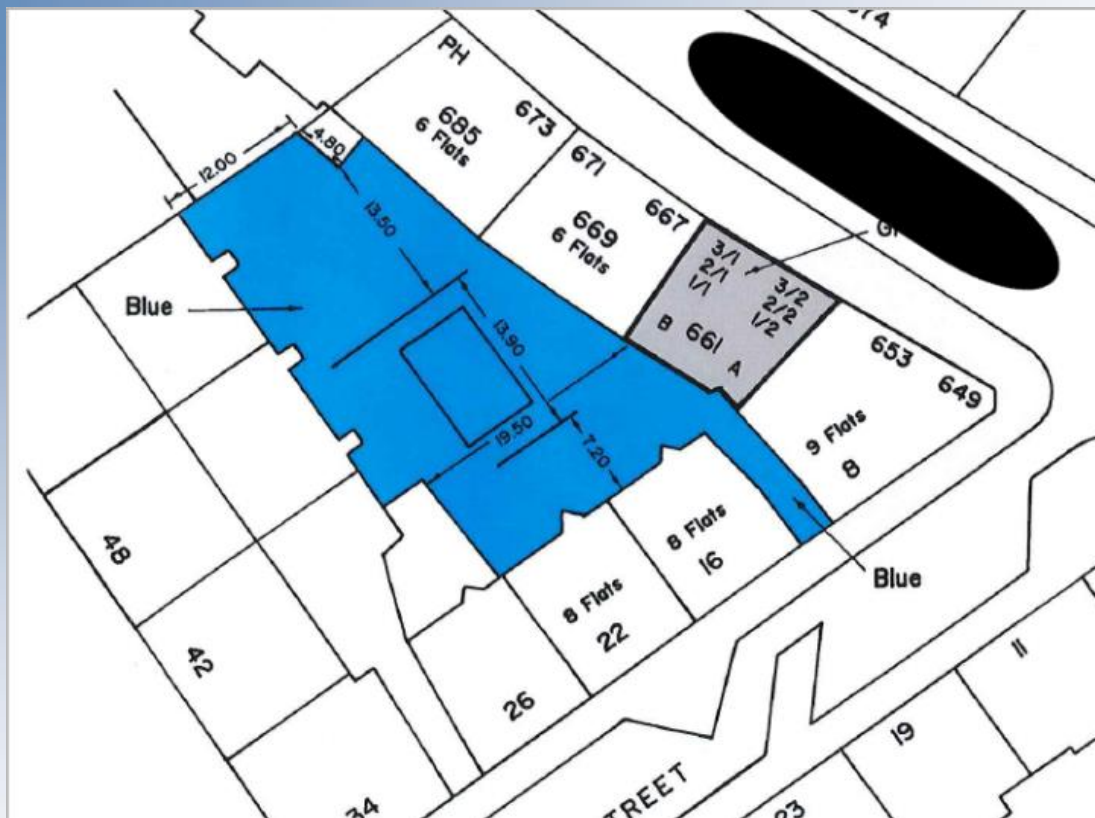
- Association acquire commercial units on ground floor of building and convert to residential dwellings
 - Approach owners to enter into new deed of conditions with back letter to limit obligation until change of owners

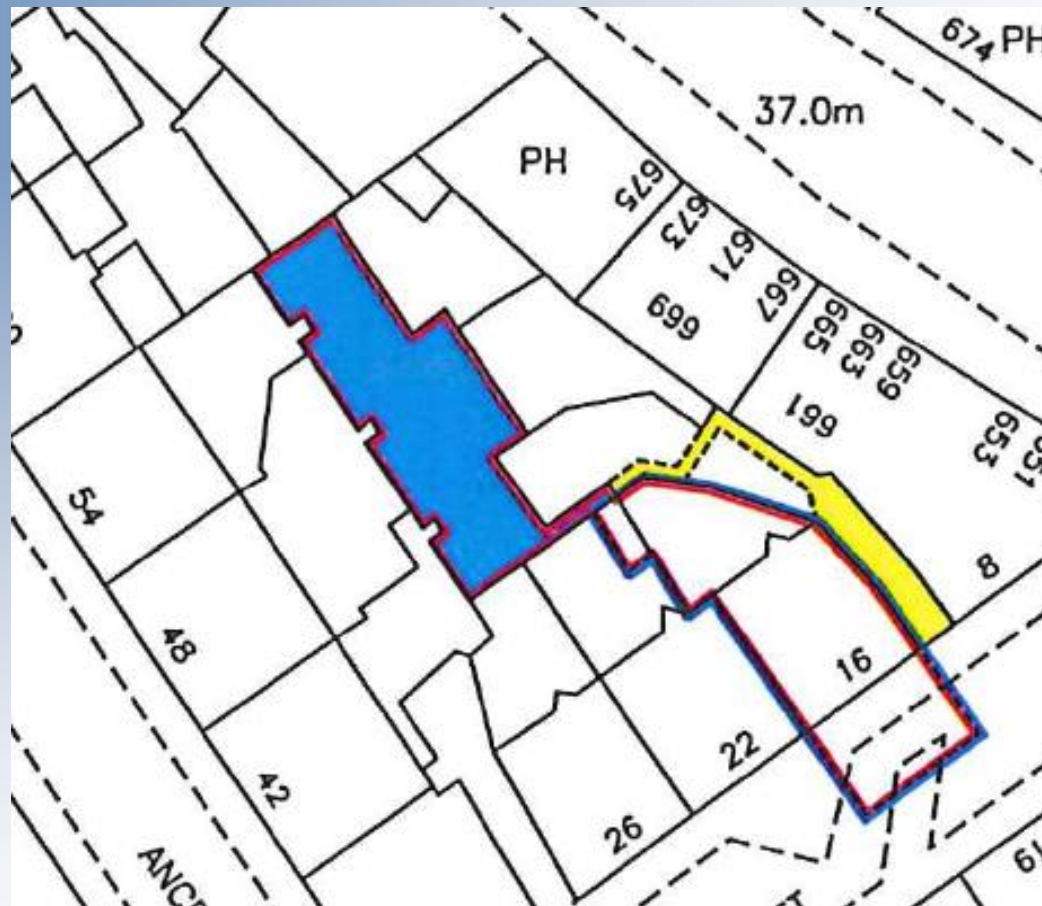
Worked Examples

- Association own all properties above sizeable commercial unit, company owner becomes insolvent.
 - Substantial work required, HA approach QLTR and acquire property rather than bear debt

Worked Examples

- Association carry out substantial environmental backcourt work .
 - Owner not involved in any change to the titles
 - Picked up on sale of RTB property
 - Acquired share of current owners
 - Registered new Deed of Conditions
 - Sold back share of new area to owner





Current layout vs former layout

