

Mind the (registration) gap!



You may have heard the term ‘the registration gap’, but what does it mean and when will it apply to you?

What is the registration gap?

‘The registration gap’ is a phrase used to describe the period in a property transaction between the date a buyer and a seller agree to complete the sale and purchase of a property, and the date the buyer is registered as owner of the property at the Land Registry. During this period, the seller holds the legal estate in the property on trust for the buyer and the buyer only has a beneficial interest in the property.

What is the difference between the legal estate and a beneficial interest?

If you own the legal estate in a property, there is a general assumption that you have unlimited power to deal with the property.

If you have a beneficial interest you will be entitled to the benefit of the property. This relates to the economic interest in the property. You will have a right to any income from the property and a right to the proceeds of sale of the property, but you won’t be able to deal with the property in the same unlimited way as the person with the legal interest.

Why do I need to know about the registration gap?

Dealing with property as if you own the legal estate, when in fact you only have a beneficial interest can have serious commercial consequences.



There have been stark reminders of the implications of buyers dealing with property before registration of their purchase has been completed at the Land Registry. Mainly, these cases have been to do with giving notice.

In one example, a buyer of a property that was subject to an agricultural tenancy served notice on the agricultural tenant before the buyer's purchase had been registered at the Land Registry (so while he was in the registration gap). The document under which the notice was served said that the notice had to comply with various requirements, which could only be complied with by the owner of the legal estate. The buyer only had a beneficial interest in the property and so the notice was held to be invalid.

In a separate transaction, a buyer took a transfer of an existing lease, and served a break notice on the landlord before the transfer had been registered at the Land Registry, in an attempt to bring the lease to an end. At the time the buyer served the break notice they were in the registration gap and so they only had a beneficial interest in the property.

In this case, the buyer couldn't exercise the right of the 'tenant' to serve the break notice under the lease, as the definition of 'tenant' referred to the seller's successors in title and 'any person in whom the lease had become vested'. As registration of the transfer of the lease had not yet taken place, the buyer was not yet a successor in title nor had the lease vested in him. The lease remained vested in the seller who held the property on trust for the buyer.

The buyer tried to argue that they had served the notice on behalf of the seller, but again this was unsuccessful as there was clearly no intention for this to be the case. It was the buyer who wanted to bring the lease to an end for their own commercial purposes, and they had served the notice to do so on their own behalf.

From a practical perspective, the Land Registry is taking increasingly more time to process applications for registration, meaning registration gaps are longer. Applications to register new leases or a transfer of part of a freehold title can take almost a year.

If you are buying a property and want to do something with it straightaway, you could find that the registration gap causes a big issue if it isn't properly acknowledged. In that situation you need to make sure:

1. what you're doing doesn't need to be done by the owner of the legal estate in the property;
2. if it does, and you can't wait until your purchase has been registered to take action, ask the legal owner to help you; and
3. if you're unsure take legal advice on the best way to proceed.

If you want further information on the registration gap or help with your property transaction please contact our [real estate team](#).



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