Grants, Renters' Rights, Partition and Rentcharges

[Conveyancing pointers & strategies]

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John E Jones

Board Member

The Society of Licensed Conveyancers

Topics

1. Grants of Probate and Probate Sales
2. The Renters Rights Act 2025
3. Partition
4. Estate Rentcharges
5. Management Companies & Freehold Estates

Basics ...

1. Know your client

2. Authority to sell? Get clear instructions.

3. Protocol - in full or part?

4. Check, correct, and deduce title

5. 'Right First Time' on the paperwork

Types of Grant of Representation:

- Probate
- Letters of Administration
- Letters of Administration (with Will annexed)
- ad colligenda bona
- de bonis non
- cessate
- Attorney

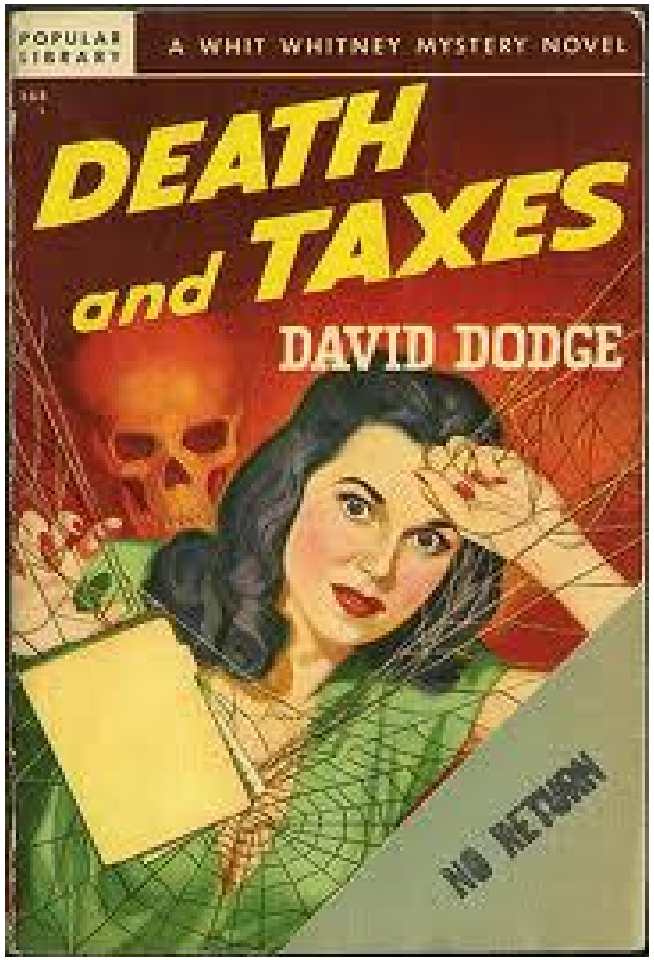
<u>Others:</u>

- Limited
- pendente lite
- double probate
- settled land
- caeterorum

England, Wales, & Northern Ireland

Personal Representatives

- Client is either the Executor or the Administrator
- An Executor has authority to sell by virtue of the Will
- An Administrator has authority to sell by virtue of the Grant
- Use the Protocol in part - do NOT supply TA forms
- Update Title if there is time or simply make use of the Grant
- Be careful of 'self-dealing' if PR is one of the buyers



Probate Sales

1. Only deal with the Personal Representatives
2. Do NOT take instructions from the Beneficiaries
3. Sell with limited title guarantee
4. Ensure the Property is “sold as seen”
5. Resist attempts by Buyer’s conveyancers to provide TA forms
6. Form A restrictions – (1) if you are selling with a live surviving owner then appoint a Second Trustee (2) if the sale is by the PRs of a sole surviving proprietor you can overreach so long as there are two PRs (section 1(1) of the Administration of Estates Act 1925)
7. Distribution of sale proceeds – to whom?
8. **HMLR Practice Guide 6 - devolution on the death of a registered proprietor**
9. Have a firm-wide policy on dealing with Probate sales

The Renter's Rights Act 2025

- Royal Assent – 27th October 2025
- effective from 1st May 2026
- Section 21 abolished (end of no-fault evictions)
- all tenancies became periodic (with limited exceptions)
- Section 8 grounds reformed
- harder for landlords to gain possession without cause



Other important changes under the Act

1. One rent increase per year
2. Section 13 process applies
3. Contractual rent reviews no longer enforceable
4. Discrimination banned
5. Rental bidding banned
6. Pet bans only allowed if reasonable
7. *Tenant Notice Rules – minimum 2 month's notice, can be given from day one and there is no prescribed form required*
8. PRS database – mandatory registration
9. Decent Homes Standard and *Awaab's Law'*

Grounds for Possession – section 8

Mandatory:

- Landlord occupation/sale
- Rent arrears (min. 3 Months unpaid)
- Serious Anti-Social Behaviour

Discretionary:

- Rent arrears or late payment
- Breach of tenancy agreement
- Property damage
- Anti-social behaviour

NB – Landlord cannot evict due to complaints about the condition of the property



Landlord best practice

AVOID COMMON MISTAKES

- **Carry out regular inspections**
- **Maintain accurate documentation & photographic records**
- **Respond to issues quickly**
- **Ensure full safety compliance**

Buy to Let Purchases

- Ensure you use an up to date Questionnaire for sending to the Seller's conveyancer
- If there is a mortgage involved, fully consider the lender's BTL requirements
- Inspect all the tenancy compliance documents
- Check that the deposit has been registered
- Check the PRS database (as from 15.12.26)
- Get the Buyer to make a full inspection of the Property
- If sold with vacant possession, ensure Buyer verifies this before completion



Partition of Title (1)

Sample wording:

We enclose our AP1 application in respect of our request for a partition of title.

The existing property has been demolished, and two new dwellings have been erected on the land.

The title plan shows the old demolished property and the large plan attached shows the two new dwellings that have been erected.

Our client, John E Jones, wishes to mortgage the part of the land now known as ‘The Lillies’ on the attached large plan. The land shown as ‘The Roses’ on the attached large plan is to remain unencumbered.

We will be grateful if you would kindly agree to a partition of the title.

Partition of Title (2)

- at the discretion of HMLR
- must send an explanatory letter with the AP1 application (Scale 2 fee)
- must supply Land Registry compliant plan(s)
- if already encumbered, you must seek consent of the lender to partition the title
- There must be a justifiable reason why you are asking to partition the title



Rentcharges

- Section 1, Rentcharges Act 1977 – “rentcharge” means any annual or other periodic sum charged on or issuing out of land except (a) rent reserved by a lease or tenancy, or (b) any sum payable by way of interest.
- Historic rentcharges
- Leasehold & Freehold Reform Act 2024
- Estate Rentcharges
- S.121 Law of Property Act 1925 – issues to be addressed
- Estate Rentcharges and Freehold Management companies

Estate Rentcharges

1. Usually set up by the builder of a housing estate to pay the builder or a management company the cost of services they will provide e.g., landscaping, maintaining roads & paths, maintaining walls, repairs to common parts, and other matters.

2. The buyer is obliged to pay a proportion of the estate renctcharge, and it will also be binding on future owners.

3. Whilst Historic Rentcharges can no longer be created, this does not apply to Estate Rentcharges.

4. The Leasehold and Freehold Reform Act 2024 does not apply to Estate Rentcharges.

5. The Estate Rentcharge owner can take action against the homeowner under section 121 of the ;Law of Property Act 1925 to recover any rentcharge due by taking possession of the property, or by granting a statutory lease to a Trustee.

6. The section 121 LPA powers have an impact on obtaining a mortgage. The Buyer's conveyancer must seek to vary the estate rentcharge deed to remove the s121 powers and/or ensure the lender is notified if the powers are to be invoked.

7. There is no present power for a homeowner to challenge the amounts of rentcharge being demanded.

8. The homeowner must pay the estate rentcharge when demanded to protect themselves from any s121 action.

9. Title Indemnity insurance is available but limited in its effectiveness.

10. You cannot remove an estate rentcharge buy you can try and negotiate a release from it. This may be unlikely unless an alternative system for recovering maintenance costs is set up.

Estate Rentcharges & Conveyancer's

1. If the title is silent on whether it is affected by a rentcharge or not, then no further action is required.

2. If the title confirms that the rentcharge has been formally exonerated or released (NB – you cannot redeem an Estate Rentcharge via DCLG) then no further action is required but report the fact to the Client in your title report.

3. If the Buyer is obtaining a mortgage, consider the Lender's requirements under section 15 of the Lender's Handbook.

4. Always obtain FME1 replies from the Management Company / Rentcharge Owner and check the replies carefully.

5. NB – the 'Estate Rentcharge' instrument must contain covenants on behalf of the Management Company / Rentcharge Owner to maintain the common areas/facilities of the estate, in return for the rentcharge payments.

6. If the rentcharge instrument contains the following express wording - *(a) that the provisions under section 121 of the Law of Property Act 1925 have been excluded <u>and</u> (b) the estate rent charge clause includes a mortgagee protection clause, which states that notice of at least 28 days* is to be given to the mortgagee prior to any enforcement action being taken by the owner of the estate rent charge* – then this is acceptable. You need simply report to the Client on those facts and report on the answers in the FME1 form.

7. Where the property is subject to an 'Estate Rentcharge' it must meet the following requirements:

   - ["The first requirement"] where either: (i) the statutory remedies for non-payment contained in Section 121 of the Law of Property Act 1925 will apply, or (ii) the rentcharge instrument provides for powers of re-entry or other enforcement powers, then the collector/recipient of the rentcharge must be obliged to give both the property owner and any lender written notice of the arrears together with at least 60 days' written notice* to remedy the breach. In addition, should further action be proposed regarding non-payment the collector/recipient must be obliged to notify any property owner/lender, in writing, of such action;

   - ["The second requirement"] in addition, the current annual amount payable under any rentcharge (or, if the property is affected by more than one rentcharge, the total amount payable under all of them) must not exceed £500* in present value and must not be capable of escalating such that the amount more than doubles every 25 years;

   - ["The third requirement"] in addition, any rentcharge must, in return for the rentcharge payments, contain covenants on behalf of the rentcharge owner to perform or provide services in respect of common areas/facilities.

   - **if the existing, or proposed, rentcharge instrument does not meet the first requirement, the second requirement or the third requirement, a <u>Deed of Variation</u> will be required. An indemnity policy will <u>not</u> be an acceptable.**

8. In addition, you can ask for the Seller to arrange for the Rentcharge to be transferred/released to the Buyer by the Rentcharge Owner. Generally, such a request is likely to be refused especially if the estate rentcharge still applies to the estate. However, if agreed there will be no requirement for a Deed of Variation.

9. In relation to points 7 & 8 above inform your Client of those enquiries and provide appropriate observations in your Title Report but emphasise that you will revisit the issue once the Seller's conveyancer has answered your enquiries. Also stress to the Client that he must make prompt payment of any demands for the Estate Rentcharge in the future so as not to fall within the remedies set out above.

10. Once you have the Seller's conveyancer's answers to your enquiries you should update Client/Lender on the course of action to be undertaken.

*NB – this is 'best case scenario'. Check 15 Lender's Handbook as several lenders will agree to a lower notice period or be unconcerned about the amount of rentcharge being paid.

Management Companies – Freehold Estates – Service Charges

- **Estate Management Company**
- Two types:

Residents' Management Company
Embedded Management Company

- **Service Charges**
- Two types:

One-off events (e.g., permission fee)The
Ongoing costs (e.g., maintenance/repairs)

- **Positive Covenant**
- **Deed of Covenant**
- No statutory way to challenge these service charges
- Failure to pay allows the Management Company to take action to recover it.
- Need to ensure this is simply a positive covenant rather than an estate rentcharge.
- Must obtain and check FME1 replies.
- Must check Lender's requirements.
- **Reforms –** proposed in the Leasehold and Freehold Reform Act 2024 but not yet in force.



New Build – wording in TP1

Nothing in this Transfer is intended to crate a rentcharge but in the event that it is construed to be a rentcharge the Transferor agrees with the Transferee that it will not take any steps to enforce payment under section 121 Law of Property Act 1925.

Useful Guides

- HMLR Practice Guide 6: devolution on the death of a registered proprietor
- HMLR Practice Guide 40: plans
- HMLR Practice Guide 56: Rentcharges
- Soc LC: Client Guide – Personal Representatives
- Soc LC: Client Guide – The Renters' Rights Act 2025
- Soc LC: Client Guide - Rentcharges
- Soc LC: Client Guide – Management Companies – Freehold Estates

Any Questions?



Thank you for attending.

John E. Jones

Board Member

The Society of Licensed Conveyancers

Legal Director & SRO

Residential Property Department

Jackson Lees Group Ltd

T: 0151 282 1700

E: jejones@jacksonlees.co.uk

