



Legal update — November 2016

Residential Private Client Overriding Interests: Buyer Beware!



The old adage remains true, particularly where, even though title to the property is registered at the Land Registry, there may still be some rights that affect it but which are not noted on the registered titles. These are rights that are given "overriding" status by statute and they are binding on successive owners of the property.

In general they should be apparent on inspection of the Property which is why anyone acquiring a property should physically inspect it as part of the pre-contract investigations. It should be noted that there is no obligation on the solicitor acting for a buyer to inspect the property, unless they have agreed to do in their terms of business. Inspection will help to alert the buyer to any third party rights to which it will take subject including:

- Rights of people who occupy property but, possibly, with no formal interest in the property (including squatters);
- leases granted for terms of less than seven years;
- certain types of easements (such as rights of way);
- some rights to mines and minerals; and
- customary rights enjoyed by the inhabitants of the local community.

There are other more obscure rights. It does not matter that the buyer may not actually have discovered them. It is enough that they were discoverable and in some cases they may remain capable of protection by the person benefitting from them in the form of a notice against your title at the Land Registry.

Your solicitor should also check whether the Seller has disclosed these rights in replies to enquiries. The contract for sale will usually place the risk of there being any on the buyer. If pre-contract enquiries reveal the existence of overriding interests, consideration should be given to: (a) any effect on the valuation of the property and (b) the ability of the Seller to give vacant possession on completion. Additionally, when the

purchase is registered at the Land Registry your solicitor will need to make a statement to the Land Registry either (a) that you know of no overriding interests affecting the Property or (b) listing all the overriding interests which you know about.



Source: istock

Pre-contract inspection is invaluable if you wish to acquire property free from overriding interests and buyers should look deeper than the fine interior decor and postcode. This was highlighted by the recent decision in *Trevellion-v-Watmore* where a lease of a small piece of land was held to be an overriding interest even though the land was obscured by a fuchsia. As the judge put it:

"A reasonably careful inspection must at least look at the boundaries and anyone walking around the garden looking at or for the boundaries would have parted the fuchsia."

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