

# Boundaries & Adverse Possession - Client Guide

General Boundaries | Squatter's rights | 12 key questions

## Keep your old deeds safe...

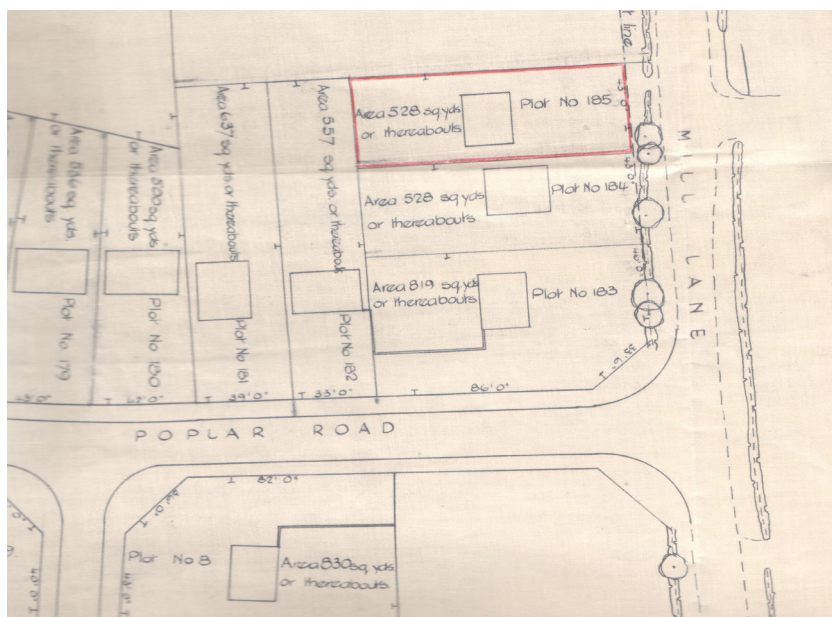
Contrary to popular belief, it has never been the Land Registry's job to say exactly where the boundary of a property is - that is up to the owner, their neighbours and (if necessary) the courts to decide.

If two adjoining landowners are unable to agree the position of their boundary the Land Registry is unlikely to want to try and resolve the issue. It will usually suggest that the issue is resolved by the owners between themselves, or by mediation or by the courts.

Old deeds, conveyances and transfers may be useful to help work out where the previous owners of the land thought the boundary was. Sometimes the deed plans are accurate, or have measurements or other useful features shown on them. If so the plans can be used to help work out where the legal boundary is. If you do have old deeds to your land it is important that you keep them safe in case there is ever a boundary dispute in the future.

## Odd Results?

The Land Registry's 'general boundaries' rule can have results that seem odd - for example, you may even legally own land that is shown on the Land Registry plans as lying OUTSIDE the vttred line showing the general boundaries of your property, and your neighbour may legally own some of the land lying WITHIN the red line showing your property.



## The 'General Boundaries' rule

Working out precisely where the legal boundary of your property is can be surprisingly difficult. Often the red line on the Land Registry plan can be misleading - in some cases it may seem to be in the wrong place. This is because in 1925 the Land Registry adopted the 'general boundaries' rule for their plans, so that the plans are NOT intended to show exactly where a boundary is - just the 'general position' of the boundaries. The Land Registry use Ordnance Survey plans for their title plans/ However, the Ordnance Survey lines on a plan often show a group of features (such as a hedge, wall, fence stream and kerb) as just one line that doesn't necessarily represent any one of these features. The line may even have been plotted in the wrong place. Requiring precisely accurate plans for Land Registration purposes would be expensive and impractical - which is why the 'general boundaries' rule was adopted. This enables a quick and relatively inexpensive land registration system, but at the expense of absolute accuracy.

When Land Registration was introduced in 1925 it was always intended that the interpretation of the correct position of the boundary would take





## “Squatter’s rights”

The legal term for ‘Squatter’s rights’ is ‘Adverse Possession’.

Generally, in order to have any chance of claiming ‘Squatter’s rights’ to a parcel of land, you need to ‘possess’ the land in such a way that it is clear to everyone (including the legal owner) that you are using it for yourself and that no-one else can use it.

Fencing in the land is good proof of possession, but you have to have kept the land fenced in for the whole of the appropriate period of possession needed - and not admit to the legal owner that it is their land, or make a written offer to buy it from them.

Often the whole history of your occupation has to be considered to see if you may have acquired any ‘squatter’s rights’.

In 2003, the law changed to make it much more difficult to claim squatter’s rights over Registered Land.

### Or a boundary error?

In many cases, the problem is simply a boundary error not a case of Adverse Possession. In that case, the dispute over the correct position of the boundary may be easier to resolve than an adverse possession case. The intention of the original buyers and sellers will be of great importance as will the physical position of fences, posts and walls. Any previous agreement on the position of the boundary may be enforceable.

into account the physical features on the ground at the time of the sale of the land, the intentions of the parties to the sale and also any information in any pre-registration title deeds.

In any case, the accuracy of the position on the ground of a line drawn on the usual Land Registry title plan is only plus or minus 1 metre. Often the width of the land in dispute is less than this. You should therefore not try to scale, or measure, from these line when trying to work out precisely where your legal boundary is.

## Key pointers to finding the correct position of the legal boundary

The history of the land and the physical position of walls and fences on the land is very important. It is very likely we would have to investigate the history of the boundary and visit the site before we were able to give advice on the position of the legal boundary, since photos and drawings may not present the full picture. However, please let us have any photographs of the boundary as it is now, or how it was in the past as this will help us understand how the boundary features relate to the positions shown on the title documents.

We may be able to offer an opinion on the legal position of the boundary but of course your next door neighbour might have conflicting views. Similarly a surveyor may be asked to offer an opinion, but the true position of the boundary might only be clear by combining both legal and surveying inputs. It may be necessary to accept a compromise.

## Court action should be only used as a last resort

Going to court to resolve a boundary dispute is generally a bad idea as it is often costly and the result can be unpredictable. It is much better to try and agree something with your adjoining owner or to try having a formal mediation. The Land Registry cannot help you on this - it is up to you to deal with, using legal and surveying advice or ultimately the court system.





## Fixing the boundary?

You can apply to the Land Registry to 'fix' the boundaries.

However, making an application is not straightforward - you will need to have a very accurate plan prepared and have full supporting evidence.

Your adjoining owner is then notified of your application. If he accepts it (or agrees a different line with you) then the boundary can be shown as fixed and your agreed plan will be referred to in the Register.

However, if he disputes your evidence on the boundary position, and you cannot agree a compromise, then once again ultimately the courts would have to decide where the boundary is before it can be shown as 'fixed' on the Land Registry plans. Often the costs of litigation is more than the value of the land.

## Special cases

Squatters on registered land who can show 10 years' possession up to today's date may have a good case to have the current fence line set as the actual legal boundary where it was reasonable to assume that this was the legal boundary - such as with new housing estates. There are other special cases too.

# What Are The General Legal Principles Of 'Squatter's Rights'?

## 1 Squatting on Unregistered Land

If the land is 'unregistered' then usually 12 years possession of the land gives the squatter ownership of the land, under the Limitation Act 1980. However, in some cases it may be necessary to squat on certain types of land for up to 30 years; or even 60 years if it is foreshore land, for example.

The length of time you need to prove you have possessed the land can depend on who the owner of the disputed land is. The problem is that, if you don't know who the owner is, it can be difficult to find out how long you have to show possession of the land before you can claim any rights over it.

For example, if you squat on land that is legally owned by a limited company the usual period that you need to prove you have possessed the land for is 12 years. However, if the company goes into liquidation within this period then the period of possession you will need to prove (now against the Crown) becomes 30 years.

Also, although you might initially persuade the Land Registry to give you Possessory title if you can prove 12 years' possession of the land, the true owner might then appear and try to claim the land back. You might be able to get Title Insurance to cover the loss of the *value* of land if you are unsuccessful in defeating their claim.

## 2 Squatting on Registered Land (starting before October 1991)

Normally, if the land is registered and you can prove a continuous period of possession of the land for 12 years expiring before October 2003 then the old Land Registration Act 1925 rules apply (which are similar to squatting on unregistered land described above). So, assuming the land is registered at the Land Registry and we can find out who the registered legal owner is, we may be able to work out whether you need to prove 12, 30 or even 60 years' possession by that date in order to make a claim.

If you can prove you have had possession of the land for the right period of time, then you should have a good case, unless the land or the owner happens to be a special case. You could initially make a detailed application to the Land Registry with all the supporting evidence. The Land Registry will notify the Registered Owner who would be asked if he agrees with your claim. Unfortunately, he may dispute your claim and you would then



## Why aren't Land Registry plans precise and accurate?

Land registries in many other European countries insist on the use of extremely accurate plans since they adopted the Napoleonic cadastral system.

However, the catch is that in some cases their land registration fees may easily be over £10,000, and their systems can delay the conveyancing process by months.

The English system is therefore quicker, cheaper and more convenient - but at the expense of accuracy.



In 2002, the Land Registry requirements for plans were tightened up and more accurate plans must now be used for all new applications - but the legacy of problems caused by old inaccurate plans and imprecise boundaries will be with us for many years to come.

We cannot prepare accurate boundary plans for you. A reputable RICS land surveyor can prepare accurate plans if these are needed.

You need to check the position of the boundary as shown on any title or contract plans very carefully against what you see on the ground when you visit the property. You must also tell us if there is anything unusual about the boundaries of the land or the boundary features.

have to go to Court to prove your case. This is likely to mean uncertainty, delay and the risk of paying the legal owner's costs if you lose your claim.

## 3 Squatting on Registered Land (starting after October 1991)

If the land you are claiming is registered land but you CANNOT show that you have had possession of it for a period of 12 years expiring before October 2003 but you CAN show 10 years possession up to today's date, you might be able to make a claim under the new rules set out in the Land Registration Act 2002.

However, you are much less likely to be successful applying under the new rules. In fact, under the new rules it is impossible to get squatter's rights over some types of registered land and against some types of land owner. In other cases you might have to show possession for more than 10 years and even up to 30 or 60 years.

If we consider that you have a good case you can make an application to the Land Registry. The Land Registry will send your application to the registered owner, who will be asked whether they accept your claim to the land. If the registered owner agrees to let you have the land then you will become the new registered owner.

Unfortunately, under the new rules, if the registered owner formally objects to your application within a set period of time your application will normally fail. The Land Registry will then reject your application. The registered owner can then eject you from the land, even though you might have been there for 10 or 20 years.

However, in general terms, if the registered owner doesn't eject you from the land and you squat on the land for a further two years, you can then make a further application. This is more likely to be successful.

### In Summary...

Boundary disputes are not common but it is important to be realistic if one does arise. Do not place too much emphasis on Land Registry plans but consider all the information you have, and look for a sensible solution.

Also bear in mind that when you come to sell the house, you may have to disclose to a purchaser that there has been a boundary dispute, whether you have won or lost your case. This might put off any potential purchaser.

### Further Advice?

The information in this guide is for general guidance only and specific advice will be needed on each case. If you want advice on the position of your boundaries, first look at the questions on the next page, since answers to them will help us to give you the best advice.



## Questionnaire - 12 Key Questions to help us advise you

As you can see there are lots of factors that need to be considered before we can advise you on the legal position of your property boundaries and whether you might be able to claim squatter's rights. It will help us if you can ensure that you can answer the following questions when we discuss your case with you.

1. Do you have any old deeds or documents relating to your property? These might be called 'Conveyances' or 'Transfers' or you may just have copies of them. If not, where do you think they might be? For example if you have a mortgage they might be with your bank or building society. If so, give us their name and address and any mortgage account reference number - we can then contact them to see if they have any useful documents. However these days many banks no longer keep any deeds at all.
2. Do you have copies of any planning permissions or house extension drawings or any plans that might show the boundaries of your land?
3. When did you buy your house or land? Have you always lived there and if not who has lived there?
4. When did you first start using the land over which you want to claim squatter's rights and what did you start using it for? Please tell us all the information you can remember, and any key dates.
5. What have you used the land for since you first started using it? For example have you built on the land, put fences round it, used it as part of your lawn, parked cars on it, put signs up, put animals on it, put a shed or garage on it, put chain link fences round it, put tarmac or paving slabs on it, and so on. Again, proving the dates on which you did these things will be important.
6. If you have ever put a fence round the land, can you say approximately on what date you put the fence up? Do you have any proof of this, such as receipts for the fencing work or for the purchase of the fence panels?
7. Have you used the land continuously, or have you allowed anyone else onto it, or has anyone ever tried to argue that it was their land? Is it possible for anyone else other than you to get access to the land? Does anyone (other than you or your family and guests ) ever walk or drive over it ?
8. Do you have any photographs of the land - either specifically showing the boundary, or which might show the position of the boundary in the background, such as old family photographs. If so, do you know when they were taken?
9. Has anyone ever claimed that the land is their land and not your land? Have you ever had any discussions with anyone about the land, or written or received any letters or notices or claims about it? Have you ever offered to buy the disputed land from anyone? Have you ever had any legal or surveying advice from anyone about the land before, and if so what did they advise you?
10. Do you have any ideas as to who might originally have owned the land, such as a local landowner or the original builder of the estate you live on?
11. Do you have any legal expenses insurance, and if so, have you ever contacted the insurer about this issue?
12. Are there any pipes, cables, manholes, lamp posts, post boxes, road signs or street furniture on the land?

