

Guidelines 6 :Sale of pre-registration deeds by solicitors and others

This guideline has been compiled by N W Alcock, to highlight an important aspect of the information given in *Guidelines 5 - Preservation of Pre-Registration Title Deeds - A Guide for Professionals*. Note that this guideline itself is based on the paper by Kevin Ward published in Society of Archivists volume 16 No.1 (Spring 1995) pp.27-39.

Legal value of pre-registration deeds

Different opinions have been expressed on this point, ranging from the view that registration and the Land Registry's indemnity cover all eventualities, to the view that establishing the existence of an error made by the Registry would be very difficult in the absence of the pre-registration deeds. The preservation of deeds might be particularly relevant in relation to disputes over boundaries and covenants. It has been suggested that the ideal solution to this dilemma is for the deeds to be placed on indefinite loan with a record office, where they can be examined if occasion arises, and where they can be used for historical research by those interested. The access now provided by the Land Registry to the register for individual properties and to any copy deeds they hold makes an argument on the grounds of privacy less significant than it might have been in the past.

Ownership and disposal of deeds

Deeds belong to the owner of the land, and should in principle be handed over when the land is sold; the process of registration does not affect the ownership of the deeds. An owner if he wishes can discard or give away his deeds. Solicitors, however, do not own the deeds they hold or originally acquired on behalf of a client, unless these deeds have been 'abandoned', a process that Ward suggests requires 'clear and unequivocal intention to abandon'. Thus, they have no right to dispose of deeds without the permission of the client, even if the client is no longer easily traceable. Any solicitor giving deeds away or selling them without the client's permission is therefore clearly in breach of his duty of care and could expect to be censured by the Law Society and possibly be liable to a criminal charge of theft or fraudulent conversion.

The responsibility of a solicitor holding deeds can clearly best be met either by returning them to the client, or by placing them on deposit, when they can be recovered if necessary.

In the case of the abandonment of deeds by a solicitor and their acquisition by a third party, the same principle would hold. Since the solicitor does not own the deeds, he cannot transfer title to them. His duties to the client might also be considered to have been assigned to the third party. Thus, the deeds still belong to the client(s) who should have a right to recover them, by a civil action if necessary, even though they are held by the third party in good faith. However, this right could presumably not be exercised by a third party with a historical rather than legal interest. The most that can perhaps be done by an interested party is to draw the seller's or his agent's attention to the fact that he does not legally own the deeds and should not therefore be selling them.

Depositing deeds

Deposit of title deeds with a Local Authority Record Office can be easily arranged. The British Records Association has produced a [Guidelines leaflet](#) entitled *Deposit your title deeds - and help preserve our archival heritage*. As well as including general guidance, this includes a form of consent for completion by the client or the solicitor. If you need advice in identifying the record office to which the deeds should be sent, or have any other query, you can contact the British Records Association (details below). The National Archives provides on its [ARCHON](#) (Archives On Line) website a complete list of local authority record offices and archive services and their addresses. The deeds should then be sent or delivered to the relevant Record Office with the form of

consent. It is recommended that the solicitor should obtain the reference/accession number allocated to the documents so that this can be placed with the Land or Charge Certificate.