

**GUIDELINES RE:
LANDLORD'S TITLE**

The Conveyancing Committee issued a practice note in the Law Society Gazette in January/February, 1980 in relation to the enquiries which ought to be made in relation to title by a solicitor for a tenant on the granting of a rack rent lease. The view of the committee at that time was that enquiries need only be made in relation to a landlord's title when acting for a client taking a lease of commercial property for a period in excess of three years. This view was taken on the basis that while a tenant was not, under the provisions of the Conveyancing or the Vendor and Purchaser Acts, entitled to enquire into the landlord's title both the practice of the profession and certain judicial pronouncements (in particular the decision in *Hill v. Harris* (1965 2 A.E.R.) referred to in that practice note) had made inroads into the statutory position.

Almost 20 years have passed since the issuing of the practice note. The committee is now of the view that in relation to shorter term commercial leases the practice of the profession since then and the decision in *ICC Bank plc v. Richard Verling, Niamh Landy and Wine Dimensions Limited* (1995) 1.I.L.R.M.1.23 have resulted in an alteration of this position. In that case a two year nine month lease of an off-licence premises was granted by the first named defendant to the third named defendant. The licence was transferred into the name of the second named defendant as a nominee of the third named defendant. The plaintiff as mortgagee issued proceedings in April, 1994 in which inter alia it sought possession of the premises. Lynch J. in his judgement indicated that inter alia the second and third named defendants had to be regarded as having notice of the mortgage created by the first named defendant in favour of the plaintiff as it was registered in the Registry of Deeds and they could have discovered its existence by means of a simple search.

In view of the above the committee is of the view that prudent solicitors acting for tenants of short term leases of commercial property should make the same enquiries and investigations as those acting for tenants of longer leases. The committee is of the view that the Law Society recommended "Pre-Lease Enquiries or Check List" as published in the Law Society Gazette in May, 1990 (and reproduced in the current edition of the Conveyancing Handbook) should be raised in relation to all such leases. Practitioners should however note that this check list is at present the subject matter of a review by the committee to take account of recent legislation.

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*Note: that an updated Pre-
lease Enquiries or Checklist
was added to the Conveyancing
Handbook in
February, 2001.*