



**OBLIGATIONS OF
VENDOR'S
SOLICITOR IN
RELATION TO THE
EXPLANATION OF
NON-MONETARY
BURDENS WHICH
APPEAR ON FOLIOS
OR APPEAR AS
'ACTS' ON
REGISTRY OF
DEEDS SEARCHES**

It would appear that a vendor's duty in respect of prior burdens affecting registered land is the same as the vendor's duty would be in respect of prior acts appearing on searches in the Registry of Deeds against unregistered land. The simplistic explanation 'does not affect' would not be acceptable in relation to unregistered land and a similar explanation should equally be unacceptable for registered land.

Land Registry

From time to time, especially in regard to housing estates, there appears a burden registered such as the following:

'The property is subject to such of the conditions relating to the use and enjoyment thereof contained in deeds of transfer made between AB of the one part and the registered owners of this and other property formerly part of the folio x of the other part'.

Difficulties arise in practice in that the vendor's solicitors are reluctant to furnish the instrument creating the burden and further because there is none with the title they are not prepared to certify that it does not adversely affect. In most cases the instrument is the transfer lodged with the application to have the transferee registered as the first registered owner. The transfer contains the usual covenants, conditions, exceptions, grants and reservations applicable to such an estate. In order to avoid such difficulties, it is suggested that the better practice should be that the transferee should retain a copy of the completed transfer with the title documents and this could then be furnished with the other documents when furnishing title on a sale of the property. However, if a copy was not retained, the vendor's solicitor should obtain a copy from the Land Registry.

If there are similar burdens on the original grantor's/transferor's title, a copy of the instrument should be with the prior title and is usually contained in a booklet of title with a written explanation of the burden.

There are, however, other cases where the burden is not as informative as the above - for example:

AB became registered with a covenant in the instrument of registration in the following terms: 'AB hereby covenants with CD not without the prior consent in writing of CD to transfer during the lifetime of the said CD the lands hereby transferred or any part thereof'.

However, the burden appearing on the folio showed only the following: 'The covenants specified in instrument X relating to the use and enjoyment of the property'.



This is not very satisfactory and, despite an exchange of correspondence with the Land Registry, the Land Registry have stated: 'Please note that it is generally our practice to register covenants by reference to the instrument (see Rule 105 of the Land Registration Rules 1972 in this regard)'.

However, Rule 105 sets out two options as to how the burden may be recorded:

1. By reference to the instrument; or
2. By setting out an extract therefrom or the affect thereof.

It is submitted that it would be far preferable for the extract itself to be registered rather than a mere reference to the instrument which a third party looking at the folio must then take up. There is, of course, the added difficulty that there is no entitlement on anybody's part to take up the instrument without the consent of the registered owner (see Rule 188). However, it is the stated policy of the Land Registry to register only by reference to the instrument, the purpose being to reduce the drafting and engrossing times and increase productivity in the Land Registry and that such a policy shall continue until the arrears of dealings have been significantly cleared after which time it may be reviewed.

It would appear, therefore, that the only satisfactory solution for the time being is for the vendor to include, by way of title, copies of all instruments appearing on the folio.

It is the intention of the Conveyancing Committee to keep the matter under review and to keep it on the agenda for any future meetings with the Land Registry.

Registry of Deeds

With regard to acts appearing on Registry of Deeds searches, the explanation where applicable 'does not affect' is not acceptable. The vendor's solicitor should check the relevant documentation to ensure that the 'act' does not, in fact, affect the property in sale. Unless the vendor's solicitor has personal knowledge of the particular transaction, the fact that an 'act' refers to particular lands such as 'Site 7 Black Acre', does not entitle the vendor's solicitor to assume that 'it does not affect' for example, Site 2 Black Acre and **enquires should be made**. When it is established that the act does not affect the property in sale, the explanation should read 'affects only Site 7 Black Acre; does not affect Site 2 Black Acre'.

It is not unknown for such acts to affect other property - and it may be necessary to inspect the relevant memorial.

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(Contd.)