



GUIDELINES RE LESSOR'S TITLE

The Conveyancing Committee has received a number of queries as to the enquiries into the landlord's title which ought to be made by a lessee's solicitor on the occasion of the granting of a lease at a rack rent. While the lessee is not, under the provisions of the Conveyancing or Vendor and Purchaser Acts, entitled to enquire into the lessor's title, both the practice of the profession and certain judicial pronouncements have made considerable inroads on this strict statutory position. Many of the uncertainties seem to spring from the decision in *Hill v Harris* (1965) 2 A.E.R. which has probably somewhat been misunderstood. The decision does not give authority for the proposition that a lessee's solicitor is bound to investigate fully the lessor's title and to raise requisitions thereon. It merely states that a solicitor acting for a lessee should take "the ordinary conveyancing precautions before allowing his client to take a sub-lease, or finding out by inspection of the head lease what were the covenants restrictive of user or otherwise contained in the head lease". Any prudent conveyancer acting for a client taking a lease of business or commercial property for more than a three year period should make the following investigations:

- (1) If the property to be let is held by the lessor in fee simple the lessee's solicitor should require production of a certified copy of the deed of conveyance under which the lessor purchased the premises. If the lessor's title is registered in the Land Registry the lessee's solicitor should require an up-to-date certified copy of the folio to be furnished. Alternatively, if the premises are leasehold premises or held under a fee farm grant then the lessee's solicitors should require sight of the last assurance of the property together with a copy of the original lease or fee farm grant so that the covenants and conditions in that document may be carefully checked.
- (2) The lessee's solicitor should satisfy himself that the lessor has obtained all necessary permissions under the Planning Acts for the development of the property, including its proposed use and that where relevant the necessary building by-law approvals have been granted by the local authority. The lessee's solicitor should, if the premises have recently been developed, satisfy himself that the conditions contained in the planning permissions and building bye-law approvals have been complied with and consequently it will be necessary for the solicitors to obtain copies of the planning permission, bye-law approvals and Architect's Certificates of compliance in the usual form. The Conveyancing Committee has, however, indicated that it considered it unreasonable to seek an architect's certificate of compliance in respect of any development which took place before the year 1970 since the practice of seeking such certificates was not common prior to that date.
- (3) The lessee's solicitor should make searches against the lessor, to include judgement and bankruptcy and sheriffs if the lessor's interest is a leasehold one, against the lessor or if the lessor is a company judgement, companies office and where appropriate sheriff searches against the lessor. At a minimum the lessee's solicitor should make a hand search in the Registry of Deeds against the lessor where the title



is unregistered, as and from the date of the assurance to the lessor.

- (4) The lessee's solicitor should satisfy himself as to the insurance requirements in the draft lease. If the insurance is to be carried by the lessor a copy of the policy should be sought on completion and arrangements made to have the lessee's interest noted on the policy.
- (5) In particular cases, specific enquiries may have to be raised, in particular as to the capacity of the lessor to grant the lease, but there should not normally be any need to furnish a full set of Requisitions on Title. ¹

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(Contd.)

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*1. This refers to residential
properties only*

UPDATE: See Recommended Pre-Leases Enquiries contained in this handbook at pages 4.23 to 4.30 and the current edition of the Law Society General Conditions of Sale.