Law of Property (Miscellaneous Provisions) Act 1994

1994 CHAPTER 36

PART I E+W

IMPLIED COVENANTS FOR TITLE

The covenants

1 Covenants to be implied on a disposition of property. E+W

(1) In an instrument effecting or purporting to effect a disposition of property there shall be implied on the part of the person making the disposition, whether or not the disposition is for valuable consideration, such of the covenants specified in sections 2 to 5 as are applicable to the disposition.

(2) Of those sections—

(a) sections 2, 3(1) and (2), 4 and 5 apply where dispositions are expressed to be made with full title guarantee; and

(b) sections 2, 3(3), 4 and 5 apply where dispositions are expressed to be made with limited title guarantee.

(3) Sections 2 to 4 have effect subject to section 6 (no liability under covenants in certain cases); and sections 2 to 5 have effect subject to section 8(1) (limitation or extension of covenants by instrument effecting the disposition).

(4) In this Part—

"disposition" includes the creation of a term of years;

"instrument" includes an instrument which is not a deed; and

"property" includes a thing in action, and any interest in real or personal property.

Changes to legislation: *There are currently no known outstanding effects for the Law of Property (Miscellaneous Provisions) Act 1994, Cross Heading: The covenants. (See end of Document for details)*

2 Right to dispose and further assurance. E+W

(1) If the disposition is expressed to be made with full title guarantee or with limited title guarantee there shall be implied the following covenants—

(a) that the person making the disposition has the right (with the concurrence of any other person conveying the property) to dispose of the property as he purports to, and

(b) that that person will at his own cost do all that he reasonably can to give the person to whom he disposes of the property the title he purports to give.

(2) The latter obligation includes—

(a) in relation to a disposition of an interest in land the title to which is registered, doing all that he reasonably can to ensure that the person to whom the disposition is made is entitled to be registered as proprietor with at least the class of title registered immediately before the disposition; and

(b) in relation to a disposition of an interest in land the title to which is required to be registered by virtue of the disposition, giving all reasonable assistance fully to establish to the satisfaction of the Chief Land Registrar the right of the person to whom the disposition is made to registration as proprietor.

(3) In the case of a disposition of an existing legal interest in land, the following presumptions apply, subject to the terms of the instrument, in ascertaining for the purposes of the covenants implied by this section what the person making the disposition purports to dispose of—

(a) where the title to the interest is registered, it shall be presumed that the disposition is of the whole of that interest;

(b) where the title to the interest is not registered, then—

(i) if it appears from the instrument that the interest is a leasehold interest, it shall be presumed that the disposition is of the property for the unexpired portion of the term of years created by the lease; and

(ii) in any other case, it shall be presumed that what is disposed of is the fee simple.

3 Charges, incumbrances and third party rights. E+W

(1) If the disposition is expressed to be made with full title guarantee there shall be implied a covenant that the person making the disposition is disposing of the property free—

(a) from all charges and incumbrances (whether monetary or not), and

(b) from all other rights exercisable by third parties,

other than any charges, incumbrances or rights which that person does not and could not reasonably be expected to know about.

(2) In its application to charges, incumbrances and other third party rights subsection (1) extends to liabilities imposed and rights conferred by or under any enactment, except to the extent that such liabilities and rights are, by reason of—

(a) being, at the time of the disposition, only potential liabilities and rights in relation to the property, or

(b) being liabilities and rights imposed or conferred in relation to property generally,

not such as to constitute defects in title.

(3) If the disposition is expressed to be made with limited title guarantee there shall be implied a covenant that the person making the disposition has not since the last disposition for value—

(a) charged or incumbered the property by means of any charge or incumbrance which subsists at the time when the disposition is made, or granted third party rights in relation to the property which so subsist, or

(b) suffered the property to be so charged or incumbered or subjected to any such rights,

and that he is not aware that anyone else has done so since the last disposition for value.

4 Validity of lease. E+W

(1) Where the disposition is of leasehold land and is expressed to be made with full title guarantee or with limited title guarantee, the following covenants shall also be implied—

(a) that the lease is subsisting at the time of the disposition, and

(b) that there is no subsisting breach of a condition or tenant's obligation, and nothing which at that time would render the lease liable to forfeiture.

(2) If the disposition is the grant of an underlease, the references to "the lease" in subsection (1) are references to the lease out of which the underlease is created.

5 Discharge of obligations where property subject to rentcharge or leasehold land. E+W

(1) Where the disposition is a mortgage of property subject to a rentcharge, **[**[F1]of leasehold land or of a commonhold unit**]**, and is expressed to be made with full title guarantee or with limited title guarantee, the following covenants shall also be implied.

(2) If the property is subject to a rentcharge, there shall be implied a covenant that the mortgagor will fully and promptly observe and perform all the obligations under the instrument creating the rentcharge that are for the time being enforceable with respect to the property by the owner of the rentcharge in his capacity as such.

(3) If the property is leasehold land, there shall be implied a covenant that the mortgagor will fully and promptly observe and perform all the obligations under the lease subject to the mortgage that are for the time being imposed on him in his capacity as tenant under the lease.

[[F2](3A) If the property is a commonhold unit, there shall be implied a covenant that the mortgagor will fully and promptly observe and perform all the obligations under the commonhold community statement that are for the time being imposed on him in his capacity as a unit-holder or as a joint unit-holder.**]**

[[F3](4) In this section—

(a) "commonhold community statement", "commonhold unit", "joint unit-holder" and "unit-holder" have the same meanings as in the Commonhold and Leasehold Reform Act 2002, and

(b) "mortgage" includes charge, and "mortgagor" shall be construed accordingly.**]**

Textual Amendments

F1 Words in s. 5(1) substituted (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), s. 181(1), **Sch. 5 para. 7(2)** (with s. 63); S.I. 2004/1832, art. 2

F2 S. 5(3A) inserted (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), s. 181(1), **Sch. 5 para. 7(3)** (with s. 63); S.I. 2004/1832, art. 2

F3 S. 5(4) substituted (27.9.2004) by Commonhold and Leasehold Reform Act 2002 (c. 15), s. 181(1), **Sch. 5 para. 7(4)** (with s. 63); S.I. 2004/1832, art. 2

Changes to legislation:
There are currently no known outstanding effects for the Law of Property (Miscellaneous Provisions) Act 1994, Cross Heading: The covenants.