



# Law of Property (Miscellaneous Provisions) Act 1994

## 1994 CHAPTER 36

### PART I

#### IMPLIED COVENANTS FOR TITLE

##### *The covenants*

#### **1 Covenants to be implied on a disposition of property**

- (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.

## **2 Right to dispose and further assurance**

- (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**

- (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**

- (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**

- (1) Where the disposition is a mortgage of property subject to a rentcharge, or 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.
- (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.
- (4) In this section “mortgage” includes charge, and “mortgagor” shall be construed accordingly.

#### *Effect of covenants*

#### **6 No liability under covenants in certain cases**

- (1) The person making the disposition is not liable under the covenants implied by virtue of—
- (a) section 2(1)(a) (right to dispose),
  - (b) section 3 (charges, incumbrances and third party rights), or
  - (c) section 4 (validity of lease),
- in respect of any particular matter to which the disposition is expressly made subject.

- (2) Furthermore that person is not liable under any of those covenants for anything (not falling within subsection (1))—
- (a) which at the time of the disposition is within the actual knowledge, or
  - (b) which is a necessary consequence of facts that are then within the actual knowledge,
- of the person to whom the disposition is made.
- (3) For this purpose section 198 of the Law of Property Act 1925 (deemed notice by virtue of registration) shall be disregarded.

## **7 Annexation of benefit of covenants**

The benefit of a covenant implied by virtue of this Part shall be annexed and incident to, and shall go with, the estate or interest of the person to whom the disposition is made, and shall be capable of being enforced by every person in whom that estate or interest is (in whole or in part) for the time being vested.

## **8 Supplementary provisions**

- (1) The operation of any covenant implied in an instrument by virtue of this Part may be limited or extended by a term of that instrument.
- (2) Sections 81 and 83 of the Law of Property Act 1925 (effect of covenant with two or more jointly; construction of implied covenants) apply to a covenant implied by virtue of this Part as they apply to a covenant implied by virtue of that Act.
- (3) Where in an instrument effecting or purporting to effect a disposition of property a person is expressed to direct the disposition, this Part applies to him as if he were the person making the disposition.
- (4) This Part has effect—
- (a) where “gyda gwarant teitl llawn” is used instead of “with full title guarantee”, and
  - (b) where “gyda gwarant teitl cyfyngedig” is used instead of “with limited title guarantee”,
- as it has effect where the English words are used.

## **9 Modifications of statutory forms**

- (1) Where a form set out in an enactment, or in an instrument made under an enactment, includes words which (in an appropriate case) would have resulted in the implication of a covenant by virtue of section 76 of the Law of Property Act 1925, the form shall be taken to authorise instead the use of the words “with full title guarantee” or “with limited title guarantee” or their Welsh equivalent given in section 8(4).
- (2) This applies in particular to the forms set out in Schedule 1 to the Settled Land Act 1925 and Schedules 4 and 5 to the Law of Property Act 1925.

### *Transitional provisions*

#### **10 General saving for covenants in old form**

- (1) Except as provided by section 11 below (cases in which covenants in old form implied on disposition after commencement), the following provisions, namely—
  - (a) section 76 of the Law of Property Act 1925, and
  - (b) section 24(1)(a) of the Land Registration Act 1925,are repealed as regards dispositions of property made after the commencement of this Part.
- (2) The repeal of those provisions by this Act accordingly does not affect the enforcement of a covenant implied by virtue of either of them on a disposition before the commencement of this Part.

#### **11 Covenants in old form implied in certain cases**

- (1) Section 76 of the Law of Property Act 1925 applies in relation to a disposition of property made after the commencement of this Part in pursuance of a contract entered into before commencement where—
  - (a) the contract contains a term providing for a disposition to which that section would have applied if the disposition had been made before commencement, and
  - (b) the existence of the contract and of that term is apparent on the face of the instrument effecting the disposition,unless there has been an intervening disposition of the property expressed, in accordance with this Part, to be made with full title guarantee.
- (2) Section 24(1)(a) of the Land Registration Act 1925 applies in relation to a disposition of a leasehold interest in land made after the commencement of this Part in pursuance of a contract entered into before commencement where—
  - (a) the covenant specified in that provision would have been implied on the disposition if it had been made before commencement, and
  - (b) the existence of the contract is apparent on the face of the instrument effecting the disposition,unless there has been an intervening disposition of the leasehold interest expressed, in accordance with this Part, to be made with full title guarantee.
- (3) In subsections (1) and (2) an “intervening disposition” means a disposition after the commencement of this Part to, or to a predecessor in title of, the person by whom the disposition in question is made.
- (4) Where in order for subsection (1) or (2) to apply it is necessary for certain matters to be apparent on the face of the instrument effecting the disposition, the contract shall be deemed to contain an implied term that they should so appear.

#### **12 Covenants in new form to be implied in other cases**

- (1) This section applies to a contract for the disposition of property entered into before the commencement of this Part where the disposition is made after commencement and section 11 (cases in which covenants in old form to be implied) does not apply

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*Status: This is the original version (as it was originally enacted).*

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because there has been an intervening disposition expressed, in accordance with this Part, to be with full title guarantee.

- (2) A contract which contains a term that the person making the disposition shall do so as beneficial owner shall be construed as requiring that person to do so by an instrument expressed to be made with full title guarantee.
- (3) A contract which contains a term that the person making the disposition shall do so—
  - (a) as settlor, or
  - (b) as trustee or mortgagee or personal representative,shall be construed as requiring that person to do so by an instrument expressed to be made with limited title guarantee.
- (4) A contract for the disposition of a leasehold interest in land entered into at a date when the title to the leasehold interest was registered shall be construed as requiring the person making the disposition for which it provides to do so by an instrument expressed to be made with full title guarantee.
- (5) Where this section applies and the contract provides that any of the covenants to be implied by virtue of section 76 of the Law of Property Act 1925 or section 24(1)(a) of the Land Registration Act 1925 shall be implied in a modified form, the contract shall be construed as requiring a corresponding modification of the covenants implied by virtue of this Part.

### **13 Application of transitional provisions in relation to options**

For the purposes of sections 11 and 12 (transitional provisions: implication of covenants in old form in certain cases and new form in others) as they apply in relation to a disposition of property in accordance with an option granted before the commencement of this Part and exercised after commencement, the contract for the disposition shall be deemed to have been entered into on the grant of the option.