

Chapter 3: Underpinning land law – third-party rights in land

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Aims of this Chapter

We have seen that often, what gives land its value and makes it marketable is the rights that benefit the land, for example, a right-of-way over neighbouring property to the public highway. The use of land may also be limited in some way such that the owner cannot do what they want with the land. These limitations might be a covenant restricting the use of the land or a legal charge in favour of a lender who has taken a mortgage over the land as security for a loan. A client may wish to purchase a piece of land to build on, but if there is no legal right of access and no right to connect to services such as electricity, water and foul drainage, the client may decide that they do not want to proceed. It is the job of the conveyancer when acting for a buyer to find out about these issues and report on them to their buyer client. Collectively, these rights of parties other than the legal owner are called "**third-party rights**".

This chapter will cover:

- easements
- profits
- freehold covenants
- mortgages, and
- bringing land law and third-party rights together on a register of title.

CONTINUE

3.1 Recap on key concepts

3.1 Recap on key concepts

To recap, you have now learned that when purchasing land, a buyer purchases estates and interests in the land.

By virtue of **s1(1) LPA 1925**, there are two legal estates:

- fee simple absolute in possession (freehold); and
- term of years absolute (leasehold).

By virtue of **s1(2) LPA 1925**, there are five legal interests:

- legal easements and profits;
- legal rentcharges;
- charge by way of legal mortgage;
- charges arising under statute (of no practical significance); and
- rights of entry in legal leases and legal rentcharges.

By virtue of **s1(3) LPA 1925**, all other interests are:

- equitable interests.

You have also learned that the above estates and interests need to comply with some formalities in order to be valid. However, this is not the end of the story. These estates and interests must be protected in order to bind buyers and other third parties.

As far as registered land is concerned, you need to remember that estates and interests do not become **legal** estates or legal interests until registration takes place. Until registration at HMLR these remain equitable interests. So, for example, a buyer only becomes the **legal** owner on registration, easements only become **legal** easements once registered, similarly mortgages only become **legal** mortgages once entered in the charges register.

With unregistered land, the buyer becomes the legal owner immediately upon completion.

The way that the system of protection of estates and interests works depends upon whether the land is **registered** or **unregistered** and the type of interest concerned. The detail of how these interests are protected is beyond the scope of this course book.

We will now move on to consider the key third-party rights which affect land.

You will remember that the freehold and leasehold estate denote the extent to which the owner has the right to use the land. The freehold owner can use the land indefinitely; the leasehold owner can use the land for a specified period of time. However, you need to understand that the enjoyment of the land by the freehold owner can be limited by the rights which others may have over the land in question.

The owner of a neighbouring property might have a right to drive over the freehold owner's land. This is a right-of-way, or an easement. The freehold owner might be under an obligation to only use the land for residential purposes. This would therefore limit their ability to use the land for business purposes. This obligation is known as a covenant. The

freehold owner may have purchased the land with the aid of a mortgage in which case the lender may have taken a legal charge over the land.

All of these are examples of third-party rights over the land which can limit the right of the freehold owner to enjoy the land.

CONTINUE

3.2 Easements

A particular right which third parties may acquire over land is an easement. There are other rights similar to easements which will be discussed briefly; these are called profits.

3.2.1 What is an easement?

An easement is a property right which one person has over another person's land. Easements can take many forms. The most common are rights of way, rights of drainage and rights to run cables and pipes under another's land.



For an easement to exist, both parties must have estates in land. The party who benefits from the easement is known as the dominant owner, and the party whose land suffers the detriment (or burden) of the easement is the servient owner.

Easements are **not** public rights; they are private rights.

3.2.2 Characteristics of an easement

The next thing to consider is how to recognise an easement.

How do we know whether an apparent right over another's land is an easement?

To be capable of being an easement, four characteristics must be satisfied, as established in ***Re Ellenborough Park [1956]***.

1. There must be a dominant and servient tenement. This means that there must be two pieces of land: one (the dominant tenement) takes the benefit of the right, and the other (the servient tenement) is subject to the burden of the right.

2. The right claimed must benefit the dominant tenement. It must be of benefit to the land as opposed to being of purely personal or commercial benefit to the occupier. A useful test to determine whether or not this is so is to ask if the right would make the land more valuable if sold.

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Let's stop and think about this for a moment.

A landowner might allow their neighbour to come onto their land because their neighbour is a painter and enjoys the views. The landowner might be happy for the neighbour to bring their easel and paintbrushes to paint their landscapes. Whilst this activity might be very pleasant for the neighbour, it is only of personal benefit for the neighbour and confers no additional value and the land itself.

Contrast this with the situation where the neighbour's only access to the public highway is across the landowner's property. The landowner might be prepared to grant their neighbour right-of-way over their land to get to the public highway. Hopefully, you can see that this right-of-way, if granted by deed, is a legal right-of-way which would benefit and add value to the neighbour's

land itself. Future owners of the neighbour's property could use the right-of-way as it is more than merely a personal right.

3 There must be diversity of ownership and/or occupation. Different people must own and occupy the dominant and servient tenements. A landlord can, however, claim an easement over their tenant's land and vice versa because diversity of occupation is sufficient.

4 The right claimed must be capable of forming the subject matter of a grant. This means that the right must be capable of being expressed in a written document and must meet the following requirements:

(a) The right claimed must be **similar to existing easements**.

Common easements include:

(i) rights of way;

(ii) rights of tenants to use common parts such as corridors;

(iii) rights of light through defined apertures;

(iv) rights to run cables and pipes under or over land;

(v) rights of drainage; and

(vi) rights of support where adjoining premises provide structural support for one another.

(b) There must be **no positive requirement for the servient owner to expend money**, except in the case of easements to maintain fences (although note that this does not apply to all fences, and the obligation to maintain a fence is often expressed as a covenant (discussed later)).

(c) Easements must also be **sufficiently definite**. There can be no easement to a general right to a view, or to general light, for instance, in a garden. Protection of a view and light might be possible by use of a restrictive covenant (discussed later). A right of way must exist along a defined track, path or road, and a right to light must be through a defined opening.

(d) **There must be no exclusive possession**. The dominant owner cannot exclude the servient owner from the land.

CONTINUE

3.2.3 Creation of easements

Even though a right may be capable of forming an easement, it does not automatically become one. It may be a mere licence. A licence is permission to enter land, it is not an interest in land.

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A mere licence is not an easement.

If Barry allowed a neighbour access across the garden of Sunnybank for the delivery of building materials, he will not have created an easement.

Even though this permission has all the hallmarks of an easement, it cannot be an easement as it is merely verbal and amounts to mere permission to enter. It would be viewed as a licence to cross the land.

Acquisition or creation of an easement will take place through either a grant or a reservation.

A grant occurs where one person agrees that another should have rights over land which they retain. A reservation occurs where a person reserves rights over land which they sell.

CONTINUE

3.2.4 Grant of easements

There are three ways of granting or creating a legal easement.

(1) Express grant

This is the most obvious means of creating an easement. One property holder expressly agrees that another should have an easement over their land. If the easement is to be recognised by law, it must be created by deed under **s52 LPA 1925** and be equivalent to a legal estate. If not created in this way, it will be equitable; such an equitable easement must, at the very least, be in writing.

(2) Implied grant

Easements created by implied grant or prescription (long use) are legal easements. Under the rules on implied grant and prescription, a claimant has the burden of proving the existence of the easement. If there is sufficient evidence to that effect, the court will declare that the easement exists, and it will be deemed to be a legal easement despite the fact that it is not created by deed and is not even in writing.

An easement may be implied into a contract or a conveyance in certain circumstances. The various methods of implied grant are based on what the parties to the agreement are presumed to have intended.
These are as follows:

(a) Necessity.

An easement will be implied if absolutely necessary. This can arise where land is landlocked, and there is no other access without a right of way. Mere inconvenience is insufficient to create an easement of necessity.

(b) Common intention.

There may be an implied easement if the parties to the transaction must clearly have intended this.

(c) The rule in *Wheeldon v Burrows [1879]*.

When land is divided and a part is to be sold on, any rights which the seller needs in relation to the land being sold should be expressly reserved for the benefit of the sellers retained land. This case established that on a sale of part, all easements which are "**continuous and apparent**" necessary for the reasonable enjoyment of the land being sold and in actual use will pass to the buyer of land. The significance of this is that these easements will pass to the buyer by implication. A person who divides their land into two and then sells one part always needs to be careful that implied easements are not being created in favour of the buyer and should seek to exclude the rule in ***Wheeldon v Burrows*** to ensure that no unintended benefits pass to the buyer.

(d) s62 LPA 1925 – this section provides that rights enjoyed by the seller of a piece of land are transferred on a sale of part to the new owner. The right must have been in actual use at the time of the sale. This section will generally be excluded on a sale of part again to ensure that no unintended benefits pass to the buyer.

(3) Presumed grant or prescription

Prescription implies that if a person can prove that for a particular period (usually 20 years) they have exercised a right which has the characteristics of an easement, they may be presumed to have an easement by prescription.

This is regarded as a legal fiction. If a person can show acquisition of an easement by prescription, it is presumed that some grant of a legal easement occurred in the past.

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We will spend a little more time in this course book looking at easements created by prescription (that is by long use) because you are more likely to see these in conveyancing practice.

For example, it may be evident from looking at the documents provided that the seller of a property has exercised a right-of-way over the land of another to gain access to the public highway. This right-of-way should appear on the property register of the title as a legal easement benefiting the property to be sold. However, if there is no right of way mentioned on the property register, the buyer's conveyancer will need to seek evidence from the seller that the right-of-way has been used to such an extent that a right-of-way by prescription has been acquired.

Often the buyer's conveyancer will require the seller to provide a statutory declaration or

statement of truth (see **Chapter 4** for detail about these documents) in which the seller confirms the route of the right-of-way and the length of time which they have used it.

The buyer's conveyancer must then look at the evidence provided to establish whether the criteria mentioned below have been satisfied for a right-of-way by prescription to be created.

For prescription to occur, the following criteria must be satisfied:

(a) There must have been continuous user (the legal term for usage): the purported easement must have been used regularly.

(b) User must have continued for the prescriptive period – generally 20 or more years.

(c) User must be by, or on behalf of, and against, the fee simple (i.e. freehold). In other words, one freehold owner must be claiming against another. A tenant cannot acquire an easement by prescription over land adjoining their leasehold land if that neighbouring land is owned by their landlord.

(d) There must be user as of right. This means that it must have been exercised without force, secrecy or permission. Where a person forcibly removes a fence to create a shortcut, or where the servient owner does not appreciate that their land is being used (e.g. where drains are buried under the land), no right of prescription can arise. Also, if permission has been given to use the particular right, then there can be no prescriptive right.

There are three different methods of prescription.

(i) At common law, for an easement to arise by prescription, it had to have been enjoyed since time immemorial (1189). The courts have adopted the rule that, if user as of right for 20 years or more is shown, it will be presumed that user has continued since 1189. If it can be shown that at any time since 1189 the easement could not have existed, for example, the land was owned by one person, an easement cannot be acquired by prescription at common law.

(ii) Under the doctrine of lost modern grant, where the easement must have been used for 20 years. In such cases, the courts may make a (fictional) presumption that the easement was granted, but that the deeds were lost.

(iii) Under the **Prescription Act 1832**, where the easement must have been used for at least 20 years. If 40 years' use can be shown, however, the right is deemed to be absolute and indefeasible (cannot be made void).

To claim an easement under the doctrine of lost modern grant, the 20-year period can be any period, whereas to claim an easement under the **Prescription Act 1832**, the 20-year period must be "**next before action**", that is, run for the 20 years immediately preceding the action.

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3.2.5 Reservation of easements

Reservation of an easement occurs if an owner sells part of their land, but retains the right to use an easement over the land sold. As with express grants, easements reserved may be legal or equitable.

In the absence of express reservation of the easement by deed, one can only be implied by means of necessity or common intention. **Note** that the rule in ***Wheeldon v Burrows*** and

s62 LPA 1925 do **not** apply to the reservation of easements. So, the law will not imply a right over retained land on a sale of part in favour of the seller. This is because the seller will have control over drafting the contract and the deed which transfers the ownership to the buyer (these days, called a transfer of part – TP1) and as such should be expected to ensure that the appropriate rights which the seller requires over the retained land are properly reserved.



Activity 1

Follow the link below and download and keep a copy of HMLR's form TP1. This is a standard pre-printed form which will be used when part of a piece of land is being sold (and part retained by the seller). Look through the document. Look carefully at **Section 12**; **Additional provisions**. You will see that it has a space to include "**rights granted for the benefit of the property**" and "**rights reserved for the benefit of other land**".

These are the sections in which the seller's conveyancer will draft any new rights which the land being sold may require and will specify any rights which the seller needs to reserve over the land being sold.

GOV.UK



Registered title(s): part transfer (TP1)

Form TP1 to transfer part of a registered title.

READ MORE GOV.UK

Activity 2

Follow the link below and download and keep a copy of HMLR's form TR1. This is a standard pre-printed form which will be used when the whole of the land in a registered title is being sold.

Download and save the form as we will look at it again in a later chapter.

You will see that the TR1 is much simpler in format than the TP1.

GOV.UK



Registered title(s): whole transfer (TR1)

Form TR1 to transfer a property.

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CONTINUE

3.2.6 Profits *à prendre*

A profit *à prendre* is a right to enter on to land of another person and take part of the produce or soil. Unlike an easement, the owner of the profit does not need to have an estate in the land itself.

Profits include:



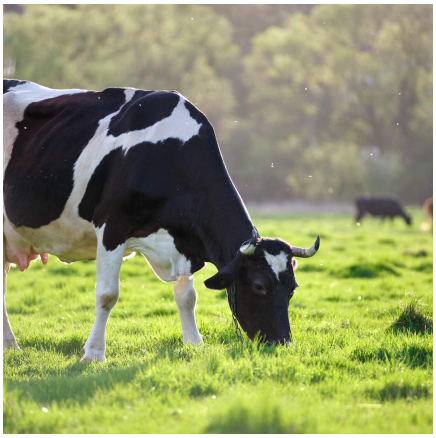
mining rights



fishing rights



shooting rights



rights of grazing



rights to collect wood



dig for peat

Profits can be acquired in similar ways to easements, although they cannot be acquired by necessity or under the rule in ***Wheeldon v Burrows [1879]***. The prescription period under the **Prescription Act 1832** is usually 30 years.

CONTINUE

3.2.7 Terminating easements

Easements can be extinguished in the following ways.

1. By statute.
2. By release. This could be express release or implied release. There has to be an intentional abandonment of the easement for there to be an implied release.
3. By unity of ownership and possession. If the dominant and servient tenements come into the ownership and possession of the same person, any easement is extinguished.

CONTINUE

3.2.8 Summary

What is an easement? (***Figure 3.2***)

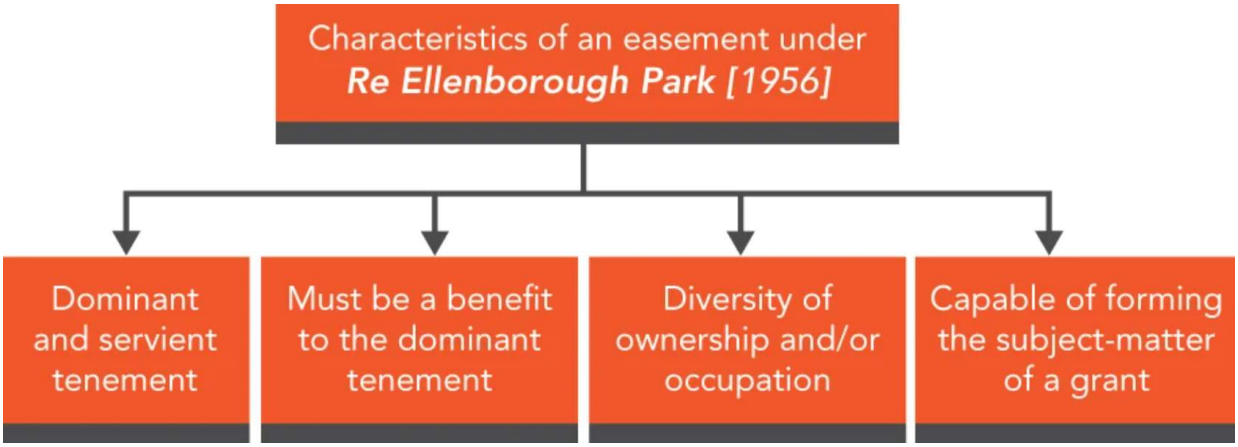


Figure 3.2

CONTINUE

3.3 Freehold covenants

In this section, you will learn about the restrictions and obligations that are often placed on owners of property. Whether these obligations can be enforced against subsequent buyers is a complex area and is outside the scope of this course book. There are, of course, many restrictions which may be placed on a person's use of their land, for example, under planning or environmental legislation. Here we concentrate on obligations which have been agreed between buyers and sellers of freehold land.

Remember that we have seen earlier that leases also contain obligations imposed on the landlord and the tenant. These are leasehold covenants, and the detail of which will be contained in the lease itself. **It is important that you do not confuse leasehold and freehold covenants**.

3.3.1 Covenantors and covenantees

The person who gives the covenant is called the **covenantor**. The covenantor is said to have the **burden** of the covenant, because the covenant burdens the land. The person who receives the covenant is termed the **covenantee**; they have the **benefit** if the covenant is breached.

3.3.2 Creation of covenants

A covenant is a promise (i.e. obligation) which governs what must be done or not done in relation to the land affected by it. The land which carries the obligation to comply with the

covenant is said to take the "**burden**" of the covenant. The land which enjoys the advantage of the covenant is said to take the "**benefit**".

> **Note** that, as with an easement, for a promise to amount to a covenant, it must confer a positive benefit on the land and not just a personal benefit to the land owner.

A covenant must be created by deed. They can be created in a separate document called a "**deed of covenant**".

> **Link to Practice** 🔗
>
> However, in most cases in residential conveyancing, you will come across covenants which are being imposed by a developer when a property is being sold for the first time as a new build. In this instance, the developer (seller) will impose various covenants in the transfer document.

3.3.3 Positive and restrictive covenants

Covenants are legally binding obligations. They can take one of two forms: **positive** or **restrictive**.

When a house is built, there are normally restrictions placed on the owner, for example, not to run a business, not to build, not to build above a certain height or not to erect aerials above the roof line. These are **restrictive covenants**.

Other covenants may be included which impose an obligation on a buyer to do something and usually expend money. This could be to maintain a fence or to clear ditches. These are **positive covenants.**

Restrictive and positive covenants are commonly included in the transfer deed on a sale of freehold land and are collectively known as **freehold covenants**. They may also be created separately in an express deed of covenant.

> **Note** that in the freehold context, it is not possible for the burden of a positive covenant to pass. In simple terms this means that it is difficult to enforce positive covenants against subsequent owners of the land.

You can see that Alan and Jane are the legal owners, and they are holding the beneficial interest on trust for themselves.

Example

Covenants are often imposed on land when property is built and the land is sold on.

Typical covenants might be:


FOR SALE



(1)

not to use the land as anything other than a private dwelling-house.



(2)

to maintain a wall between the properties.



(3)

not to allow the fence on the northern boundary to fall into disrepair.

Do you notice anything about the wording of these covenants?

1. You will notice that the first covenant is restrictive (or negative) – it starts "**not to use**...".
2. The second is positive, because it involves doing something and costs money to comply with – it starts with "**to maintain**".
3. The third covenant is, however, more problematic. This covenant is worded negatively – its starts "**not to...**" but it involves expenditure. This is, in fact, a positive covenant.

The clue here is to look at the substance of the covenant and not the wording, that is, the test is one of substance and not form.

The significance of covenants being positive or negative in nature is relevant to whether it is possible to enforce the covenants against subsequent owners of the property taking the

burden of the obligation. The detail is outside the scope of this course book. However, you will come across covenants frequently in practice, and it is useful for you to be able to recognise a covenant and whether it is positive or negative in nature.

CONTINUE

3.3.4 Protecting restrictive covenants in registered land

Restrictive covenants are recognised only in equity and are, therefore, equitable interests. A restrictive covenant is protected by **notice** in the charges register.

CONTINUE

3.4 Mortgages

A mortgage is a right of a lender over land which guarantees the payment of a debt or the performance of some other obligation. It is one of the most important third-party rights that is binding on the land. The borrower in this relationship is the **mortgagor** and the lender is the **mortgagee**.

The money originally borrowed from the lender (which is generally used to fund the purchase of the property in a residential conveyancing transaction) is called the "**capital sum**". The lender will charge a monthly rate of interest on the capital sum that has been borrowed. The length of the mortgage is called the "**term**". A typical term for a residential mortgage is 25 years meaning that the borrower agrees to repay the loan over this period of time. The detail of the basis upon which a lender is prepared to lend money to a borrower for the purchase of a property in the conveyancing transaction is contained in the mortgage offer.



Link to Practice 🔗

As we have seen, the conveyancer will generally act for the buyer of a residential property and the institutional lender. The mortgage offer will be sent to the conveyancer who must ensure that all of the relevant conditions in the mortgage offer can be met. They will request drawdown of the loan to enable the buyers purchase to complete. After completion, the conveyancer is also under an obligation to register the mortgage in the charges register of the buyer's title. You will see how this works in a later chapter when we consider the conveyancing process and, specifically, the post-

completion work which the buyer's conveyancer must carry out.

CONTINUE

3.4.1 Types of mortgage

Four types of mortgage are commonly used for the purpose of obtaining a loan by using a home as security for that loan. They are

1. the repayment mortgage,
2. the interest-only mortgage,
3. the endowment mortgage, and
4. the pension mortgage.

It is important to note that a conveyancer can explain the information below to a buyer client and can explain in general terms what a mortgage offer means to a client.

Link to Practice 🔗

Note that the conveyancer can only give generic mortgage advice rather than specific mortgage advice. This means that the conveyancer cannot, for example, tell the client whether a particular lender has a good reputation or whether a particular mortgage deal is worth taking out. If a

client ever requests specific advice on a mortgage lender or product, the conveyancer should decline to comment and should tell the client to obtain independent financial advice.

The monthly repayment to the lender will consist partly of the capital (the loan) which has been borrowed and partly of interest on this loan. Repayment in relation to a house purchase mortgage will usually be by monthly instalments over 20–25 years. The mortgagor may also be required to take out a life insurance policy with an insurance company to cover the eventuality of their death before the whole amount has been repaid. **Note** that you may also see this referred to as a capital repayment mortgage. With this repayment method, you can ensure that your mortgage is fully paid off at the end of the mortgage period.

As the name implies, this is a mortgage whereby the borrower only pays off the interest accruing on the capital sum each month. This means that the monthly repayments are generally lower than a repayment mortgage. However, the capital sum borrowed will remain outstanding for the entire term of the mortgage and the borrower will therefore need to have arrangements in place to pay off the capital sum owed at the end of the mortgage.

Examples of such arrangements would be an investment plan, specific ring-fenced funds or a second property which the borrower could sell.

This is a type of mortgage which is no longer available, but may still be encountered in practice, though rarely. It is reported that in mid-2000 some 23% of new mortgages were still endowment based. It is a type of mortgage where only interest is paid off by means of monthly instalments. The mortgagor will also take out an endowment policy (insurance policy) with an insurance company. There will be monthly payments of a premium to the insurance company. These premiums will be invested and will be used at the end of the policy to pay the capital loan. There is, however, no guarantee that the proceeds will be sufficient to repay the loan in full. It is this last point which led to a mis-selling scandal and it is no longer possible to take out an endowment mortgage, but there may still be some in practice, which is why an awareness of this product is necessary.

As its name suggests, a pension mortgage links a mortgage with pension arrangements for the mortgagor's retirement. This type of mortgage is generally available only to the self-employed and is beneficial, for tax reasons, to high earners; for these reasons they are fairly rare in practice.

CONTINUE

3.4.2 The creation of mortgages

Mortgages are third-party rights which are binding on the land. The third party, usually a bank or building society, will acquire a legal (or possibly an equitable) interest over the land in the form of a charge, which is the most common. Rarely a mortgage will be in the form of a lease; this latter is known as a grant by demise and is not encountered very often in

practice (in this context “demise” means “lease”). During the mortgage, the mortgagor (borrower) retains the legal estate.

Mortgages are either **legal** or **equitable**.

CONTINUE

3.4.3 Legal mortgages

Legal mortgages are legal interests (**s1(2) LPA 1925**).

3.4.3.1 Mortgages of unregistered titles

By virtue of **s85 LPA 1925**, where land is unregistered, legal mortgages can be created by:

- a lease (or demise) for a term of years absolute subject to a provision for cessation on redemption (i.e. which can be brought to an end if paid off early); or
- a charge by deed expressed to be by way of legal mortgage.

The first of these methods is a lease (or demise) which lasts for 3,000 years but which can be brought to an end early when the mortgage is redeemed. The mortgagor redeems a mortgage when they pay off the mortgage.

The second method of creating a legal mortgage of unregistered land is where the mortgagor executes a deed in favour of the mortgagee. The deed must expressly state that the property has been charged with the debt by way of legal mortgage. This, too, can be redeemed by paying off the mortgage at a date earlier than agreed.

3.4.3.2 Mortgages of registered titles

A legal mortgage over registered land can only be created:

- by deed;
- expressly stating that the property has been charged with the debt by way of legal mortgage; and
- which has been registered in the charges register of the title.

If the mortgagee fails to register the charge, their mortgage will not bind a buyer for value unless protected by notice.

CONTINUE

3.4.4 Equitable mortgages

Equitable mortgages, which are created in writing rather than by deed, are sometimes used to secure short-term loans or overdrafts.

Also note from the above that a mortgage over registered land will be equitable until it is registered.

3.4.5 The mortgagor’s right to redeem the mortgage

A mortgagor usually agrees to repay the loan over a number of years by monthly instalments. Nevertheless, the mortgage will contain a provision that the full loan must be repaid by a specific date, usually six months from the date the mortgage was created. This date is known as the "**legal date for redemption**". This may seem surprising, but it has some important effects.

1. First, once the legal date for redemption has passed, a number of the mortgagee's remedies arise.
2. Second, after the legal date for redemption has passed, the mortgagor has an equitable right to redeem the mortgage.

This right to redeem is known as the **equity of redemption.** Any attempt to prevent the mortgagor from exercising their equitable right of redemption is considered to be a "**clog on the equity of redemption**". For example, if there was a term in the mortgage agreement preventing the mortgagor from repaying the mortgage early, this term would be void as a "**clog on the equity of redemption**".



Link to Practice 🔗

"**Clogs on the equity of redemption**" sound very old-fashioned, don't they? However, this is referring to a part of the conveyancing process which we come across every day and which represents a risk to the seller's conveyancer.

If Jennifer and Barry purchase a property with the aid of a mortgage, the title will be registered and the formalities required to create the mortgage would be to ensure that it is by deed, is expressed to be by way of legal mortgage and is registered in the charges register of title of their proposed new

home. Their conveyancer will be responsible for ensuring that this registration takes place. We will come across this in a later chapter (post-completion).

The mortgage which Jennifer and Barry take out is likely to be for a 25-year term. But this does not mean that they have to live in their current property for 25 years before they can move. This is because of the equity of redemption. Jennifer and Barry will be entitled to pay off their mortgage with the sale proceeds if they decide to sell the property.

The conveyancer who is acting for them on their sale will apply to their lender for a “redemption” figure. This is the sum required to pay off the mortgage in full calculated to the completion date.

It is vital for the seller’s conveyancer to ensure that the sale price is enough to cover the amount required to redeem the mortgage. This is because the seller’s conveyancer will be required to give an undertaking (that is, a professionally binding promise) to the buyer’s conveyancer to pay off Jennifer and Barry’s mortgage with the purchase money received on the completion date from the buyer’s conveyancer.





Activity

Find the Protocol form called "**Completion Information and Undertakings**".

A copy of the form is at **Chapter 17**.

Read the form and look in particular at question 5 "**mortgages and charges**". You will see that the seller's conveyancer must list the mortgages or charges secured on the property which they undertake to redeem on completion.

CONTINUE

3.4.6 Remedies of the mortgagee

There are a number of remedies available to a mortgagee when the mortgagor defaults on repayments. **Note** that obtaining possession and then selling the property are by far the most commonly used remedies.

3.4.6.1

Obtaining possession

Possession of a dwelling is only lawful if the mortgagee has obtained a court order for possession. The court can stay, suspend or adjourn possession proceedings if it thinks that the mortgagor can

find sums owed under the mortgage and pay the forthcoming instalments within a reasonable time.

3.4.6.2

Sale

A mortgagee may sell the mortgaged property of which it has taken possession. This is under a statutory power implied into all mortgage deeds, whereby the mortgagee must be sure that the power of sale has **arisen** and that it is **exercisable**.

Under **s101 LPA 1925**, a power of sale arises where the mortgage is made by deed, the contractual date set to redeem the mortgage has passed (remember that this is usually six months after creation of the mortgage) and there is no contrary intention in the mortgage deed.

Under **s103 LPA 1925**, a power of sale is exercisable when one or more of the following conditions are met:

- interest payments are more than two months in arrears; or
- notice requiring payment of the capital (loan) has been served and three months have elapsed without payment; or
- there is a breach of some other term of the mortgage (e.g. the property has been leased without permission).

(1) Duties of mortgagee on sale

On sale, the mortgagee must obtain the best price available, although the mortgagee has the choice of when to sell. The mortgagee has a duty to take reasonable care and there is a requirement of good faith in the exercise of its power of sale.

(2) An action in debt

This right is of little use where the mortgagor has little or no money or income. Where the mortgage is for a significant proportion of the value of the property, however, the mortgagee will insist that the mortgagor pays a premium at the outset to cover indemnity insurance. This mortgage indemnity guarantee policy is, contrary to popular belief, for the benefit of the mortgagee and not the mortgagor.

Where the mortgagee makes a claim against the insurance policy, the insurance company will be able to sue the mortgagor for the sum owed. The insurance company has the right to do this under a principle known as subrogation.

3.4.6.3

Appointment of a receiver

With business premises a mortgagee could appoint a receiver rather than sell the property. A receiver is a named individual who may take possession of property for its protection or realisation. A receiver may be appointed by the court, by a charge-holder with a suitable clause in their security or under the provisions of a statute, for example, the **LPA 1925.**

3.4.6.4

Foreclosure

Foreclosure is rare and involves long and expensive court proceedings. The effect of a court order for foreclosure is to transfer the whole property from the mortgagor to the mortgagee.

Where an order for foreclosure is obtained, a possession order will be required where the mortgagor is refusing to move out.

3.4.6.5

Liability of guarantors

It is possible for a guarantor to guarantee all or part of a loan to a mortgagor.

In recent years, with house prices rising, many young first-time buyers are looking to parents to act as guarantors of the mortgage. In these cases, the parent's name does not have to appear either on the mortgage agreement or the property deeds (thus, the guarantor does not have an interest in the property) but they will still be jointly and severally liable for the loan. Thus, a guarantor may be subject to an action in debt where the mortgagor fails to pay the loan.

On the other hand, when the mortgagor is able to meet the repayments in full on their own, then the guarantor can be released from the agreement.



Activity

Follow the link below. This will take you to various standard mortgage documents for a number of mortgage lenders.

Click on **Dudley Building Society** and look for the PDF of their “England and Wales” mortgage deed. Look at the deed. You will see that it is very simple because it incorporates the detailed mortgage conditions by reference. You will also see that it includes a provision for a guarantor to sign the deed.

LMS



Documents

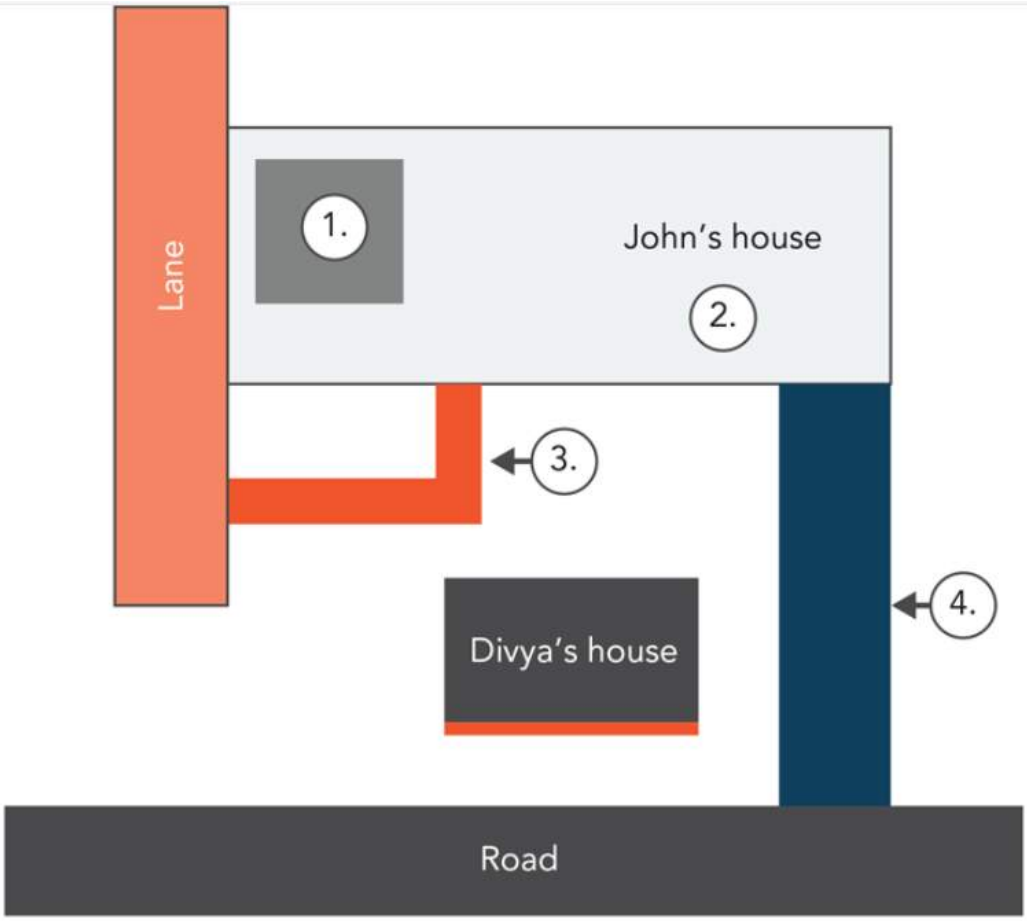
By clicking on lender names below you are able to view or download mortgage offer enclosures and legal documents. These documents are subject to change and should not be saved locally for future use.

READ MORE LMS

CONTINUE

3.5 A practical illustration of third-party interests

Divya has built a house in her garden and has sold it to John. John owns the plot shown in the following diagram. Divya still lives next door and owns the other plot shown in ***Figure 3.5a***.



1. John has taken out a mortgage to buy the house. The lender, HABC Bank, therefore has an interest in John's property. If he defaults, the lender has rights and may repossess and sell the property.

2. John has entered into restrictive covenants with Divya, promising her that he will not carry on a business from his house, that he will not extend the property without her prior approval and that he will not obstruct the driveway. (Divya wants to retain some control over john's behaviour to protect the value of her retained land next door.)

3. John has been granted a right of way by Divya over a footpath on her land so that he can reach the lane, which provides a short cut to the village. He has no side exit of his own as the boundary consists of large mature trees. This right to use the path is an easement.

4. John has also been granted a right of way by Divya over the driveway on her land so that he can reach his property. Without this he has no access from the main road. This right to use the drive is an easement. John has agreed that he will pay 50 per cent of the cost of maintaining the driveway.

Figure 3.5a

The main significance of the classification into legal and equitable interests lies in determining whether an interest will be enforceable against future owners of the land, that is, whether an interest in land will "bind" later owners. This will be of great relevance to someone buying a house as the buyer will want to know about any rights which will affect their property ownership, for example, whether they will have to allow a neighbour to continue to use a right of way over the garden of the property they are buying or whether they will have to comply with a covenant not to use the house for business purposes. It is important to appreciate that the rules differ according to whether the interest is legal or equitable, what type of interest it is and whether the land has registered or unregistered title. For instance, in registered land, restrictive covenants can be protected by an entry on the title register.

3.5.1 Bringing it all together

We have covered a lot in **Chapters 2** and **3**. You will see that we have linked the technical, land law concepts with the issues that you will come across in practice. Trainees in both the conveyancing and private client departments will need to be familiar with a registered title.

Please look at the registered title at ***Figure 3.5b*** to see how many of the points which we have considered in this chapter come together.

Land Registry

Official copy of register of title

(1) Title number CS705289 | Edition date 19.11.2008

- This official copy shows the entries subsisting on the register 15 January **2024** at 11:50:13.
- This date must be quoted as the "search from date" in any official search application based on this copy.
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- Issued on 15 January **2024**
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by Land Registry Maradon Office

A: Property register (2)

This register describes the land and estate comprised in the title.

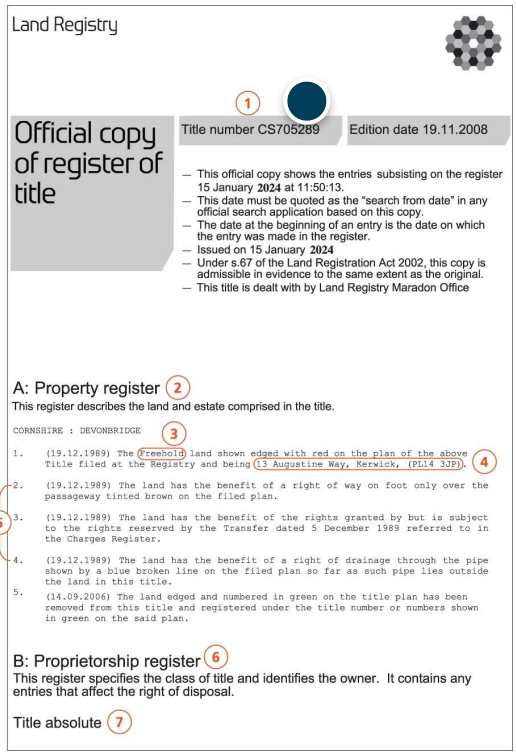
(3) CORNSHIRE : DEVO[illegible]

1. (19.12.1989) The (Freehold) land shown edged with red on the plan of the above Title filed at the Registry and being (13 Augustine Way, Kerwick, (PL14 3JP)). (4)
2. (19.12.1989) The land has the benefit of a right of way on foot only over the passageway tinted brown on the filed plan.
3. (19.12.1989) The land has the benefit of the rights granted by but is subject to the rights reserved by the Transfer dated 5 December 1989 referred to in the Charges Register. (5)
4. (19.12.1989) The land has the benefit of a right of drainage through the pipe shown by a blue broken line on the filed plan so far as such pipe lies outside the land in this title.
5. (14.09.2006) The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

B: Proprietorship register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute (7)



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A: Property register 2

This register describes the land and estate comprised in the title.

CORNSHIRE : DEVONBRIDGE 3

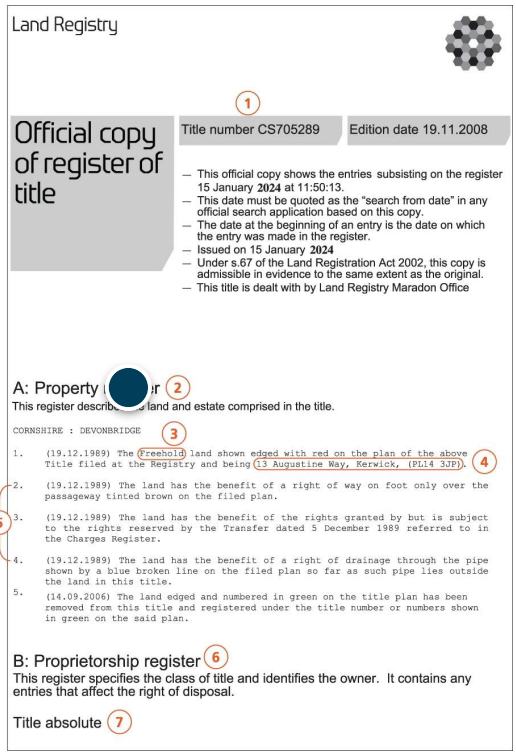
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B: Proprietorship register 6

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute 7

This is the title number. This is the exclusive identification number allocated to a title by HMLR on first registration.



Land Registry

1

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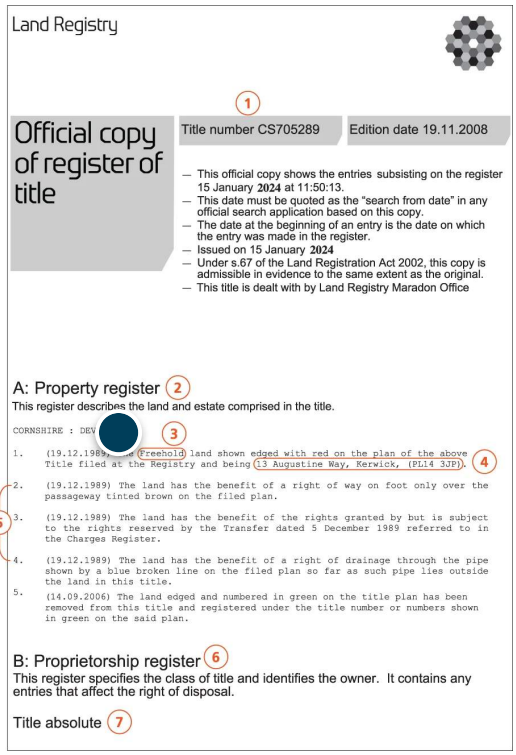
5

B: Proprietorship register 6

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute 7

This is the property register. This describes the property comprised in the title.



Land Registry

Official copy of register of title

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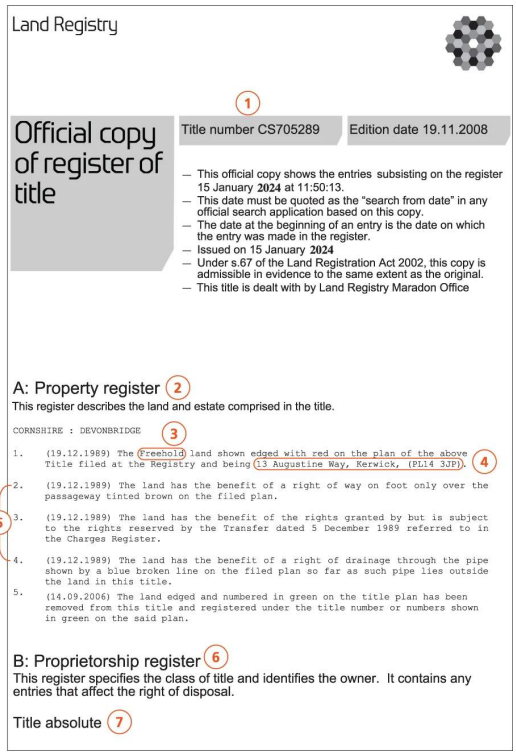
5

B: Proprietorship register 6

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute 7

You will see that this property is freehold.



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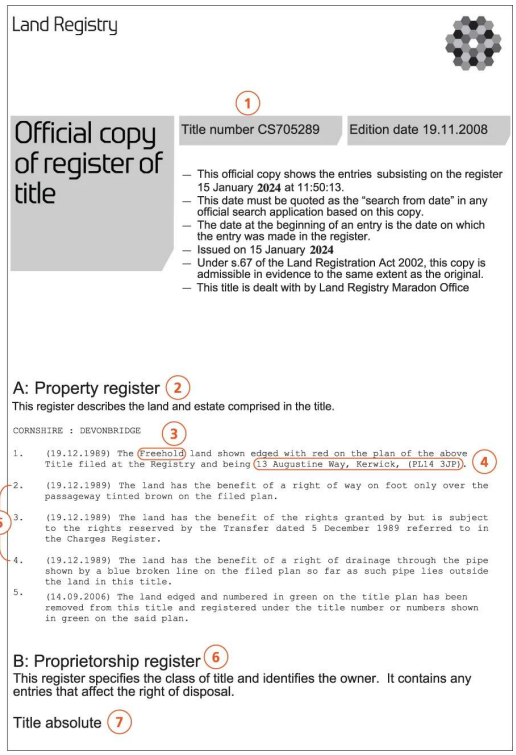
5

B: Proprietorship register 6

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Title absolute 7

This is the address of the property.



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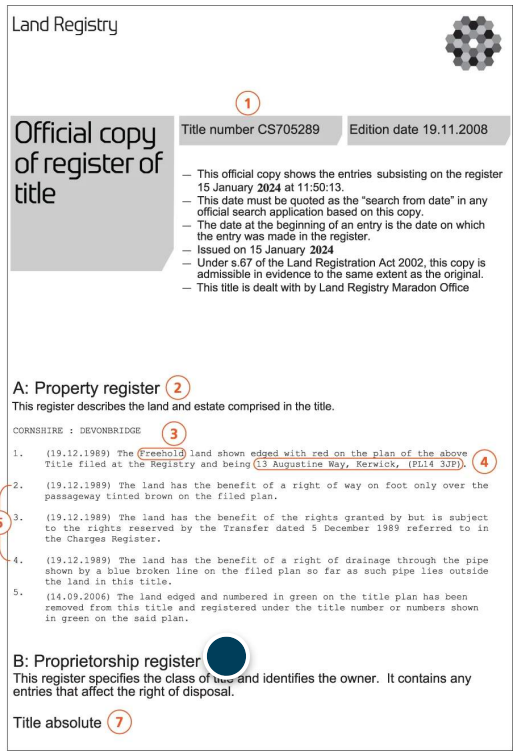
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Title absolute 7

Entries 2, 3 and 4 contain the rights which benefit the property.

- Entry 2 refers to a right-of-way on foot.
- Entry 3 refers to various rights contained in the transfer dated 5 December 1989.
- Entry 4 refers to a right to drain through a pipe.

These entries are examples of notices on the register of title.



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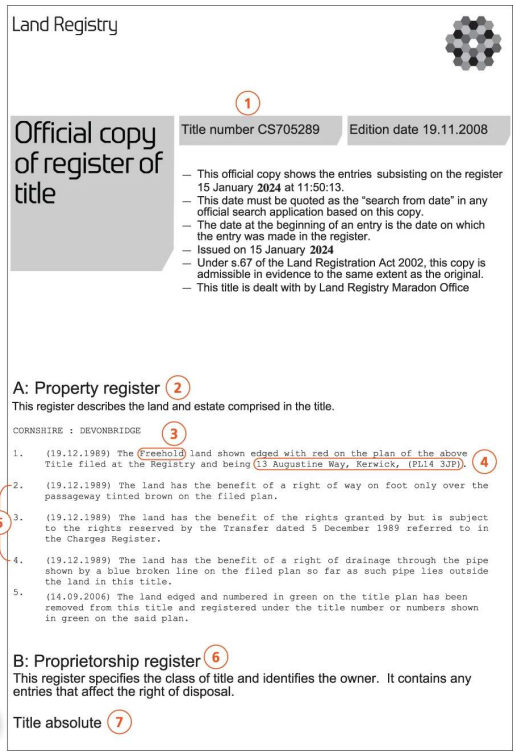
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B: Proprietorship register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute 7

This is the proprietorship register. This tells us the class of title and who holds the legal title to the property. If the property is being sold, it is the registered proprietors who will appear in the contract as the sellers.



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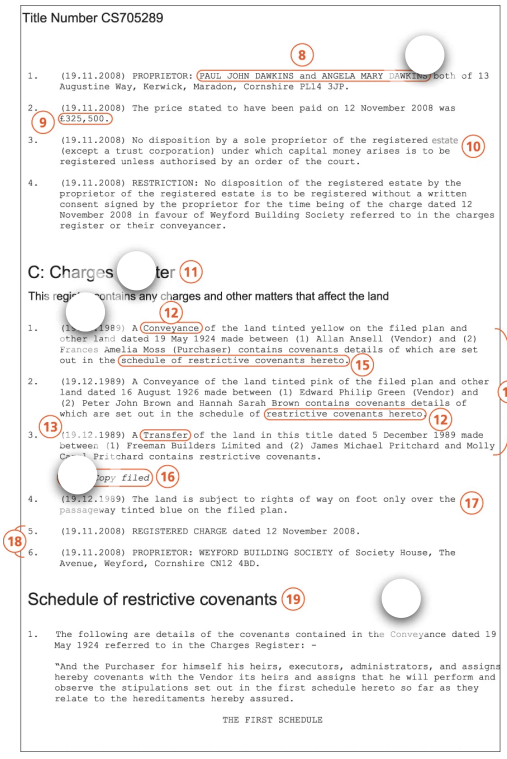
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B: Proprietorship register 6

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute 7

The property benefits from title absolute. This is the best class of title which HMLR can allocate.



Title Number CS705289

8

1. (19.11.2008) PROPRIETOR: PAUL JOHN DAWKINS and ANGELA MARY DAWKINS both of 13 Augustine Way, Kerwick, Maradon, Cornshire PL14 3JP.
2. (19.11.2008) The price stated to have been paid on 12 November 2008 was 9 £325,500.
3. (19.11.2008) No disposition by a sole proprietor of the registered estate 10 (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.
4. (19.11.2008) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated 12 November 2008 in favour of Weyford Building Society referred to in the charges register or their conveyancer.

C: Charges ...ter 11

This regi... contains any charges and other matters that affect the land

1. (19.12.1989) A 12 Conveyance of the land tinted yellow on the filed plan and other land dated 19 May 1924 made between (1) Allan Ansell (Vendor) and (2) Frances Amelia Moss (Purchaser) contains covenants details of which are set out in the schedule of restrictive covenants hereto. 15
2. (19.12.1989) A Conveyance of the land tinted pink of the filed plan and other land dated 16 August 1926 made between (1) Edward Philip Green (Vendor) and (2) Peter John Brown and Hannah Sarah Brown contains covenants details of which are set out in the schedule of restrictive covenants hereto. 12 14
3. 13 (19.12.1989) A Transfer of the land in this title dated 5 December 1989 made between (1) Freeman Builders Limited and (2) James Michael Pritchard and Molly ... Pritchard contains restrictive covenants.

...opy filed 16

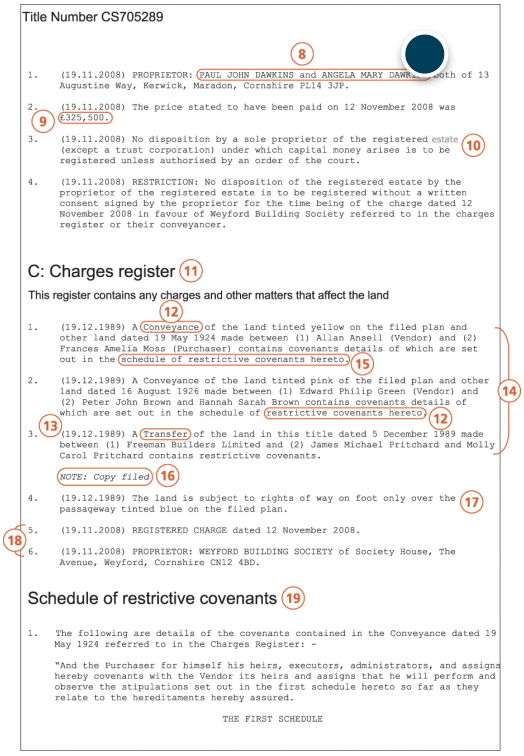
4. (19.12.1989) The land is subject to rights of way on foot only over the passageway tinted blue on the filed plan. 17
5. (19.11.2008) REGISTERED CHARGE dated 12 November 2008. 18
6. (19.11.2008) PROPRIETOR: WEYFORD BUILDING SOCIETY of Society House, The Avenue, Weyford, Cornshire CN12 4BD.

Schedule of restrictive covenants 19

1. The following are details of the covenants contained in the Conveyance dated 19 May 1924 referred to in the Charges Register: -

"And the Purchaser for himself his heirs, executors, administrators, and assigns hereby covenants with the Vendor its heirs and assigns that he will perform and observe the stipulations set out in the first schedule hereto so far as they relate to the hereditaments hereby assured.

THE FIRST SCHEDULE



Title Number CS705289

1. (19.11.2008) PROPRIETOR: PAUL JOHN DAWKINS and ANGELA MARY DAWK[illegible] both of 13 Augustine Way, Kerwick, Maradon, Cornshire PL14 3JP.

2. (19.11.2008) The price stated to have been paid on 12 November 2008 was £325,500.

3. (19.11.2008) No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.

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C: Charges register

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3. (19.12.1989) A Transfer of the land in this title dated 5 December 1989 made between (1) Freeman Builders Limited and (2) James Michael Pritchard and Molly Carol Pritchard contains restrictive covenants.

NOTE: Copy filed

4. (19.12.1989) The land is subject to rights of way on foot only over the passageway tinted blue on the filed plan.

5. (19.11.2008) REGISTERED CHARGE dated 12 November 2008.

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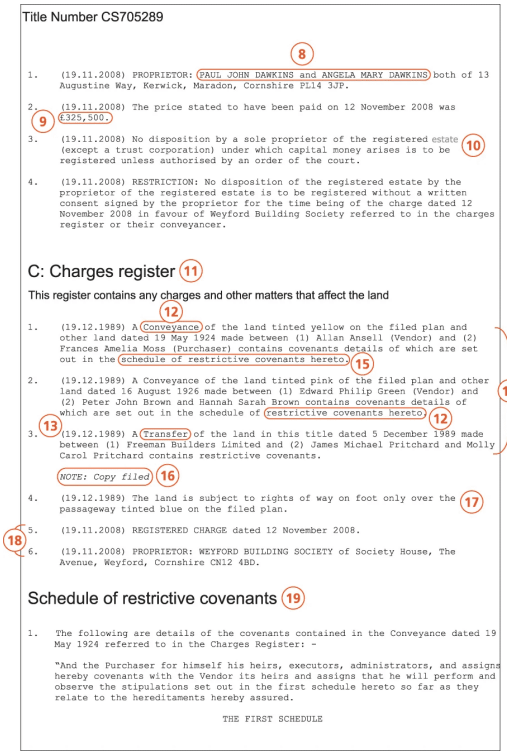
Schedule of restrictive covenants

1. The following are details of the covenants contained in the Conveyance dated 19 May 1924 referred to in the Charges Register: -

"And the Purchaser for himself his heirs, executors, administrators, and assigns hereby covenants with the Vendor its heirs and assigns that he will perform and observe the stipulations set out in the first schedule hereto so far as they relate to the hereditaments hereby assured.

THE FIRST SCHEDULE

This shows us the name and address of the registered proprietors.



Title Number CS705289

1. (19.11.2008) PROPRIETOR: PAUL JOHN DAWKINS and ANGELA MARY DAWKINS both of 13 Augustine Way, Kerwick, Maradon, Cornshire PL14 3JP.

2. (19.11.2008) The price stated to have been paid on 12 November 2008 was £325,500.

3. (19.11.2008) No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.

4. (19.11.2008) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated 12 November 2008 in favour of Weyford Building Society referred to in the charges register or their conveyancer.

C: Charges register

This register contains any charges and other matters that affect the land

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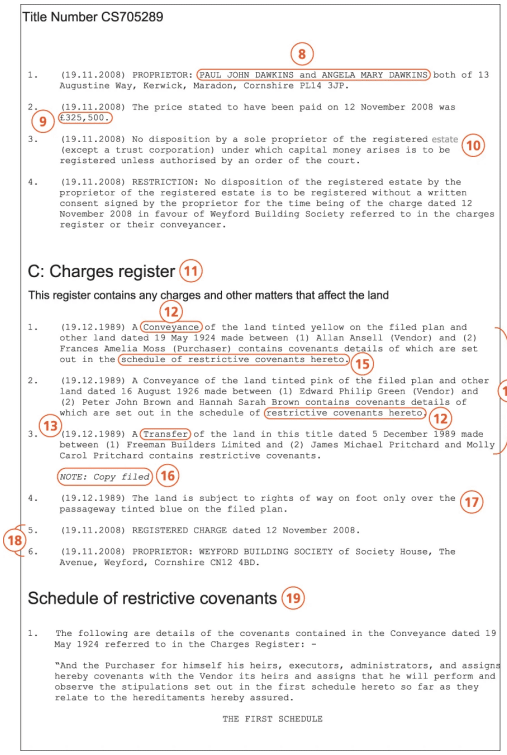
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THE FIRST SCHEDULE

This entry reveals the price paid for the property on the specified date. In most cases, this is the date when the current registered proprietors purchased the property.



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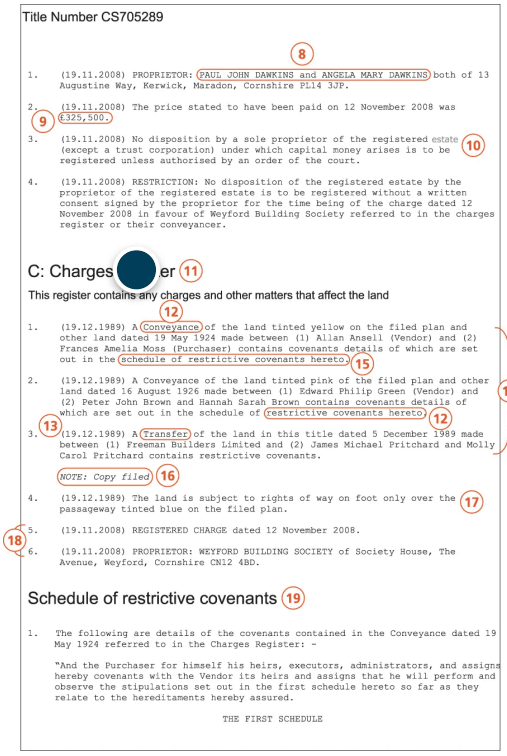
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THE FIRST SCHEDULE

This is a Form A restriction and denotes that the registered proprietors hold the beneficial interest as tenants in common. We will consider co-ownership in **Chapter 6**.



Title Number CS705289

8

1. (19.11.2008) PROPRIETOR: PAUL JOHN DAWKINS and ANGELA MARY DAWKINS both of 13 Augustine Way, Kerwick, Maradon, Cornshire PL14 3JP.

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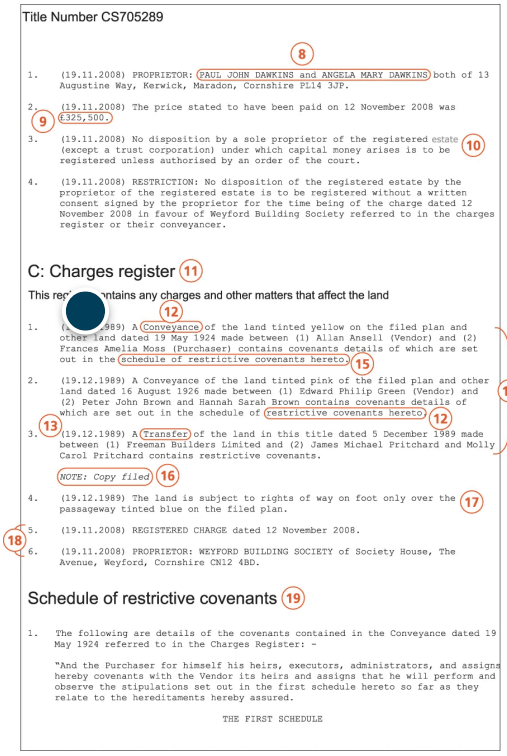
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THE FIRST SCHEDULE

This is the charges register. This register gives details of the incumbrances (i.e. the negative things) which affect the property.

Note that not every register of title will contain a charges register although, most will. If there are no covenants or mortgages, there will be no charges register but this is unusual.



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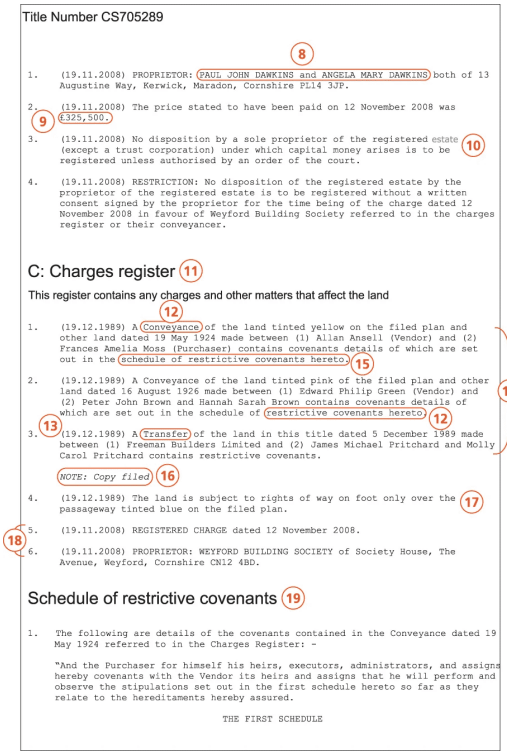
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THE FIRST SCHEDULE

You will see from entry 1 that a conveyance dated 19 May 1924 is referred to. You will recall that a conveyance is an unregistered document of title. You do not need to look at the conveyance itself because HMLR has included the relevant parts of the conveyance on the register of title. You do, however, need to recognise and understand what a conveyance is.



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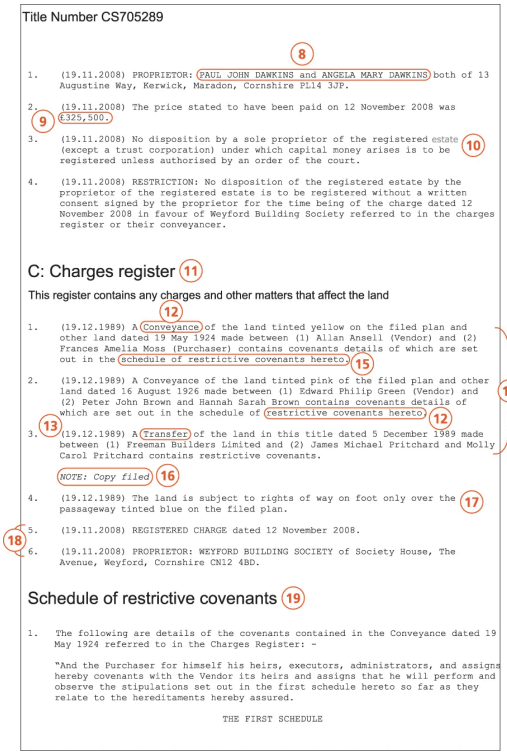
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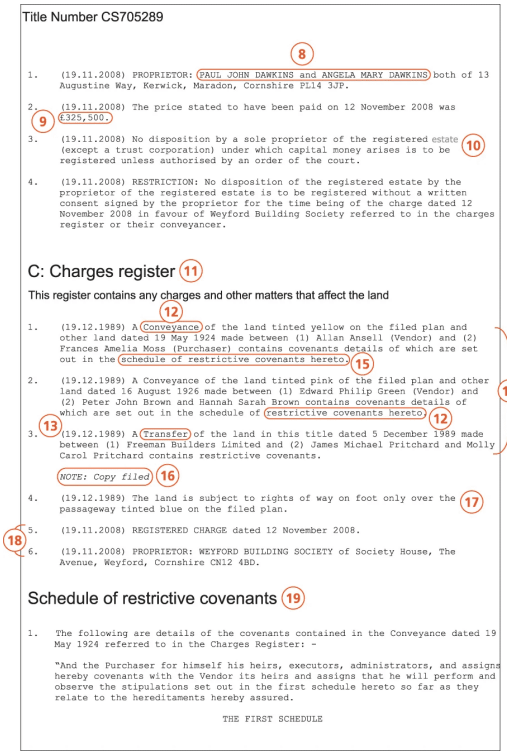
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THE FIRST SCHEDULE

You will see that entry 3 refers to a transfer. This is a registered land equivalent of the conveyance. If the whole of the land in a title is being transferred, form TR1 will be used. We will look at a transfer in a later chapter.



Title Number CS705289

8

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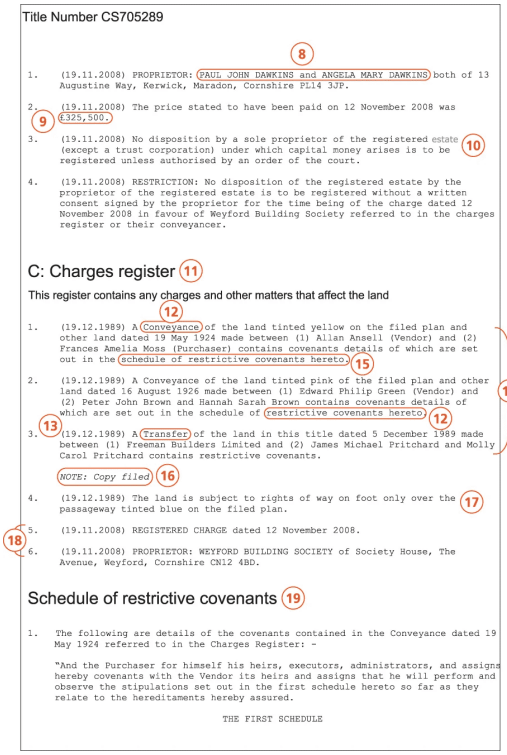
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THE FIRST SCHEDULE

Entries 1, 2 and 3 of the charges register all refer to documents which contain restrictive covenants affecting the title. You will remember that a restrictive covenant is a promise not to do something (which is capable of binding subsequent owners of the land).



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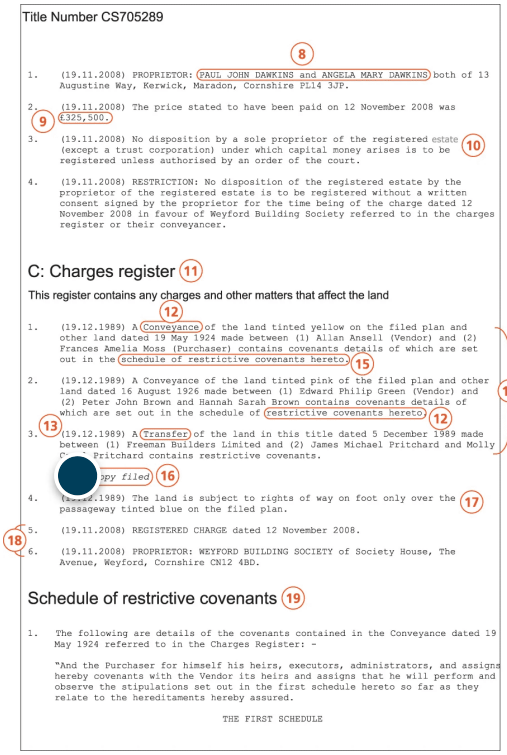
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THE FIRST SCHEDULE

You will note from entries 1 and 2 of the charges register that HMLR has indicated that the covenants contained in the conveyance dated 19 May 1924 and 16 August 1926 have been included in the schedule of restrictive covenants (see item 19).



Title Number CS705289

8

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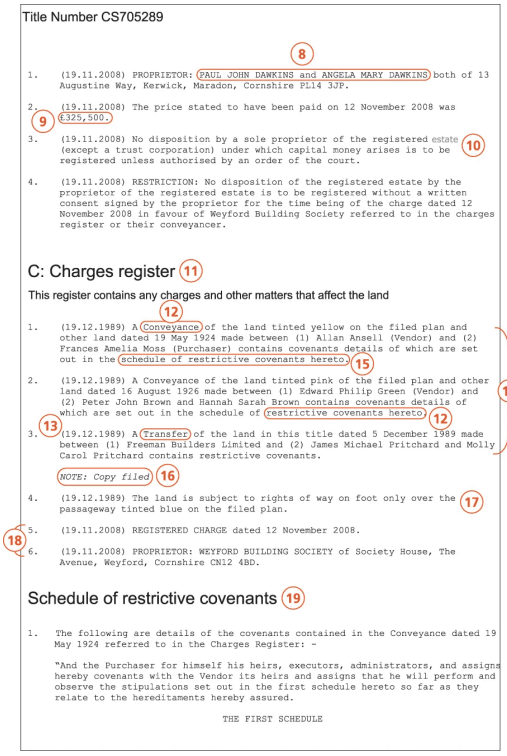
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THE FIRST SCHEDULE

You will note from entry 3 of the charges register that HMLR has dealt differently with the restrictive covenants contained in the transfer of 5 December 1989. In this case, HMLR has made this document available for download from the portal. It is possible to make a postal application to HMLR to obtain a copy of a document shown as "**copy filed**" if the applicant does not have access to the HMLR portal.



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1. (19.11.2008) PROPRIETOR: PAUL JOHN DAWKINS and ANGELA MARY DAWKINS both of 13 Augustine Way, Kerwick, Maradon, Cornshire PL14 3JP.

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3. (19.11.2008) No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court. (10)

4. (19.11.2008) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated 12 November 2008 in favour of Weyford Building Society referred to in the charges register or their conveyancer.

C: Charges register (11)

This register contains any charges and other matters that affect the land

(12)

1. (19.12.1989) A Conveyance of the land tinted yellow on the filed plan and other land dated 19 May 1924 made between (1) Allan Ansell (Vendor) and (2) Frances Amelia Moss (Purchaser) contains covenants details of which are set out in the schedule of restrictive covenants hereto. (15)

2. (19.12.1989) A Conveyance of the land tinted pink of the filed plan and other land dated 16 August 1926 made between (1) Edward Philip Green (Vendor) and (2) Peter John Brown and Hannah Sarah Brown contains covenants details of which are set out in the schedule of restrictive covenants hereto. (12) (14)

(13) 3. (19.12.1989) A Transfer of the land in this title dated 5 December 1989 made between (1) Freeman Builders Limited and (2) James Michael Pritchard and Molly Carol Pritchard contains restrictive covenants.

NOTE: Copy filed (16)

4. (19.12.1989) The land is subject to rights of way on foot only over the passageway tinted blue on the filed plan. (17)

(18) 5. (19.11.2008) REGISTERED CHARGE dated 12 November 2008.

6. (19.11.2008) PROPRIETOR: WEYFORD BUILDING SOCIETY of Society House, The Avenue, Weyford, Cornshire CN12 4BD.

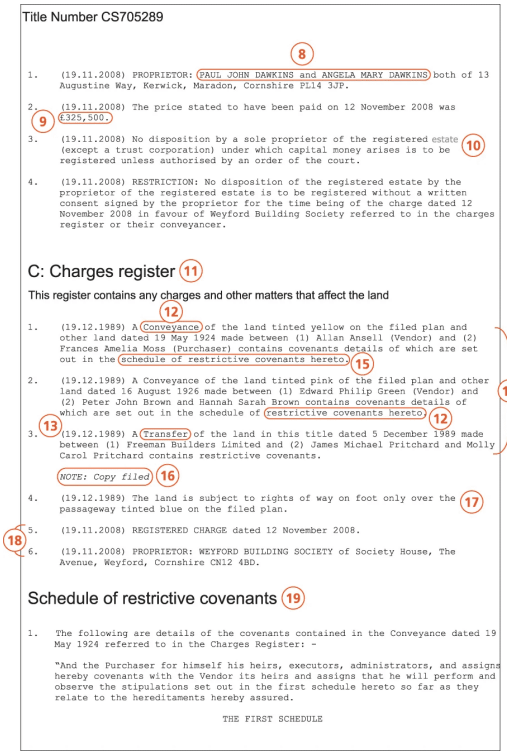
Schedule of restrictive covenants (19)

1. The following are details of the covenants contained in the Conveyance dated 19 May 1924 referred to in the Charges Register: -

"And the Purchaser for himself his heirs, executors, administrators, and assigns hereby covenants with the Vendor its heirs and assigns that he will perform and observe the stipulations set out in the first schedule hereto so far as they relate to the hereditaments hereby assured.

THE FIRST SCHEDULE

Entry 4 of the charges register denotes that the property is subject to a right-of-way on foot for the benefit of neighbouring land. The root of this right-of-way is shown on the title plan.



Title Number CS705289

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C: Charges register

This register contains any charges and other matters that affect the land

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6. (19.11.2008) PROPRIETOR: WEYFORD BUILDING SOCIETY of Society House, The Avenue, Weyford, Cornshire CN12 4BD.

Schedule of restrictive covenants

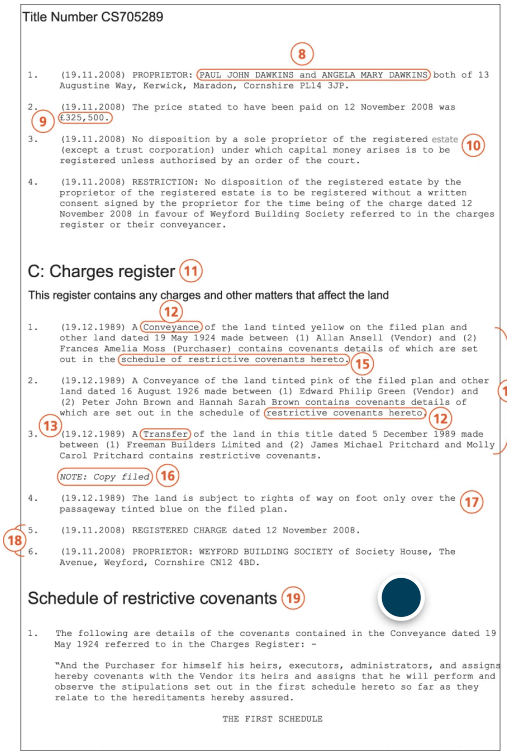
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THE FIRST SCHEDULE

Entries 5 and 6 denote that the current registered proprietors have a legal charge over the property dated 12 November 2008 in favour of Weyford Building Society. This means that they obtained a mortgage to fund the purchase of the property.

Look back to entry 2 of the proprietorship register. You will remember that this gives the price paid for the property on 12 November 2008. This is the date that they bought the property and took out the mortgage. If the registered proprietors sell the property, their conveyancer will be required to give an undertaking to redeem this legal charge out of the sale proceeds on completion.



Title Number CS705289

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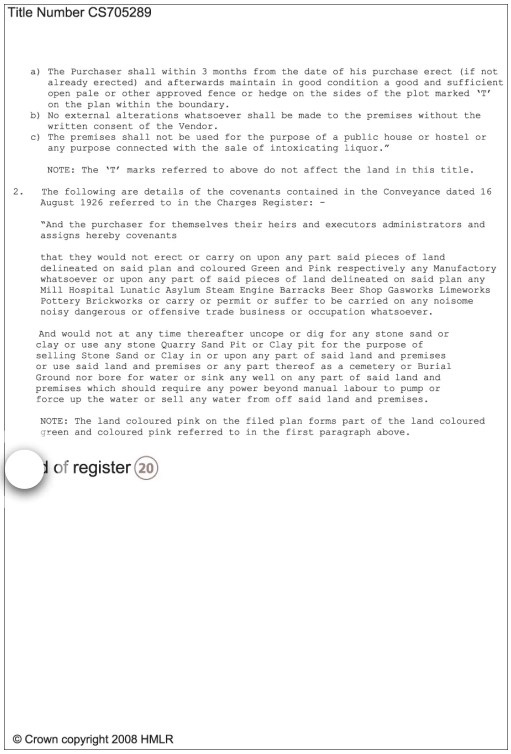
Schedule of restrictive covenants

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"And the Purchaser for himself his heirs, executors, administrators, and assigns hereby covenants with the Vendor its heirs and assigns that he will perform and observe the stipulations set out in the first schedule hereto so far as they relate to the hereditaments hereby assured.

THE FIRST SCHEDULE

This is the schedule which contains the restrictive covenants referred to at entries 1 and 2 of the charges register. Read the covenants carefully. You will see that the language is somewhat archaic but you should be able to work out what the covenants mean. **Note** that not every charges register has a schedule of restrictive covenants.



Title Number CS705289

a) The Purchaser shall within 3 months from the date of his purchase erect (if not already erected) and afterwards maintain in good condition a good and sufficient open pale or other approved fence or hedge on the sides of the plot marked 'T' on the plan within the boundary.
b) No external alterations whatsoever shall be made to the premises without the written consent of the Vendor.
c) The premises shall not be used for the purpose of a public house or hostel or any purpose connected with the sale of intoxicating liquor."

NOTE: The 'T' marks referred to above do not affect the land in this title.

2. The following are details of the covenants contained in the Conveyance dated 16 August 1926 referred to in the Charges Register: -

"And the purchaser for themselves their heirs and executors administrators and assigns hereby covenants

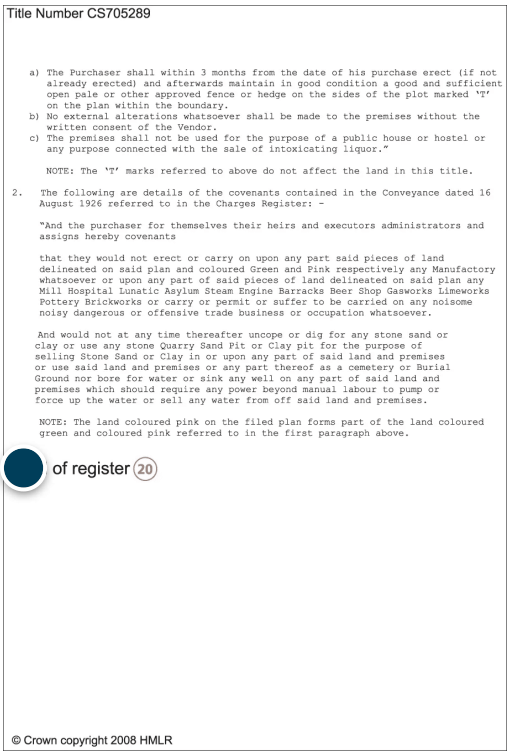
that they would not erect or carry on upon any part said pieces of land delineated on said plan and coloured Green and Pink respectively any Manufactory whatsoever or upon any part of said pieces of land delineated on said plan any Mill Hospital Lunatic Asylum Steam Engine Barracks Beer Shop Gasworks Limeworks Pottery Brickworks or carry or permit or suffer to be carried on any noisome noisy dangerous or offensive trade business or occupation whatsoever.

And would not at any time thereafter uncope or dig for any stone sand or clay or use any stone Quarry Sand Pit or Clay pit for the purpose of selling Stone Sand or Clay in or upon any part of said land and premises or use said land and premises or any part thereof as a cemetery or Burial Ground nor bore for water or sink any well on any part of said land and premises which should require any power beyond manual labour to pump or force up the water or sell any water from off said land and premises.

NOTE: The land coloured pink on the filed plan forms part of the land coloured green and coloured pink referred to in the first paragraph above.

End of register

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of register 20

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As the words denote, this indicates the end of the register. Always look out for these words to ensure that you have a complete copy of the registers of title.



Land Registry
Official copy of title plan

Title number **CS705289** 21
Ordnance Survey map reference **TL2467SW**
Scale **1:1250**
Administrative area **Cornshire: Devonbridge**

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CS889532

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Measurements scaled from this plan may not match measurements between the same points on the ground.
This title is dealt with by Land Registry, Maradon Office.
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0102002001



This is the title plan to the property in question.

CONTINUE

Knowledge check

This knowledge check is a self-assessment to see how well you understood the content of this chapter and it does not count towards your course mark.

There are 3 questions in this knowledge check.

1. Which of the following is **not** a requirement for an easement?

- a. There must be a dominant and servant tenement
- b. There must be diversity of ownership
- c. The right must be capable of forming the subject matter of a grant

SUBMIT

Complete the content above before moving on.

2. Daryl owns Top Forest, a piece of land completed surrounded by Lower Forest, which is owned by Seamus. There is a track over Lower Forest which has been used by Daryl to access Top Forest for the last 10 years. What is the best description of the right which Daryl has?

- a. Equitable easement of necessity
- b. Legal easement of necessity
- c. Easement by prescription

SUBMIT

Complete the content above before moving on.

3. The covenantee has the benefit of a freehold covenant. True or false?

a. True

b. False

SUBMIT

Complete the content above before moving on.

3.6 Chapter summary

(1) The rights of freehold and leasehold owners may be limited by the rights which others may have over the land in question – easements, covenants and mortgages are three commonly occurring third-party rights.

(2) An easement is a property right which one person has over another's land; the most common are rights of way, rights of drainage and rights to run cables and pipes beneath another's land.

(3) To be capable of being an easement, four characteristics must be satisfied:

(a) there must be a dominant and servient tenement;

(b) the right claimed must benefit the dominant tenement;

(c) there must be diversity of ownership and/or occupation; and

(d) the right claimed must be capable of forming the subject matter of a grant.

(4) There are three ways of granting or creating a legal easement:

(a) express grant;

(b) implied grant – this is divided into various subcategories as follows: necessity, common intention, the rule in ***Wheeldon v Burrows***, **s62 LPA 1925**; and

(c) presumed grant or prescription.

(5) Easements can also be created by reservation; that is, when an owner sells part of the land but retains the right to use an easement over the land sold.

(6) Easements can be extinguished by statute, by release or by unity of ownership and possession.

(7) Freehold covenants are obligations to do or not to do something which are capable of running with freehold land and binding subsequent owners.

(8) A freehold covenant will generally be created in a transfer of the land if part is sold or by a deed of covenant.

(9) A freehold covenant can be positive or restrictive.

(10) A positive covenant requires a positive act to comply with it, usually the payment of money. These are difficult to enforce in the freehold context.

(11) A restrictive covenant requires no act to comply with it.

(12) A mortgage is a right of a lender over land which guarantees the payment of the debt or the performance of some other obligation.

(13) The main different types of mortgage are: repayment mortgage, interest only mortgage, endowment mortgage and pension mortgage.

(14) A mortgage is generally created by deed and is registered on the charges register of a title.

(15) There are various remedies available to a lender (mortgagee) if the mortgage or (borrower) defaults on repayment. Obtaining possession and selling the property is the most commonly used remedy.

You have completed Chapter 3.

EXIT