

Implied Covenants of Title

If the contract doesn't specify – full title guarantee is assumed: SCPC6.6.2, SC 4.6.2.

<p>Limited:</p> <ol style="list-style-type: none">1) The seller has the right to dispose of the land as he purports to.2) That the seller will do all he reasonably can to transfer the title he purports to give3) (Leasehold only) That the lease subsisting at the time is disposed of and there is no breach of covenant making the lease liable to forfeiture4) <i>That the seller himself has not encumbered the land and is not aware that anyone else has done so since the last disposition for value.</i>	<p>Full:</p> <p>As for limited title but replace 4 with: <i>The land is disposed of free from incumbrances other than those the seller does not and could not reasonably know about.</i></p>
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WS6 Investigating Unregistered Title

How to answer an investigation question:

1. State the issue you have spotted e.g. *"The conveyance has not been properly stamped"*
2. Why is it an issue? e.g. *"a conveyance that has not been stamped cannot form a good root of title"*
3. What action should you take or should you require the seller's solicitor to take? e.g. *"We need to ask the seller to pay the fines for late stamping and the duty to have the document stamped"*

Root of Title

The root of title will be the most recent document that satisfied s.44 LPA 1925:

- Goes back at least 15 years
- Deals with/shows who owns the whole legal and equitable interest that is being sold
- Contains a recognisable description of the relevant land
- Does nothing to cast doubt on seller's title

Buyers are bound by anything revealed/would have been revealed in a good root but nothing further back: those can be ignored (consider defective title insurance if accepting short root).

Good documents for Root:

- Conveyance on sale
 - Legal mortgage
 - Deed of gift and assent of land will do but have not usually been properly investigated
- NOT grant of probate/representation.

Epitome of Title

- A chronological list of all the documents up to the present day which deal with ownership of the property.
- Copies of the relevant documents should be attached (originals handed over on completion unless sale of part)
- An unbroken change of ownership needs to be shown, including relevant Powers of Attorney (POA) and grant of probates.
- Documents you don't need to include:
 - Marriage and death certificates
 - Land charges department search certificates (but good practice to include)
 - Expired leases
 - Documents pre-dating the good root (s.45LPA) unless they are referred to in the root document e.g. "as described in the 1925 conveyance" or a POA under which root document was executed

Description of Land/Plan

Refer to the plan (even if pre-root) and make sure it matches up with the property purportedly being sold.

<p><u>Incumbrances</u></p> <ul style="list-style-type: none"> • These should have been set out in the contract – do they match up with what seller has disclosed? • All should be deduced, even if pre-root • Have any covenants been breached by current tenant? • Will they interfere with buyer’s planned user & do they bind the buyer? 	
<p><u>Stamp Duty</u></p> <ul style="list-style-type: none"> • Documents dated pre 1 Dec 2003 that transfer ownership for value (not assents or powers) should have been stamped for value – look for embossed seal in the corner • If they haven’t been stamped – <u>seller</u> must pay any unpaid duty plus interest. 	
<p><u>Execution</u></p>	
<p>Pre 31/07/1990 deed</p>	<p>On and after 31/07/1990 deed</p>
<p><u>By an individual</u></p> <ul style="list-style-type: none"> • Signed • Sealed (red circle) • Delivered as a deed (signed by maker with intention to be bound by it – you can infer this from the signing and sealing) <p><u>By a Company</u></p> <ul style="list-style-type: none"> • Company seal must be placed on doc in presence of secretary and a director; or • As per articles of assoc. <p>If not executed thus, not an effective transfer of legal ownership.</p>	<p><u>By an individual</u></p> <ul style="list-style-type: none"> • Signed by its maker “A” [someone acting on his behalf – “B”] • That signing to be witnessed and attested [must be two attesting witnesses to B’s signing and A must be there too] • Document was intended as a deed • Document was delivered as a deed (see above) <p><u>By a Company</u></p> <p>All the following must also be <i>delivered</i> as deeds. Methods of <i>execution</i>:</p> <ul style="list-style-type: none"> • Method A: <ul style="list-style-type: none"> · Company seal affixed. · It is clear on the face of the doc it is intended to be a deed · Witnessed and attested by (2 company directors/director and secretary) · Note: pre-15 Sep 2005, only director and secretary was allowed. • Method B <ul style="list-style-type: none"> · Signed by a director and secretary/2 directors · Document is clearly expressed to be executed by the company, not the directors personally • Method C <ul style="list-style-type: none"> · Only available after 6 April 2008 · Executed by a single director · Witnessed and attested by one witness.

<p><u>Searches</u></p> <p>The following will only bind the buyer for value if they are registered with the Land Charges Department against the <u>owner’s name</u> by the date of completion: <i>Restrictive covenants D(ii); Equitable easements D(iii); Puisne mortgage C(i); Estate contract C(iv), Class F FLA ’96 charge.</i></p> <p>Therefore make searches against all legal owners of the estate named in the epitome (not lenders) for the time in whole years in which they owned the property. This may mean searching pre-root. If there is doubt, search back to 1926.</p> <p>Where the seller provides previous searches there is no need to repeat them provided that they:</p> <ul style="list-style-type: none"> • Are made against the correct name (Maiden names? Spelling?) • Are made for the correct period of ownership (include the period between their death and the grant) <p>And that</p> <ul style="list-style-type: none"> • The transaction that followed the valid searches was entered into within the 15 working day priority period given by the search. <p>If not, it is always best to re-do the search.</p> <p><u>Discharged Mortgages</u></p> <ul style="list-style-type: none"> • Banks: s.115 LPA provides a receipt endorsed on the mortgage deed is evidence of discharge – must be signed by lender and name the person who repaid the mortgage. • Building Societies: receipt signed by someone authorised by the Building Society and in the form of wording required by Building Societies Act 1986
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If the seller is a...

<p><u>Trustee</u></p> <ul style="list-style-type: none"> • Have the power to dispose of land under TLATA 1996 as if they were sole beneficial owner • If the consent of beneficiaries is required by the trust deed, the buyer need only check that the consents of more than 2 beneficiaries (or the guardian if under 18) have been obtained. • Watch out for – trustees making disposals of land to themselves <ul style="list-style-type: none"> · Make enquiries into the situation – e.g. would want to see the will that made the trustee beneficiary. • The buyer pays the purchase money to the trustees (there must be at least 2 or a trust corporation) and thus “overreaches” and takes free of any equitable interests deriving from the trust (LPA 1925, ss.2, 27). • Only one trustee? – insist another is appointed before completion and make the contract conditional on that, or make a second trustee party to the contract if done before exchange.
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Co –Owner

Co –owners hold on trust for each other. Check whether they hold as joint tenants or tenants in common (TIC).

Tenants in Common

- If alive – make both party to contract
- If one is dead –
 - their interest could have passed to anyone under will/intestacy
 - Therefore, unless survivor(s) can prove that they have become solely and beneficially entitled to the property ...
 - (need death cert, grant of probate and asset made to survivor)
 - ..buyer will insist the appointment of a second trustee so that they can overreach.

Joint Tenants

- In unregistered land the buyer can assume the tenancy has not been severed if all 3 of the following conditions are satisfied (LP(JT)A 1964:
 - There is no memorandum of severance endorsed on the conveyance of property to the JTs.
 - No bankruptcy proceedings registered against either tenants' name.
 - Conveyance contains a statement that the survivor is solely and beneficially entitled to the land
- If not, the survivor will be treated as surviving Tenant in Common.

Disposing Lender

For buyer to take good title:

- Power of sale must have arisen under s.101 LPA (see face of mortgage doc)
- Doesn't matter if power has become exercisable
- There won't be a receipt on the mortgage deed if power of sale exercised
- Buyer also takes free from any subordinate mortgages to which the selling lender had priority.

Personal Representative (by sale or assent)

1 PR can give valid receipt for the proceeds of sale, but if there is more than one, both must join in the conveyance.

s.36 Administration of Estates Act:

Protects buyers by stopping PRs from disposing of property twice.

Under s.36 the Buyer takes good title even if there has been a prior disposition by the PRs, as long as:

- a) There has been no earlier conveyance of land;
 - b) The conveyance contains a statement given by the PRs that they have not made any previous assent or conveyance of the property concerned; and
 - c) No memorandum of any such transfer is endorsed on the grant
- So assentees could lose out to buyers. Assentees should therefore make sure a memorandum of the assent was endorsed on the grant of probate.

Checklist:

- i. Check grant of probate to confirm authority of PRs
- ii. Make sure all the PRs are joined in the conveyance
- iii. Make sure there is no memorandum on the grant of probate of a prior disposition of land
- iv. Make sure conveyance contains an acknowledgement that the grant was produced
- v. SALE: check conveyance contains a s.36 statement
- vi. ASSENT: check there is a memorandum of the assent on grant of probate

Acting under a Power of Attorney

The risk is that the power may have been revoked before the buyer makes the purchase. Buyer should check the transaction is within the terms of the power.

General	Special	Trustee	Lasting/Enduring
Can deal with all donor's assets (s.10 PAA 1971)	Can deal with only certain named assets	Where property held on trust	Made under EPAA 1985 this type of power endures through the mental incapacity but must be registered.
Revoked automatically by donor's death, mental incapacity or bankruptcy. Can be revoked expressly by donor			Revocable only by court order

Immediate Purchaser

A buyer takes good title under s.5(2) PAA 1971 if he buys from the attorney:

- In good faith; and
- Without knowledge of revocation of the power or donor's death.

Subsequent Purchaser

Where A sells (with PofA) → B → C...

C obtains the protection of **s.5(4) PAA1971** and has good title if either:

- The conveyance from **A** to **B** took place within 12 months of the grant of power; or
- **B** made a statutory declaration within 3 months of the completion of sale to **C** that **B** had no knowledge of the revocation of the power.

Note: if one of two co-owners wants to appoint an attorney they cannot appoint their co-trustee.