

Property: Searches and Checks

L-5



Abbreviations

- NCA – National Crime Agency
- DD – Due Diligence
- SDLT – Stamp Duty Land Tax
- VAT – Value Added Tax
- SCS – Standard Conditions of Sale
- SCPC – Standard Commercial Property Conditions
- Sol. – Solicitor
- LR – Land Registry
- JT – Joint tenancy
- TC – Tenancy in common
- T – Trustee
- CP – Civil Partner
- PR – Personal Representative

Searches and checks

1. Deducing Title
2. Main searches
3. If Unregistered Title
4. If Appropriate
5. Survey



1. DEDUCING AND INVESTIGATING THE TITLE

Seller must prove

Seller owns the property e.g. description of the property and rights benefiting it

Seller can transfer it – seller must prove it in own expense SCS 4.1.1, SCPC 6.1.1

Any defects in title e.g. 3d parties rights

Seller provides title documents

Buyer raises Requisitions on Title - queries relating to the title supplied by the Seller, which they have found to be unsatisfactory.

Time:

- 1) **If before exchange of contracts** SCS 4. 2. 1, SCPC 6.2.1 prevents the raising of requisitions after exchange has taken place.
- 2) **After exchange** – limited to the matters that have not yet been disclosed by the seller before exchange, exceptions in case of the Unregistered title if deed in epitome either:
 - a) Executed under a pre-root power of attorney;
 - b) Refers to a plan or description in a pre-root deed;
 - c) Refers to covenants in the pre-root, without giving full details.

Requisitions on Title

Registered Title

Official Copies

Check:

- Description of the property and the plan is accurate;
- Names of the registered proprietors;
- Price paid;
- Entries in the Charges Register, such as mortgages, notices, restrictive covenants, easements;
- Indemnities;
- If leasehold - no deeds of variation or other documents referred to on the Register have been missed in the contract
- The class of title

Classes of the Title:

Absolute Title - the highest form – the most marketable
Qualified Title - if the registrar is of the opinion that the title has only been established for a limited period or subject to certain reservations which cannot be disregarded e.g. owner would take ownership subject to the interests of any of the beneficiaries

Possessory Title - Where there are no title deeds to prove ownership or the deeds have been destroyed the registrar would normally grant Possessory Title. It is usually given to those with a claim under 'Adverse Possession' or 'Squatters Rights.'

Good Leasehold - Good leasehold title will be granted where the registrar is satisfied as to the title of the leaseholder only and not the freeholder.

Unregistered Title

1. **Abstract of Title** - brief summary
2. **Epitome of title** - bundle of the documents proving the ownership

Check:

- 15 years unbroken chain of ownership;
- the seller is the sole owner of the property under the last document in the chain of title
- If caution against first registration – 3rd parties interests;
- Check receipts of all the mortgages;
- Any memoranda endorsed on the documents;
- Correct amount of SDLT has been paid on each document;
- Any provisions contained in each of the documents in the epitome, in particular restrictive covenants, rights benefiting the property and rights burdening the property;
- That any plans attached to the documents in the chain of title show the property correctly
- No resistible disposition since the area became one of compulsory registration

Good Root:

- 15 years unbroken chain of ownership;
- Deals with both equitable and legal estate;
- Sufficient description;
- No doubts on the title

Short title: will be bound by the encumbrances, which would have been discovered had the buyer investigated for the full 15 years – *constructive notice* and the Registry may not grant Absolute title

2. MAIN SEARCHES

Search	Details
Enquiries of the seller	<p><u>What:</u> boundaries, disputes with neighbors, services, planning history, fixtures and fittings etc.</p> <p><u>Forms:</u></p> <ul style="list-style-type: none"> • Commercial Property Standard Enquiries • Questions for the Seller in Residential Conveyancing • Firm's own forms <p><u>Result:</u> misrepresentation</p>
Local Land Charges	<p><u>What:</u> Planning permission; Listed buildings; Tree preservatons; Conservation area; Financial charges (for road constriction if benefits the land); Assets of community value (building or land for wellbeing or social interest – sold through limited bid)</p> <p><u>Forms:</u> LLC1</p> <p><u>Result:</u> Compensation under Local Land Charges Act 1975</p>
Enquiries of the Local Authorities	<p><u>What:</u> Planning and building regulations (e.g. window or doors replacing approval, some external alteration of the property); Planning policy; Roads, footways and footpaths (who maintain them?); Traffic Schemes; Conservation areas; Contaminated land; Land for public purposes; Different pending notices, orders, directions and proceedings; Compulsory purchase; Radon gas etc.</p> <p><u>Forms:</u> CON29R (always required, free of charge) and CON29O (optional and for a fee: public pathway; pipelines etc)</p> <p><u>Result:</u> Compensation by local authorities</p>
Water Company Search	<p><u>What:</u> Connection to public water supply and sewerage network; Responsibility to maintain private drainage system; Public water pipes / sewers within the property</p> <p><u>Forms:</u> CON29 DW (fee is charged)</p>
Inspection	<p><u>What:</u> Check physical defects (survey); Accuracy of plans and boundaries; Rights and easements; Fixtures and fittings; Rights of any occupiers</p> <p><u>Result:</u> No duty to disclose; Must be repeated before exchange</p>

2. IF UNREGISTERED TITLE

Search	Details
Search of Index Map	<u>What:</u> Whether the property or its part is already registered or subject to a caution against first registration or if application for registration has been lodged; If there has been any resistible disposition <u>Forms:</u> SIM
Central Land Charges Search	<u>What:</u> Reveals charges registered against the estate and any bankruptcy proceedings <u>Forms:</u> K15 (Full land charges search), K16 (bankruptcy only search) <u>Result:</u> gives buyer 15 days of priority, must be repeated before completion

3. IF APPROPRIATE

Search	Details
Coal Mining Search	<u>When:</u> property in mining area <u>What:</u> Past works, future proposals; Shafts within 20 metres of the property <u>Forms:</u> CON29M <u>Result:</u> Compensation
Highways Search	<u>When:</u> property abuts a road and there is a risk of ransom strip between the property and it might be owned by another person <u>What:</u> check if any and check the ownership of the strip <u>Forms:</u> Letter with plan
Environmental Search / Flood risk	<u>When:</u> property located nearby a river or a factory etc <u>What:</u> Liability for cleanup costs <u>Forms:</u> Private company search services / agent + enquiries with local authorities
Company Search / Winding up Petition	<u>When:</u> Seller is a company and/or our client is a company <u>What:</u> If winding up petition; If fixed or floating charges <u>Forms:</u> Companies House Search, High Court winding up petition search <u>Result:</u> No protection or priority, so must be repeated exchange and completion

Search	Details
<p>Chancel Repair Liability: require owners of former rectorial (church) land to meet the cost of repairing the church chancel</p>	<p><u>When:</u> property near a church, but be now just a matter of course; if the land belonged to the church <u>What:</u> Liability to contribute to the costs of repair Since 13 October 2013 it has overriding power only if entered to the register, but check if no dispute since 13 October 2013 <u>Forms:</u> If registered – check official copies, if not - Online search at The National Archives or instruct an agent, Check if any legal proceedings</p>
<p>Planning Enquiries</p>	<p><u>When:</u> the client is planning to do constructional works or change the use; in addition to LLC1, CON29 <u>What:</u> ✓ Alterations and additions – if and when; ✓ Use: what is the current use and is it permitted; ✓ Advertising – use of the external parts for the adverts – if planning consent obtained; ✓ Building regulations – requirement of the adequate standard of the works, minimum standard of health and safety; Final certificate of compliance; Building regulation consent <u>Forms:</u> Agent and additional enquiries with local authorities and the seller's solicitors</p>
<p>Subsidence Report</p>	<p><u>When:</u> unusual location <u>What:</u> Risk of damage to the foundations caused by conditions in the locality</p>
<p>Railway Infrastructure Search</p>	<p><u>When:</u> The property is on proposed route <u>What:</u> compulsory demolishing; adverse affect of the nearby railway station</p>

4. SURVEYS

Types	Description / Characteristics
A. Valuation Survey	<ul style="list-style-type: none"> ➤ How much? ➤ Limited to significant defects ➤ Cheap
B. Condition Report	<ul style="list-style-type: none"> ➤ Only for new properties and conventional homes in good condition ➤ Very basic ➤ Cheap
C. House Buyer Report	<ul style="list-style-type: none"> ➤ For properties in reasonable condition ➤ Structural problems, such as subsidence or damp, as well as any other unwelcome hidden issues inside and outside ➤ May include a property valuation ➤ Doesn't look beyond the floorboards or behind the walls. ➤ Good for lender
D. Full Structural Survey	<ul style="list-style-type: none"> ➤ Comprehensive survey and good for older homes or homes that might need repairs ➤ Provides detailed advice on repairs ➤ Does not usually include a valuation ➤ Extensive and in some circumstances worth the extra money but it ➤ Should include the surveyor's opinion on the potential for hidden defects in this area

Searches and Checks

1. **GOV.UK** 'caution against first registration';
2. **Cancelling a caution against first registration**, Taylor Wessing
<https://www.lexology.com/library/detail.aspx?g=66e6c44c-5204-4809-9570-518c0595d0c0>
3. **Questions for the seller in residential conveyancing**, Law Society
<file:///C:/Users/Lenovo/Downloads/TA-consultation-main-document.pdf>
4. **Commercial property standard enquiries**,
[https://uk.practicallaw.thomsonreuters.com/6-502-2923?_lrTS=20170826153744122&transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/6-502-2923?_lrTS=20170826153744122&transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)
5. **Legal Practice Companion** (Conveyancing: Checking title and making search) or **LPC Handbook**
6. **A Practical Approach to Conveyancing, Robert Abbey and Mark Richards**: Pre-contract Searches and Enquiries, Town and Country Planning
7. **Property and Practice, Anne Rodell and Clare Harris**: "Essential Background" / Town and Country Planning, Building Regulations and Related Matters; "The Conveyancing Transaction: Initial Stages" / Surveys; The Conveyancing Transaction: Procedure Leading to Exchange: Deduction of Title; Investigation of Title – How to Investigate Title; Investigation of Title – Problems and Worked Examples; Searches and Enquiries Before Contract; Insurance

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