



Leases: consents

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Introduction

The need to supply the consent of a third party to the registration of a lease arises in a number of cases. Typical examples are:

- the consent of a freeholder (or head lessor) to the registration of a sub-lease
- the consent of a restrictioner under a restriction on the landlord's title
- the consent of a cautioner under a registered caution
- the consent of a chargee holding a legal charge over the landlord's title.

Evidence required

The type of evidence required and the effect of not lodging such evidence differs according to the circumstances of each application.

Consent by a landlord

Leases often contain a clause prohibiting or restricting the power of the tenant to sub-let the demised land. This is commonly known as an 'alienation clause'. When this clause appears in a lease being registered, Land Registry makes the following entry in the Property Register of the tenant's title under rule 6(2) Land Registration Rules 2003:

"The lease prohibits or restricts alienation."

If the tenant later grants a sub-lease, Land Registry practice was to examine the head lease to see if a consent was required. If the necessary consent was not lodged only good leasehold title was granted to the sub-lease. This practice has now changed.

The lack of a consent will not now prevent the granting of absolute title.

This practice is on the basis that the sub-lease is not prevented from being a legal lease simply because there has been a breach of the alienation clause, albeit that this breach is likely to make the sub-lease liable to determination through forfeiture of the head or superior lease.

Consent by a landlord – consent lodged

If a consent is lodged Land Registry will not check to see if the consent is a sufficient consent, nor will any check be made that the consent has been given by the correct person. Absolute title will be granted wherever possible.

Consent by a landlord – consent not lodged

The lack of a consent will not prevent the granting of absolute title if all other requirements for that class of title have been met. However, Land Registry will make the following entry in the Property Register of the title to the sub-lease:

“The registrar has not seen any consent to the grant of this sub-lease that the superior lease, out of which it was granted, may have required.”

The purpose of this entry is to alert any potential purchasers to the possible vulnerability of the registered sub-lease. The entry can be removed at a later date if a suitable consent is lodged. No fee is charged for this type of application.

Consent by a restrictioner

Where a landlord’s registered title contains a restriction in the Proprietorship Register, the terms of the restriction must be complied with before any lease out of that title can be registered. The most common types of restriction are those that:

- require the consent of a third party, including a chargee
- limit a disposition by a sole proprietor
- require the service of a notice
- specify that a certificate is produced confirming that certain statutory provisions have been complied with.

Where a restriction is registered against the landlord’s title, registration of a sub-lease cannot proceed without a consent. It is not possible to merely grant good leasehold title if the consent is not lodged. The application will be cancelled.

Restriction in favour of a third party

Example: “No disposition of the registered estate by the proprietor of the registered estate is to be registered without the written consent of”.

In this case the consent of the person named in the restriction must be lodged.

Charge restriction

Example: “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 in favour of ..”.

Where this type of restriction is registered against the landlord’s title, a consent, release or discharge of the charge by the chargee in respect of the land leased must be lodged.

Form A restriction – joint proprietors

Example: “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.”

In this case any disposition by a sole owner under which capital money arises must be accompanied by either evidence of the devolution of the equitable estate, the appointment of a co-trustee, an application to cancel the restriction, or an order of the court.

Restrictions requiring service of a notice

Example: “No disposition of the registered estate is to be registered without a certificate signed by the applicant for registration or his conveyancer that written notice of the disposition was given to”.

In this case a certificate by a conveyancer confirming that the notice has been served must be lodged. Production of a copy of the notice alone is not acceptable.

Leases granted under Right to Buy legislation

Example: “No transfer or lease of the registered estate by the proprietor of the registered estate or the proprietor of any registered charge is to be completed by registration unless made in accordance with section 156A of the Housing Act 1985.”

If the landlord’s title was acquired under the provisions of the Housing Act 1985, the title may contain the restriction shown above. In these cases a certificate of compliance given by a conveyancer is required when any disposition is lodged for registration.

Consent by a cautioner

Cautions fall into two categories: against first registration or against dealings with registered land.

Cautions against first registration

A person who has an interest in an estate that is unregistered may register a caution against first registration. When the first registration of an affecting interest, such as a lease, is lodged, notice will be served on the cautioner.

A consent should be lodged where one is available. Land Registry will in most cases also serve notice on the cautioner, but this does not negate the need to lodge a consent where available.

Cautions against dealings with registered land

Before 13 October 2003 a person who had an interest in an estate that is registered could register a caution against dealings with that estate. However, this type of caution was abolished by the Land Registration Act 2002.

Although cautions against dealings can no longer be registered, existing cautions remain in force and notice will be served on the cautioner by Land Registry when an affecting application, such as a lease, is lodged. If a consent is available it should be lodged with the application to register the lease.

Consent by a chargee

This is where the landlord's title is subject to a charge at the time that a sub-lease is granted. It is different to the situation where a chargee has a restriction on the landlord's title preventing a disposition without a consent. This is covered in detail in consent by a restrictioner.

In the context of this section, the term 'charge' includes legal charges, mortgages, fixed equitable charges, and floating charges.

The lack of a consent by a chargee of the landlord's title will not prevent the granting of absolute title to the sub-lease. If a consent has not been lodged, the following entry will be made in the register of the sub-lease:

"The title to the lease is, during the subsistence of the charge dated in favour of affecting the lessor's title (and, to the extent permitted by law, any charge replacing or varying this charge or any further charge in respect of all or part of the sum secured by this charge), subject to any rights that may have arisen by reason of the absence of chargee's consent, unless the lease is authorised by section 99 of the Law of Property Act 1925."

The purpose of this entry is to alert any potential purchasers to the possible vulnerability of the registered lease.

Consent or discharge

A chargee can consent using a formal letter of consent, or lodge a discharge of part (Form DS3) instead. However, where a DS3 is used an entry will have to be made on the landlord's title that the part leased has been discharged from the charge. With a title that includes a large number of leasehold premises this can become unwieldy. For this reason the use of a consent is the preferred option.

More information on the format of consents or discharges can be found in Land Registry Practice Guide *31 – Discharges of Charges*.

Leases granted under Right to Buy, or Right to Acquire legislation

Where a lease has been granted under the provisions of the Housing Act 1985, a consent by a chargee or a discharge may not be required. More details can be found in Land Registry Practice Guide *47 – Transfers of public housing estates*.