



Leases: determination

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Merger

This is where a leasehold estate in land and the reversionary estate both come into the same ownership and are held in the same capacity. Merger is a matter of intention in that the person holding both estates must want merger to occur. Otherwise the two titles can continue to exist separately.

The term 'held in the same capacity' means that both titles must be held in the same way. For example, although the names of the registered proprietors of both titles might be the same, if one title is held by two or more beneficial joint tenants and the other title by tenants in common, or one title is held on trust and the other is held under a different trust, merger will not be possible.

Documentary evidence of title required

In all situations documentary title is required to show that the two estates (the landlord's and the tenant's) have come into the same ownership and are held in the same capacity. This can take the form of either the actual documents or an examined abstract or epitome of title. A form DL is also required, along with the lease and counterpart. If these deeds are not available their whereabouts must be accounted for.

Application forms

- Form AP1 is required to close any registered leasehold title.
- If the lease is not registered, but is noted on the landlord's registered title, only a form CN1 is required to cancel notice of the lease. Where the lease is noted as a Unilateral Notice, form UN4 or UN2 will be required instead of a form CN1.
- If the lease is not registered but the landlord's title is being registered as a first registration, the application to merge can be made on the form FR1.

Other requirements

- Any new charge lodged must only be against the reversionary title.
- Merger may not be possible if all incumbrances affecting the leasehold estate have not been dealt with ie a charge, caution, or restriction etc. A discharge, consent or release as appropriate must be provided.
- Merger is an exempt interest under stamp duty land tax rules and does not require a land transaction return certificate or a self certificate.

Surrender by deed

This is when a tenant surrenders a lease to the immediate landlord, who accepts the surrender. The lease is then absorbed into the reversion and determined. The deed of surrender must make it clear that the tenant is surrendering the lease.

Documentary evidence of title required

Documentary title is required to show that the lease has been surrendered and with the consent of the landlord. Normally this consent takes the form of the landlord signing the deed. Otherwise a formal written consent must be provided. The lease and counterpart must also be lodged. If they are not available their whereabouts must be accounted for.

Application forms

- Form AP1 is required to close any registered leasehold title.
- If the lease is not registered, but is noted on the landlord's registered title, only a form CN1 is required to cancel notice of the lease. Where the lease is noted as a Unilateral Notice, form UN4 or UN2 will be required instead of a form CN1.
- If the lease is not registered but the landlord's title is being registered as a first registration, the application for surrender can be made on the form FR1.

Other requirements

- Surrender may not be possible if all incumbrances affecting the leasehold estate have not been dealt with ie a charge, caution, or restriction etc. A discharge, consent or release as appropriate must be provided.
- If the leasehold estate is subject to a Form A restriction, surrender is a 'disposition' for the purposes of the restriction. If the surrender is for capital money and is only by a sole registered proprietor, closure of the leasehold title will not be possible.

Stamp duty land tax

SDLT evidence is not required for the surrender of a lease by deed where the surrender took place on or after 12 March 2008 and:

- the lease was originally granted for a term of seven years or more and
- the consideration for the assignment or surrender, other than any rent, is less than £40,000 or
- the lease was originally granted for a term of seven years or less and
- the consideration for the assignment or surrender does not exceed the zero-rate threshold.

Surrender by operation of law

This is when an event occurs that in law has the effect of surrendering a lease. Common examples are the grant of a new lease to the same person, an extension of the term or where the tenant vacates the property and hands in the keys. A surrender by operation of law cannot be one sided; both the landlord and the tenant must agree to the surrender.

Documentary evidence required

Where a new lease has been granted or the application is made with the consent of both the landlord and the tenant Land Registry will require a letter that no deed of surrender was entered into. The letter can be from the conveyancer acting for either party. Otherwise a statutory declaration or statement of truth is required which must:

- specify the consideration paid (if any)
- confirm that no deed of surrender was entered into
- set out details of when and how the premises were vacated and the keys returned if the tenant was occupying the property
- confirm that the rent payable in any sub-lease is now being paid direct to the landlord.

The original lease and counterpart should be lodged if it is in your possession. Otherwise their whereabouts must be accounted for.

If the lease is registered but the landlord's title is unregistered, documentary title to the landlord's title will also be required.

Application forms

- Form AP1 is required to close any registered leasehold title. If a new lease is granted, only one form is required to cover both applications.
- If the lease is not registered, but is noted on the landlord's registered title, only a form CN1 is required to cancel notice of the lease. Where the lease is noted as a Unilateral Notice, form UN4 or UN2 will be required instead of a form CN1.

Stamp duty or stamp duty land tax

A surrender by operation of law is a land transaction for the purposes of SDLT (s.43(3)(b) of the Finance Act 2003).

If the surrender is one of the following, no SDLT evidence is required in respect of the surrender, whether or not the surrender took place before or on or after 12 March 2008:

- a new lease of the same property has been granted in consideration of the surrender or
- a deed of variation of lease takes effect as a surrender and re-grant.

An SDLT5 (where required) must be produced in respect of the new lease.

Additionally, no SDLT evidence is required for the surrender of a lease where the surrender took place on or after 12 March 2008 and either:

- the lease was originally granted for a term of seven years or more and
- the consideration for the assignment or surrender, other than any rent, is less than £40,000 or
- the lease was originally granted for a term of seven years or less and
- the consideration for the assignment or surrender does not exceed the zero-rate threshold.

Determination by notice

This is where a lease for a fixed term can be determined early. The most common example is where a 'break clause' in the lease allows for its early determination. Another example is where the lease has a 'frustration clause' — a clause that allows for early determination if the building is destroyed by fire or similar event.

Documentary evidence required

- If the lease is registered but the landlord's title is unregistered, documentary title to the landlord's title will be required.
- The original lease and counterpart should be lodged if they are in your possession.
- Evidence that the determination is in accordance with the terms of the lease ie Either:
 - a copy of the notice bearing a receipt by the landlord or tenant (depending on whom it was sent to) must be lodged or
 - a certificate from the applicant's conveyancer confirming that the notice was served and detailing the method and date of service or
 - a statutory declaration containing a copy of the notice and details of the method and date of service is required.

Application forms

- Form AP1 is required to close any registered leasehold title.
- If the lease is not registered, but is noted on the landlord's registered title, only a form CN1 is required to cancel notice of the lease. Where the lease is noted as a Unilateral Notice, form UN4 or UN2 will be required instead of a form CN1.

Stamp duty land tax

- Determination by notice is an exempt interest under stamp duty land tax rules and does not require a land transaction return certificate or a self-certificate.

Effluxion of time

This is where the fixed term of a lease has expired. Determination by effluxion of time may be affected by legislation such as the Landlord and Tenant Act 1954 or the Local Government Act 1989, which may prolong the term beyond its original date.

Documentary evidence required

- Confirmation that neither the Landlord and Tenant Act 1954 nor the Local Government Housing Act 1989 affect the lease is required, or evidence that the lease has determined in accordance with their provisions.
- Evidence that any option to renew, protected on the register of the landlord's title, has not been exercised or cannot now be exercised is also required.

Application forms

- Form AP1 is required to close any registered leasehold title.
- If the lease is not registered, but is noted on the landlord's registered title, only a form CN1 is required to cancel notice of the lease. Documentary evidence of the title to the lease and a form DL is required. Where the lease is noted as a Unilateral Notice, form UN4 or UN2 will be required instead of a form CN1.
- If the lease is not registered but the landlord's title is being registered as a first registration, the application to merge can be made on the form FR1. Documentary title to the landlord's title will be required.
- The original lease and counterpart should be lodged if it is in your possession.

Stamp duty land tax

- Effluxion of time is an exempt interest under stamp duty land tax rules and does not require a land transaction return certificate or a self-certificate.

Disclaimer

This is where the tenant becomes bankrupt or a company becomes insolvent and either the trustee in bankruptcy or liquidator gives up (disclaims) the lease. In this case the lease is determined.

Documentary evidence required

- The original lease and counterpart should be lodged if they are in your possession.
- Evidence of the bankruptcy or liquidation must be lodged.
- An official copy of the notice of disclaimer is required.
- A certificate by the trustee/liquidator that he/she has the power to disclaim the lease must be provided.
- Certified copies of any relevant court orders or applications to a court for an order must be lodged.

Application forms

- Form AP1 is required to close any registered leasehold title.
- If the lease is not registered, but is noted on the landlord's registered title, only a form CN1 is required to cancel notice of the lease. Where the lease is noted as a Unilateral Notice, form UN4 or UN2 will be required instead of a form CN1.

Other requirements

- All incumbrances on the tenant's title must be accounted for.

Stamp duty land tax

- Disclaimer is an exempt interest under stamp duty land tax rules and does not require a land transaction return certificate or a self certificate.

Forfeiture

This is usually where a tenant has failed to comply with the conditions or covenants in a lease, such as payment of the rent or maintenance of the premises, and the landlord re-enters the demised land.

Forfeiture is effected either by taking court proceedings or by peaceable re-entry. When a lease is forfeit, any lease that derives from it will also be determined.

For comprehensive information about forfeiture please see Land Registry Practice Guide 26 – *Leases: determination*.