

Leases: options in leases

In this section

- LRA 2002 means the Land Registration Act 2002
- LRR 2003 means the Land Registration Rules 2003
- Prescribed clauses lease means a lease as defined in r.58A LRR 2003.

This section relates solely to options contained in leases. Options contained in separate deeds are covered in Appendix A of Land Registry Practice Guide 19 - *Notices, restrictions and the protection of third party interests in the register* which can be downloaded from the Land Registry web site or obtained free of charge from any Land Registry office.

An option to determine a lease, such as a break clause, in favour of a tenant is not an interest that affects a registered estate and so cannot be noted. An option to determine a lease in favour of a landlord is a liability incident to the lease and is not required to be noted (s.12(4) LRA 2002 (first registrations) or s.29(2)(b) registered dispositions). What follows should be considered in the light of these statements.

General

Land Registry will only note an option or a right of pre-emption in the title carrying the burden of it; for example, we will in the landlord's title a tenant's option to purchase the reversion.

Prescribed clauses leases - general rules

If the lease containing the option is a prescribed clauses lease, clause LR9 must be completed with details of the option. Additionally, the title number of any affected titles, other than the landlord's title, must be added to clause LR2.2 otherwise, in the absence of a separate form AN1, AP1 or UN1, the option will not be noted. See the module 'Prescribed clauses leases' for more details.

Option in favour of a tenant - landlord's title unregistered

- Options affecting a landlord's unregistered title should be registered as a Class C(iv) Land Charge.
- If the landlord's title is being registered as a first registration and the counterpart lease containing the option is lodged with the application, the option will be noted automatically by Land Registry, but only so far as it affects the land being registered. Without a specific application, it will not be noted against any other title.
- If on first registration of the landlord's title the option is revealed in panel 5 of a form DI (Disclosable overriding interests), as part of the details of a lease, the option will be noted automatically, but only in respect of the title being registered.

Option in favour of a tenant - landlord's title registered

- If a registrable disposition of the landlord's title occurs, such as a transfer or charge, and the option is revealed in panel 5 or 6 of a form DI, the option will be noted without the need to lodge a form AN1 or UN1. A copy of the lease should be lodged.
- In all other cases an express application in form AN1, AP1, FR1 or UN1 is required. This applies even where the lease is being noted at the same time as the option; i.e. where the lease cannot be registered.

Pre-emption rights in favour of a landlord

Sometimes a lease contains a right for the landlord to re-purchase the leasehold estate if the tenant decides to transfer the land. This is often referred to as a right of pre-emption. The fact that the leasehold and reversionary estates then come into the same ownership does not mean that the lease is determined. The landlord can retain both estates to run 'in parallel'. The burden of the interest can be noted on a tenant's title.

If the title is registered, an application in form AN1, AP1, FR1 or UN1 is required. If the title is unregistered, a Class C(iv) Land Charge should be registered.

Land Registry forms

Land Registry forms AN1, AP1, FR1 or UN1 can be downloaded from Land Registry's website.