

Leases: restrictive covenants in leases

In this section:

- LRA 2002 means the Land Registration Act 2002.
- 13 October 2003 is the date the LRA 2002 came into force.
- Prescribed clauses lease means a lease defined in r.58A LRR 2003.

This desk aid is concerned only with restrictive covenants affecting land outside the extent of the land demised by the lease, and reference to 'restrictive covenant(s)' in this module has this meaning alone.

Background

A lease may contain a restrictive covenant entered into by a landlord or tenant in favour of the other. Such a restrictive covenant cannot be noted in a register of a title where it affects the property leased (s.33(c) LRA 2002). However, covenants affecting other registered land of the tenant or landlord can be noted in the register(s) of those titles. A typical example would be where a landlord lets a retail unit for use as a supermarket and covenants with the tenant not to lease any other units on the site for the same purpose.

Restrictive covenants contained in leases created before 13 October 2003 do not need to be registered if the lease is not subject to registration. However application can be made in form AN1 or UN1 to note the covenants on any registered title burdened by the covenants.

Restrictive covenants in a lease created on or after 13 October 2002 must be noted on the burdened title, otherwise they will not bind a subsequent purchaser for value of the burdened land (s.29(1) LRA 2002). This applies even where the lease is not capable of registration or noting.

Prescribed clauses leases - general rules

If the lease is a prescribed clauses lease, clause LR10 must be completed with details of the covenants. Additionally, the title number of any affected titles, other than the landlord's title revealed in clause LR2.1, must be added to clause LR2.2. Otherwise, in the absence of a separate form AN1, AP1 or UN1, the restrictive covenants will not be noted. (See the module 'Prescribed clauses leases' for more details.)

Restrictive covenants in favour of a tenant - landlord's title being registered

If a landlord's title is being registered as a first registration (form FR1) and the counterpart lease containing the restrictive covenants is lodged with the application, Land Registry will note the restrictive covenants on the burdened title without a separate application. The same applies where the covenants are revealed in panel 5 or 6 of a form DI (Disclosable overriding interest) that accompanies an application for first registration.

Restrictive covenants in favour of a tenant - lease being registered as first registration

If the lease is being registered as a first registration, a separate application to note the covenants against any registered burdened title must be made using form AN1, AP1 or UN1. If the lease includes prescribed clauses a separate application must still be made. This is because although prescribed clauses can be used in leases lodged for first registration, the provisions dispensing with the need to lodge additional application forms do not apply to these applications.

Restrictive covenants in favour of a tenant - lease is a disposition dated before 19 June 2006

If the lease is a disposition of a registered estate, granted before 19 June 2006, a separate application must be made using form AP1, AN1 or UN1.

Restrictive covenants in favour of a tenant - lease is a disposition on or after 19 June 2006

If the lease is a disposition of a registered estate in land, granted on or after 19 June 2006, subject to a few exceptions it must be a prescribed clauses lease. In this case clause LR10 must be completed with either details of the covenants or reference to the clause in the body of the lease that contains the covenants. The title number of any affected title other than the landlord's title revealed in clause LR2.1 must also be inserted in clause LR2.2. See the module 'Prescribed clauses leases' for more details.

Restrictive covenants in favour of a landlord

Restrictive covenants in favour of a landlord are quite rare, but the position is similar to those in favour of a tenant.

Further information and Land Registry forms

Further information on the registration of leases can be found in the Land Registry Practice Guide *25 - Leases – when to register* which can be downloaded from Land Registry's website or obtained free of charge from any Land Registry office. Land Registry forms can also be downloaded from the website.