

## 49. Commercial Certificates of Title

### Overview

Certificates of title are used in many different transactions. They very commonly used in relation to residential, commercial and development mortgages. They are also used in relation to the sale of portfolios of properties,, acquisitions of companies and businesses, flotations and privatisations.

There is no single standard certificate of title in the case of commercial and development property lending. Many lenders and lender's solicitors use their own form of certificate. However, the City of London Law Society form is widely accepted as the standard commercial certificate of title.

The CLLS certificate is addressed to the lender and the lender may rely on it. The primary purpose behind the Certificate is to reduce as much as possible the negotiation that takes place over the form of certificates of title. This objective have been achieved to a significant extent, with the Certificate being accepted as the standard by many, if not most, firms.

A considerable amount of the information contained in the Certificate will be based on information provided by the owner of the Property. To this extent, the Certificate replaces the normal enquiries before contract. This means that the solicitors giving the Certificate will have to liaise closely with the owner of the Property (or solicitors on the owner's behalf) to obtain this information.

It is for the solicitors giving the Certificate to decide how best to elicit this information. To assist solicitors, examples of letters or questionnaires seeking information and confirmations from the owner of the Property appear on the City of London Law Society's website.

Often, the Certificate will be given to a lender providing finance for the buyer to purchase the Property. In this case, the buyer's knowledge of the Property will be slight and it will be relying on the information provided by the Seller's solicitors. The Certificate includes optional references to the Seller, as well as, or instead of, the buyer, in the appropriate places.

The certificate is given on the basis that the lender will take professional advice on its contents, where necessary. The certificate contemplates that specific information will be disclosed, but that the lender may require

the help of its professional advisers to assess its significance. The information required to enable the lender to make a proper assessment of risks should be given.

If any of the standard form statements do not apply, a disclosure and agreement to qualification / modification must be agreed with the lender. The purpose is to report by way of exception so as to focus on deviations from the ideal of compliance in the standard “unqualified” certificate.

The CLLS certificate is recognised by the Solicitors Regulatory Authority as compatible with the conflict of interest rules, whereby a solicitor may act for a lender and borrower. The certificate may be used where the property is not the borrower’s residence.

## **Basic Contents and Assumptions**

The certificate confirms basic title issues

- ❖ That the borrower will have good and marketable title, subject to registration or subject to position as disclosed;
- ❖ that the requisite searches and enquires have been made;
- ❖ that the property will be validly charged to the lender
- ❖ That if the borrower holds under a lease that the details of the lease terms and conditions are fairly summarised in the

schedule, highlighting the key terms of the lease

The certificate confirms certain factual matters relating to the property and its use;

- ❖ that the property is used for the stated existing use;
- ❖ the stated position as to occupation and vacancy;
- ❖ that the certificate has been sent to the valuer for review, and that there is nothing which requires re-valuation or which change his assumptions in the valuation;
- ❖ that the borrower has confirmed and approved the contents of the certificate and given written instructions in respect of certain points as required;

The following is not warranted;

- ❖ no inspection has been made;
- ❖ no opinion is given as to value;
- ❖ certain environmental issues are excluded
- ❖ environmental assessment and surveys are excluded.

The certificate is made on the basis of certain assumptions

- ❖ that signed documents appear to be valid on the face;
- ❖ that where information has been

supplied by the seller or a borrower that it is relied on if there is no apparent doubt or reason to doubt its accuracy

The certificate is given in accordance with English law and the statements in the schedule to the CLLS certificate applies.

### **Schedules Relating to Specific Issue**

The certificate deals with a very wide range of issues; much wider than issues of ownership and prior mortgages. It covers a wide range of legal and practical issues that may impact on the value of the secured property. The schedules to the CLLS certificate contain confirmations in relation to many issues, including the following;

- ❖ the title documents have been examined and appear to be in order;
- ❖ the title deeds are duly stamped
- ❖ that there is no adverse position in the land Registry;
- ❖ that properly abuts a public road maintained at public expense;
- ❖ that the property enjoys any necessary or required easements
- ❖ that the property enjoys any necessary or required services and they are lawfully connected;
- ❖ that there are no adverse interests, mortgages or charges
- ❖ that there are no adverse rights, options

or agreements

- ❖ that there is no basis for a dispute or claim
- ❖ that no notices have been received from public authorities
- ❖ that the existing use is lawful under planning legislation
- ❖ that there have been no developments without planning consent;
- ❖ that the planning permission is valid;
- ❖ the planning conditions have been complied with and are not onerous;
- ❖ that planning agreements have been complied with;
- ❖ that listed building status has been complied with;
- ❖ that certain environmental legal obligations have complied with (although the general physical status is not confirmed);
- ❖ that the property is not subject to compulsory acquisition
- ❖ that it is not a protected monument;
- ❖ that there is no outstanding statutory notices;
- ❖ that the borrower is not aware of any outstanding statutory notice or breach of legislation;
- ❖ that there is no requirement for permits for environmentally sensitive use such as air or water pollution;
- ❖ matters relating to fire safety compliance;
- ❖ matters relevant to VAT

- ❖ compliance with Stamp Duty Land Tax..

## **Schedules setting out leases**

The certificate contains very detailed confirmation that the leases of the property are in accordance with minimum investment standards. This includes a number of detailed confirmations as to the lease contents and responsibility of the landlord and tenant under the lease in relation to certain key issues.

The schedules to the certificate summarise the key commercial terms of leases and tenancies that affect the property. It also confirms practical compliance matters in relation to the lease. The certificate confirms;

- ❖ that rent is up to date;
- ❖ that rent reviews have been undertaken when due;
- ❖ that any building works and alterations were undertaken by landlord and are not discounted in rent review;
- ❖ that the tenant is responsible for repair;
- ❖ that there are restrictions on change of use without landlord's consent;
- ❖ that the tenant is prohibited from making structural alterations or those affecting appearance
- ❖ that the tenant may not share possession, assign, mortgage or sublet the property without landlord's consent

not to be unreasonably withheld

- ❖ that landlord is required to insure and tenant is obliged to pay;
- ❖ that rent suspension and reinstatement provisions in the event of destructions are per market norms;
- ❖ that position with assignments and sublease are disclosed;
- ❖ that there are no adverse options;
- ❖ that there are no side agreements or concessions outside of the terms of the lease;
- ❖ that all necessary consents have been granted under the lease that there are no breaches of covenant
- ❖ that material terms have been disclosed up;
- ❖ that the insurance arrangements are to accord with minimum standards;
- ❖ that where the property is part of a larger structure, that there is a proper service charge arrangement;
- ❖ that there landlord can terminate the lease on the basis of non-payment of rent, insolvency and breach of obligations;
- ❖ that there are no landlord and tenant rights of renewal;
- ❖ that there are no other right to renew the lease;
- ❖ that there were no breaches of material covenants.

*Lavelle Coleman is an Irish firm of solicitors with an England and Wales legal practice. Our England and Wales qualified and regulated solicitors provide a wide range of legal services from our Dublin offices. We have written legal guides in relation to a broad range of England and Wales legal matters as they relate to Irish based individuals and businesses. These guides are available on our website at <http://www.lavellecoleman.ie/England-Wales-Law.aspx>*

*This is an extract from our "Legal Guide to the Management and Enforcement of Security in England and Wales for Irish Lenders (2009). The Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances. It should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances. While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in it. The reader should rely only on specific legal or taxation advice. This extract is based on the law as of 1<sup>st</sup> August 2009.*

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