



Lenders will want to know that, following extensive review and consultation, the City of London Law Society (CLLS)¹ launched a new edition of one of its most in-demand documents, the Certificate of Title (CoT), now in its eighth edition.² This briefing note considers the key changes of which lenders, in particular, should be aware.

What Has Not Changed?

Changes are to content, rather than structure, which remains the same.

Certifiers will continue to identify differences between accepted standard lease provisions (now based on the Model Commercial Lease,³ widely acknowledged to be even-handed and well drafted) and the property-specific documents. Material differences in wording or legal effect will continue to be disclosed.

What Has Changed?

The Valuers

Certifiers are no longer required to confirm that a copy of the CoT has been sent to the valuers, so there will be no automatic referral for assessment of the content of the CoT against the valuation report. This will, in most cases, be covered as a condition precedent, but this now places the obligation on a lender and their lawyers, rather than a borrower, which, in most cases, occurs in any event.

Position on Liability Cap⁴

While, in theory, it has always been possible to negotiate a cap on certifier liability, this has not always been reflected by the reality. The new edition works on the assumption that there should be a cap, including, as it now does, wording limiting certifier liability. As before, the actual amount will be a matter for negotiation, but this does present a fairer starting point from a certifier perspective, allowing that where a property is of particularly high value, the cap may be less than the amount of the loan or property itself.

Share Acquisitions

There is new provision dealing with the scenario in which both shares and property form part of the transaction helping to standardise front end disclosures.⁵

Construction and Planning Reports

The intention is that these will now be annexed to the CoT, with a statement to the effect that these matters are beyond the scope of the CoT.⁶ Those benefitting from the CoT must rely on the separate reports provided, although the drafting provides that this exclusion should only apply where such reports are not prepared by the firm providing the CoT.

Climate Change

Despite the wider interest in climate change and its impact on transactional work, the new CoT does not seek to address climate risk, other than through the extent to which advisers should disclose relevant information that they may discover when carrying out appropriate searches.

Climate change has not been entirely left out in the cold, however. Lenders will notice a difference in the level of reporting on lease clauses covering:

- Energy performance certificates⁷
- The impact of the tenant's alterations on the energy rating of the property⁸
- Data sharing⁹

¹ City of London Law Society Land Law Committee.

² Accessible here: [CLLS Precedent documents: Certificate of Title and Related Documents.](#)

³ <https://modelcommerciallease.co.uk/>.

⁴ Paragraph 1.9.

⁵ Paragraph 3.3.

⁶ Paragraph 5.

⁷ Schedule 3, paragraph 24.

⁸ Schedule 5, Part 2, paragraph 7.3.

⁹ Schedule 5, Part 2, paragraph 26.

Given that the majority of leases are seeing just “light green” touches at present, this approach reflects practical reality, rather than aspirational values.

National Security and Investment Act 2021¹⁰

In acknowledgement of the difficulties encountered by certifiers in identifying whether this act applies, there is now provision for the certifier to express no opinion on this and confirm no enquiries have been made.

Residential and Mixed-use¹¹

There is extensive legislation giving residential occupiers rights to enfranchise and extend lease terms. A new section for residential and mixed-use buildings aims to support the certifier in identifying whether there is a risk of relevant rights applying.

Searches

Interestingly, chancel repair is no longer a specifically referenced search, although it remains open to certifiers to include other relevant information. There are residual concerns around this potential liability, however, and it is anticipated that the search is likely to remain relevant in many cases. Coal searches are also not now included as routine.

Welsh Legislation

We have seen some extensive changes to the nature of residential tenancies in Wales, as well as the less-recent Land Transaction Tax independence from Stamp Duty Land Tax. Changes to the CoT reflect these.

Listed Buildings

Additional drafting is now included to cover listed buildings,¹² ensuring that no prohibited works have been carried out, enforcement proceedings have been issued, and there are no onerous conditions attaching to any relevant consents.

Outstanding Obligations Under Agreement for Lease

A statement to the effect that there are no material obligations under any agreement for lease that remain outstanding following grant of the lease has been added, against which certifiers will now have to disclose any such obligations.¹³



Immediate Action?

There is no need to switch to the new edition partway through a transaction that is currently relying on the previous edition or if the parties agree to retain an earlier edition for updating purposes. However, best practice for new transactions is to use the most recent edition. For fresh instructions, therefore, advisers will anticipate using the eighth edition CoT.

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¹⁰ Schedule 1, paragraph 3.7.

¹¹ Schedule 3, paragraph 28. Schedule 5, Part 2, paragraph 32.

¹² Schedule 3, paragraphs 16, 19.

¹³ Schedule 4, Part 2, paragraph 21.