

Leases

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1. Registration of Lease as a burden - General

1.1 Registerable as a burden

Before registration of a Lease, it must be ascertained that the Lease comes within section 69(1)(g) of the Registration of Title Act 1964.

It should be noted that section 2 of the Landlord and Tenant (Ground Rents) Act 1978 prohibited the creation of any fresh leases of private residential dwellinghouses. Leases can of course be created in respect of all other types of property [e.g. flats, commercial or development property and generally of property on which there is no private dwellinghouse].

Note also that section 2 of the Housing (Miscellaneous Provisions) Act 1992 provides [notwithstanding the provisions of the Landlord and Tenant (Ground Rents) Act 1978] that a person (including a housing authority) may grant a Shared Ownership Lease of a house.

Pursuant to the Housing (Miscellaneous Provisions) Act 2009 sections 2, 3 and 8 of the Housing (Miscellaneous Provisions) Act 1992 are repealed. Shared Ownership Leases can no longer be granted from the commencement date of the Act. A commencement order is awaited.

Shared Ownership Leases created prior to the commencement date may still be lodged for registration.

1.2 Categorisation of Leases.

Registerable Leases lodged for registration should be categorised as follows:

Leases of registered land dated on or after the 1st December 2009 being the date of commencement of the Land and Conveyancing Law Reform Act 2009.

Leases of registered land dated on or after the 26th May 2006 being the date of commencement of the Registration of Deeds and Titles Act 2006. Note the distinction between the first two categories is that pursuant to the Land and Conveyancing Law Reform Act 2009 a Lease of Registered Land on or after the date of commencement of the Act must be in a prescribed format. The prescribed format is LR Form 31 of the Land Registration Rules (S.I. 483 of 2012).

All other Leases affecting registered land and dated prior to 26th May 2006 and/or unregistered land regardless of date.

1.3 Documents to be lodged

Documents to be lodged are:

(i) For Leases of Registered Land Dated on or after 26th May 2006:

- A completed LR Form 17 of the Land Registration Rules,
- The appropriate Fee,
- The Original Lease, [and if dated on or after 1st December 2009 in LR Form 31]
- A Certified Copy/Counterpart of the Original Lease [original is to be returned under Rule 152 of the Land Registration Rules 2012]

- Map.

(ii) For all other Leases:

Documents as above and additionally:

- Affidavit of Discovery in LR Form 16 of the Land Registration Rules by the applicant for registration
- Affidavit in LR Form 2 of the Land Registration Rules [if applicant other than the Original Lessee] by the applicant for registration
- Appropriate Registry of Deeds and Judgment Searches.

Note - the Searches and Affidavit of Discovery to be dated within 3 weeks of the date of lodgement of the application in the Land Registry.

1.4 General Processing.

[See Mapping Practice Direction for mapping procedures and requirements].

On referral of the Dealing to the Mapping Branch, the mapping officer shall give the necessary references and description for the registration of the Lease [..as a burden or not as the case may be...] and for its registration in the Register of Leasehold Interests. References shall be given on the Certified Copy/ Counterpart Lease. If the original only is lodged, the reference shall be given on it.

The particulars for entry on the Register [new Leasehold Folio and Lease Burden] are to be taken from the Original Lease. If a Duplicate/Counterpart or attested copy is lodged, it may be filed on the instrument having been compared with the original.

In all cases, save when the lease purports to lease the mines and minerals, Part 1 of the folio shall state that: "The registration does not extend to the Mines and Minerals". This note is to be entered whether or not such a note appears on the Freehold/Leasehold Folio. When there is a Lease of Mines and Minerals the case is to be referred to the Divisional Manager (see Rule 28).

A Folio with good leasehold title is to be drafted in all cases except in the case of a Lease of property registered with an absolute title. In the latter case a Folio with an absolute title is to be drafted.

2. Application for registration of a Lease as a burden on registered property where the Lease is dated on or after the 26th May 2006 and the consequent registration of the Original Lessee OR a Successor to the Original Lessee as owner on the register of ownership of Leasehold interests

The Original Lessee

All these applications are to be processed in the Dealing Sections.

On the 26th day of May 2006 the Minister for Justice Equality and Law Reform signed a Commencement Order in respect of, inter alia, section 58 of the Registration of Deeds and Titles Act 2006. This section amends section 51 of the 1964 Act and provides that the word “transfer” shall include a lease. Under the Registration of Title Act 1964 in the case of registered property, any lease of the property or part of it was deemed to confer an unregistered leasehold interest. Before any such interest could be registered it was necessary for the lessee to apply for first registration. Section 58 of the 2006 Act provides that where a registered owner of land leases the land or any part of it, the lessee shall be registered as owner of the leasehold interest in that land. The effect of this amendment to section 51 of the 1964 Act is to render leases of registered land to be of themselves registered land.

Accordingly in respect of leases wholly affecting registered land, [i.e. where all the property the subject of the lease comprises registered land] executed after the commencement date there will be no requirement to furnish an Affidavit of Discovery in LR Form 16 of the Land Registration Rules or Registry of Deeds and Judgment Searches. This practice also applies in respect of sub-leases lodged at the same time as, or at any time after, an application to register the head lease, where the property the subject of the head-lease is wholly registered.

Charges affecting such interest must be in the manner appropriate to registered land. Additionally from the commencement date of the Land and Conveyancing Law Reform Act 2009 [1st December 2009] charges on property must be in the prescribed format - LR Forms 49, 50, 51 and 52 of the Land Registration Rules 2012.

The date of registration of the Lease and any associated charge is the date of

lodgement of the dealing (Rule 60 Land Registration Rules).

A Successor to the Original Lessee

It often occurs prior to the completion of an application to register a Lease that the property is sold and a second application by the new owner is presented for registration. Indeed it often happens that two or more transactions over time with property are presented in one application initially. Treat such applications as per an application by the original Lessee above but in addition to the documents required to be lodged all the disposition(s) from the Original Lessee to the current transferee/assignee applicant must be presented for registration.

Note that dispositions made prior to the completion of registration of the leasehold interest should be in the manner appropriate to registered land [i.e. shall be by way of transfer but assignment is acceptable] as must charges.

Note again the particulars for entry on the Register are to be taken from the Original Lease.

These applications are to be processed in the Dealing Sections and the date of registration is the date of lodgement of the dealing. (Rule 60 Land Registry Rules).

3. Application for First Registration of a Lease as a burden on registered property where the lease is dated prior to the 26th May 2006 and the consequent registration of the Original Lessee as owner on the register of ownership of Leasehold interests

The leasehold interest which it is sought to register in this instance will not become registered land until first registration is completed [i.e. until the new folio is opened and application completed]. Date of Registration on the new Leasehold Folio is the date of settling and date of registration of the Lease Burden is date of lodgement.

All these applications are to be processed in the Dealing Sections. Documents required are:

- Affidavit of Discovery in LR Form 16 of the Land Registration Rules 2012

by the Original Lessee

- Appropriate Registry of Deeds and Judgment Searches against the Lessee.

3.1 Mortgage of Leaseholds

The person(s) mortgaging the property leased must be identical with the Lessee(s) and the date of the Mortgage must be the same or subsequent to that of the Lease and an assent to the registration of same as a burden on the new leasehold Folio be provided.

A mortgage of unregistered leaseholds may be made either by:

- assignment of the residue of the term, *or by*
- a sub-Lease (more usually called a sub-demise).

In the case of assignment, the deed provided for re-assignment to the mortgagor on payment of money advanced. In the case of sub-Lease, the mortgagor gives a lease to the mortgagee for a term less by a few days than the term granted by the Lease, with a proviso for surrender of the term granted by the Mortgage on payment of the money advanced.

Mortgages of Leaseholds are invariably by way of sub-Lease. The reason for this is that an assignee of a lease is bound to perform the covenants in the lease; if therefore the mortgagor were to assign the whole of his term to the mortgagee, the mortgagee would be bound to perform the covenants in the lease and to pay the rent reserved. The mortgagor therefore usually sub-Leases the whole of his term except the last few days. The mortgagee is then only a sub-Lessee, and is not liable on the covenants to the original lessor. The mortgagor declares himself to be a trustee of the last few days of the term for the mortgagee and confirms that he will join in a conveyance if required by the mortgagee - thus the mortgagee could sell the whole leasehold interest on exercising his power of sale. As a general rule, the Mortgagor does not declare or covenant to join in a conveyance if required by the mortgagee, but gives a power of attorney to the mortgagee to convey the last few days as the mortgagee shall think fit. These last few days are called "nominal reversion".

"Mortgagor" is the person mortgaging the property and should be identical with the Lessee in the lease being mortgaged. He is also referred to as the "the Borrower".

“Mortgagee” is the lender

A mortgage by way of sub-lease generally takes the following form:

“.....the Mortgagor (Borrower) hereby as beneficial owner demises unto.....all the hereditaments and premises.....to hold the same unto the.....for the unexpired residue of the term of - years granted by the said lease (less the last day thereof) subject to the proviso for redemption hereinafter contained”.

3.2 Declaration of Trust of the Nominal Reversion

Such declaration will be in some form as follows:-

“The Borrower hereby declares that he the Borrower shall henceforth stand possessed of the reversion or respective reversions hereby reserved of the term or several terms of years for which the mortgaged property or any part or parts thereof is or are held by the Borrower in trust for thesubject to such equity of redemption (if any) as may for the time being subsisting therein by virtue of these presents and to dispose thereof as it shall direct AND hereby authorises the to appoint a new trustee or trustees of the said reversion or respective reversions and in particular at any time or times to appoint such new trustee or trustees in place of the Borrower or any trustee or trustees appointed under this power as if he or they were incapable of acting in the trusts thereof hereby declared and the Borrower hereby irrevocably appoints the the attorney of him the Borrower in his name and on his behalf at any time to assign the same reversion or respective reversions to the ...or their assigns as it.... shall think fit and subject to such equity of redemption (if any) as for the time being may be subsisting as aforesaid and to execute and do all instruments and acts necessary or proper for that purpose.” An ownership of the charge may be registered in respect of the mortgage, if applied for.

If, however, the Leasehold estate is charged in the manner which is appropriate to registered land, then the ownership of the charge cannot be registered. If the “Charge/Mortgage” is one entered into post commencement of the Land and Conveyancing Act 2009 and in the prescribed format this issue will not arise.

If a mortgage not disclosed in the application appears on a Search and evidence is not forthcoming to show that it has been released, the existence of such mortgage should be entered on the folio as a charge (see section 79 (2) of the Registration

of Title Act, 1964) in the following format:

Date of settling: "Charge created by Mortgage dated ... made betweenand"

Instrument No..

No ownership of the charge is to be entered. No assent to its registration under section 69(2) of the Registration of Title Act 1964 is necessary.

Prior to settling and completion of the application Continuation Searches should be requested and Cautions against First Registrations be inspected. Memorial details should be completed in ITRIS. If any Caution or Act on the search appears the Settling Officer must resolve the difficulty prior to final completion.

Note - a sub-Lease which is being registered as a burden on the existing leasehold folio is to be dealt with in the same manner as a lease except that it is to be given a distinctive colour [e.g. purple] on the Land Registry Map, and is to be described as a sub-Lease in Part I of the Leasehold folio.

In all cases the Original Lease should, except where no counterpart or certified copy thereof is lodged, be returned to the Solicitor with the following Certificate endorsed thereon endorsed (section 95 of the 1964 Act) as follows:

"Land Registry

Registered as a burden in

Folio_____ of the Register

County_____

The ownership of this lease is registered in folio _____of the Register

County_____

The deposit of this lease will not create a lien on the registered owners interest under it".

4. Application for registration of a Lease as a burden on registered property where the Lease is dated prior to the 26th May 2006 and the consequent registration of a Successor to the Original Lessee as owner on the register of Leasehold interests

In this type of case in addition to the documents required at 3 above [LR Form 16

and Searches against the Lessee] the following are generally necessary:

- All Original Deed(s) of Assignment, *together with*
- An Affidavit in LR Form 2 of the Land Registration Rules 2012 by the current applicant for registration. The Affidavit of Discovery in LR Form 16 should also be from the current applicant
- Appropriate Registry of Deeds Searches against all the parties on title for the periods they held the property and Judgment Searches against any party on title for the preceding 5 years

Such cases were traditionally passed to an Examiner of Title for attention.

Therefore where an application has been lodged by an Original Lessee for registration of a Lease and, prior to completion, an Assignment of the leasehold interest is lodged, [or indeed where both are lodged together] the following procedures are to be followed:

(a) The Assignment is to be passed to an Executive Officer who is familiar with processing Leases. The Executive Officer will set up the application as an 'Assignment of Lease' Examiners application and associate with the Lease application.

(b) Standard requisitions as attached are to issue by the Executive Officer to the solicitor for the new applicant, such requisitions to be amended as appropriate. The standard requisitions will be available on the ITRIS correspondence list.

- Lodge a letter from the solicitor for the original lessee(s) consenting to you as the solicitor for the assignee(s) taking over the original lease application.
- Lodge affidavit in LR Form 2 & 16 of the Land Registration Rules 2012 sworn by the new applicants.
- Lodge the original Deed of Assignment to the assignee together with all other original deeds and Family Law documentation in the new applicant's possession or control including the originals of mortgages and vacated mortgages.
- Lodge a Judgment Office search against the applicant from the date of the Deed of Assignment to date.
- Lodge a Common Search or Verified Hand Search on Registry of Deeds Names Index only for all acts affecting the application property by the

new applicant(s) from date of the Deed of Assignment to date.

- All acts appearing on Searches to be explained.

(c) On receipt of satisfactory replies, the Executive Officer will make the draft registrations, including the drafting of the leasehold folio, and both dealings are to be passed for the attention of an Examiner of Titles.

(d) Deeds and Judgment Office Searches should be made by the Examiner and any undischarged acts arising should be queried, as appropriate. Deeds Searches and Judgment searches should be made by e-mail.

(e) Examiners should then complete the registration to be effected (including date of registration).

Note: The Lease dealing will be recorded on MIDAS as a “Regional” application. The Assignment will be recorded on MIDAS as an “Examiners” application.

However as stated supra Section 58 of the Registration of Deeds and Title Act 2006 commenced on 26th May 2006. It amended section 51 of the 1964 Act to provide that “transfer” shall include “lease”. Therefore, a lease dated after 26th May 2006, which is carved out of registered land, is not regarded as a first registration and affidavits in Forms 2 or 16 or searches are not required for such leases. A lessee under such a lease has the benefit of section 90 of the 1964 Act. Therefore, such lessee is entitled to transfer their interest, while they are entitled to but not yet actually registered as owner.

Rule 18 of the Land Registration Rules provides that the PRA may in any case dispense with or modify the official examination of title. Rule 182 of the Rules provides that the PRA may, in any particular case, relax the regulations made by the Rules. Relying on these provisions, and by analogy with the processing of Leases dated post 26th May 2006, requests for Forms 2 and 16, could be waived, with little or no risk to pre May 2006 Leases of registered land, in the following cases:

Leases of registered land and subsequent Assignment:

- where the Assignment is on sale
- where Deed of Mortgage/Charge has been executed by the assignee and is lodged with the Deed of Assignment or as a further dealing

- where the consideration is less than €1 million
- the property demised is residential

Provided the applications meet all four criteria set out in above, and that no queries arise other than the absence of Form 2/16 and/or Searches, Leases and associated Assignments/Transfers may be completed without seeking Form 2 and 16. Searches should, in these cases where no searches are lodged, or continuation searches are required, be carried out in-house. Date of registration will be date of settling.

If it is necessary to raise other queries in these cases, then the absence of the Form 2 and 16 and searches should also be queried. This procedure applies only to cases where no other queries arise.

As examination of title is being dispensed with or modified in these particular cases, subject to searches returning no acts, the Dealings may be settled by Dealings staff and need not be submitted to an Examiner of Titles. The returnable original Lease may be returned to the party who lodged it.

In any cases, where LR Forms 2 and 16 have been lodged, such cases may continue to be processed in accordance with the initial procedure set out above. In cases of any doubt or where issues arise as to Acts appearing on Searches consult an Examiner of Titles before proceeding with the matter.

5. Application for registration of an Original Lessee as owner on the Register of Ownership of Leasehold Interests where the Lease is already registered as a burden

These applications should be made in LR Form 2 of the Land Registration Rules 2012. They are to be dealt with in the same manner as items 3 and/or 4 above as the case may be. The Lease being already registered as a burden simply requires a note to the foot of the Lease Burden entry regarding the registration details of the Title to the Lease [i.e. Leasehold Folio number].

6. All other applications for registration on the Register of Ownership of Leasehold Interests

All such applications [other than housing authority shared ownership leases affecting registered property] are to be set up as “Examiner” dealings and passed

to an Examiner of Title for attention.

7. Miscellaneous Matters

7.1 Creation of Lease on Folio subject to a Charge

On the registration of a lease as a burden, on a folio on which a charge is registered, a note that the lease ranks in priority to the charge is to be entered if the registered owner of the charge joins in or consents to the granting of the lease.

The power of a mortgagor to create a Lease, under Section 18 of the Conveyancing Act 1881 was considered in the case of George Maloney (Plaintiff) v Paul O'Shea and anor. (Defendants) [2013] IEHC 354. Such statutory power may be excluded by the terms of the mortgage, except with the express consent of the mortgagee.

In regard to charges created after 1st December 2009, the relationship of the Lender with the Lessor would be governed by Section 112 of the Land and Conveyancing Law Reform Act 2009. This provides, in respect of mortgages created on or after 1st December 2009, that there is a general power for a mortgagor in possession to lease, subject to the mortgagee's consent, which shall not be unreasonably withheld. A lease without such consent is voidable by the mortgagee, if the lessee had actual knowledge of the mortgage and granting the lease has prejudiced the mortgagee.

For the avoidance of any doubt, the consent of the owner(s) of registered charges should be obtained to the registration of Leases of registered land, unless the relevant Lender has joined in the Lease, or a Deed of Postponement or partial discharge is lodged prior to or with the Lease.

7.2 Application for entry of Note of Priority under Rule 99 of the Land Registration Rules 2012

Where it is claimed that a lease registered as a burden has priority over a registered charge by reason of section 18 of the Conveyancing Act 1881 and an application is made under Rule 99 of the Land Registration Rules, 2012 for the entry of a note of such priority, the case is to be submitted to the Divisional Manager who shall direct the procedure to be followed.

7.3 Right of Way granted in Lease

In development schemes if a right of way over the proposed public roads is also granted to the lessee affecting the Folio property out of which the Lease is carved, it should be registered by adding after the O.S. reference in the Lease Burden entry the following words “together with the right of way specified in Instrument No.-“. If any other such right is likewise granted the additional words should take the form of:- “together with the right specified in Instrument No.-“.

If, however, a lease, which is not part of a building scheme is lodged, and a right of way, or other such right, is granted to the Lessee, which affects registered property, it must be registered in full as a burden thereon. In the case of difficulty consult the Divisional Manager.

7.4 First Registration of Leases containing Covenants restricting Assignment etc

On first registration in the register of leaseholders, if the Lease contains a covenant restricting assignment or a covenant against sub-letting, no entry is made in respect thereof. The registration in the Register of Leasehold Interests is subject under section 44(3)(c) of the 1964 Act to the covenants and conditions contained in the original Lease.

7.5 Lease by the Owner of a Charge

The owner of a charge has in certain circumstances powers of leasing. However, such applications should not be proceeded with without a direction from the Divisional Manager.

7.6 Affidavit of Discovery

The Affidavit of Discovery must be sworn by the applicant. However, in special circumstances, where the applicant cannot be located, the Affidavit may be sworn by his Solicitor. The direction of the Divisional Manager should be sought. In the case of a corporate body it should be sworn by the Secretary.

7.7 Lease by a Personal Representative

A Lease by the personal representative of a registered owner may be accepted and proceeded with. The Grant must be lodged.

7.8 Companies as Lessee

If a Lessee is a limited company the certificate of incorporation must be produced if it is incorporated within the State, unless already registered. A company incorporated outside the State shall produce evidence of its incorporation. The

direction of the Divisional Manager should be sought on the evidence produced. (See Rule 74 of the Land Registration Rules 2012.)

7.9 Lease by a Company within the meaning of the Companies Act 1963

On such a Lease where the seal appears to have been affixed in the presence of and attested by (1) the Secretary, (2) Deputy Secretary or (3) a member of the board of directors of the Company, the Registrar shall be entitled to assume that the Lease was duly executed by the company (Rule 74(4) of the 2012 Rules).

If attested by any person other than one of these, the memorandum and articles of association of the Company should be produced in order to ascertain that the deed was duly executed.

7.10 Co-Ownership

Generally speaking, a property is leased to two persons as joint tenants rather than as tenants in common. They are usually husband and wife. If, however, the property is leased to them as tenants-in-common they are to be registered accordingly.

Note: The shares in which they hold must be specified.

7.11 Options to Purchase in Leases

Agreements and covenants in leases which give options to purchase the freehold are not to be registered as burdens. The only entry that can be made is an inhibition. Consult the Divisional Manager about the form of the inhibition.

7.12 Second Mortgages lodged with applications for registration of Leases

Section 79(2) of the Registration of Title Act 1964, provides as follows:

Where, prior to first registration, land has become subject to any mortgage, mortgage by demise or sub-demise or term of years to secure money actually raised, such mortgage, mortgage by demise or sub-demise or term of years shall, on the first registration of the land (if registered with an absolute, qualified or good leasehold title) or (if registered with a possessory title) on the conversion of the title into an absolute or good leasehold title, operate as a charge on land and shall be registered only as a charge thereon." The Section refers either to a first or a subsequent mortgage.

If the mortgagee applies for registration of the ownership of the charge in the manner described supra, then the ownership can be entered on the folio

irrespective of whether it is the first or a subsequent mortgage.

The charges should be entered on the folio in the order of their apparent priorities as determined by the dates on which they were registered in the Registry of Deeds, or, if neither was so registered as determined by the dates of the mortgages. The priority thus indicated on the folio is not conclusive, as section 74 of the Act does not refer to the priority of charges created prior to first registration. The date of registration will be the date of settling of the dealing.

If, however, one of the mortgagees or the solicitor in his application consents to the registration of the other mortgage in priority to his, a note of that priority should be entered on the folio.

8. Forfeiture of Leases

A lease may be determined by way of forfeiture. Forfeiture means the deprivation of a person of his/her property as a penalty for some act or omission. Forfeiture may arise by agreement or by act of the parties. Usually a forfeiture clause is provided for in a lease i.e. a re-entry clause enabling the landlord to re-enter the demised premises or any part thereof in the name of the whole in the event of a breach of covenant. If, for example, property is in a bad state of repair and is held under lease containing a full repairing covenant, and the lease contains a re-entry clause in the event of breach of covenant, the landlord may forfeit the lease by peaceful re-entry. It should be noted in the context of forfeiture by peaceable re-entry, that where a person is entitled to purchase the fee simple in his/her dwellinghouse under the Landlord and Tenant (Ground Rents) (No 2) Act of 1978 and the lease contains a re-entry clause, section 27 (1) of that Act protects such tenant from forfeiture, but that this will not affect any other civil remedy the lessor may otherwise have against the tenant for breach of covenant etc.

In the case of a forfeiture and re-entry the most useful possible evidence would be the consent to cancellation of the person entitled to the lessee's interest, whose lease has been forfeited and this will very rarely be forthcoming. Such applications are to be processed in the dealing section on lodgement of an application in LR Form 57A of the Land Registration Rules 2012 adapted to suit the facts of the particular case.

Where such consent is not available refer the case to an Examiner of Titles. It is to be noted that where there has been a valid forfeiture of a lease and peaceable

re-entry, all incumbrances on it, apart from the statutory rights of subleases will determine. Subleases in this context may, in certain cases, include mortgages by subdemise.

Where the lease burden is to be cancelled the leasehold folio is closed. In the case of any doubt arising, the matter is to be passed to the Deputy Registrar for direction.

9. Disclaimer of a Lease by a Liquidator

A Liquidator can disclaim onerous property in the case of a company being wound up pursuant to section 290 of the Companies Act 1963. The following documents should be lodged:

1. The official copy of the court order giving the liquidator liberty to disclaim.
2. The official copy of the Notice of Disclaimer by the liquidator.
3. The official copy of the vesting order of the court pursuant to section 290(7) of the Companies Act 1963 stating in whom the disclaimed leasehold property is to vest.
4. An application in LR Form 57A of the Land Registration Rules 2012 (adapted to meet the needs of the particular case) by the liquidator or the solicitor for the liquidator of the company lessee in question to cancel the lease registered as a burden on whatever folio is affected and to close the leasehold folio (if opened).

10. Surrender of Leases

General

Leases may be determined by way of surrender. Surrender is the yielding up of an interest in land. In the case of surrender of a lease, the lease reverts back to the landlord who retakes possession. Cases of surrender of leases arise in the circumstances set out below.

10.1 Surrender by the person entitled to the Lessee's interest where the Lease contains a provision for surrender

In such cases the application should be made in LR Form 57A of the Land Registration Rules 2012 suitably adapted to meet the facts of the particular case.

The original lease must be lodged. A short supporting affidavit or declaration should also be lodged, identifying the person making same as the person entitled to the lessee's interest, exhibiting the original lease and any other original documents of title, referring to the proviso for surrender contained in the lease, identifying the landlord and setting out fully the facts and circumstances of the surrender. Although the consent of or a corroborative declaration from the landlord or his or her solicitor in such cases is not strictly necessary, same should be lodged if possible, being the best evidence available. It is also to be noted that the terms of a proviso for surrender in a lease must be strictly complied with. The right of the lessee to relief does not arise in such cases and incumbrances (apart from certain statutory safeguards for sublessees) die with the terminated lease. It may be the case that the lease in question is registered on a leasehold folio on which charges and burdens are registered. In such case notices are to be served on the owners of said interests informing them that the leasehold folio will be closed unless good cause is shown within 14 days.

Such applications are to be passed to an Examiner of Title for attention.

10. 2 Surrender where the Lease does not provide for surrender but where the Lessor consents to such surrender

Such surrender is evidenced as set out in section 7 of The Landlord and Tenant Law Amendment, Ireland, 1860 [Deasy's Act]. Section 7 of Deasy's Act provides that "the estate or interest of any tenant under any lease or other contract of tenancy shall not be surrendered otherwise than by a deed executed, or note in writing signed by the tenant or by his agent thereto lawfully authorised in writing or by act and operation of law".

Surrender by deed executed or note in writing signed by the tenant or by his agent thereto lawfully authorised in writing. The proofs set out in 10.1 above must be lodged. In such cases it is essential that the consent or corroborative affidavit of the landlord or his/her solicitor must be lodged. Such cases are to be passed to an Examiner of Titles for attention.

Surrender by act and operation of law. Wylie in "Irish Landlord and Tenant Law Chapter 25.10" states that "act and operation of law" is the construction put by the courts on the acts of the parties, not necessarily what the parties thought they had achieved ". Fitzgerald in "Land Registry Practice" page 242 "states that surrender by act or operation of law may be inferred from the acts or conduct of

the parties". Such acts of either party may be regarded as surrender of the lease by estoppel. These matters and situations are matters for decision by the courts and the Land Registry would require that a court order be furnished as evidence before the lease would be cancelled on these grounds.

Generally, therefore, the necessary court order must be requisitioned. However it is to be noted that in such cases each one depends to a marked degree on its own particular facts and are to be considered on such basis.

Such applications are to be made in LR Form 57A or LR Form 57B of the Land Registration Rules 2012 as appropriate, adapted to suit the needs of the particular case. The original lease is to be lodged and such cases are to be passed to an Examiner of Titles for attention.

Where, in any case where it may be considered appropriate to proceed by way of notices, and/or advertisement and/or indemnity, without a court order, the Deputy Registrar is to be consulted.

10.3 Where Surrender is provided for in legislation

Section 40 of Deasy's Act 1860 provides that "if any dwellinghouse or other building constituting the substantial matter of the demise, and held by any tenant under any lease or contract of tenancy not containing an express covenant or agreement binding on the tenant to repair the same, shall be destroyed, become ruinous and uninhabitable or become incapable of beneficial occupation or enjoyment by accidental fire or other inevitable accident and without the default or neglect of the said tenant, it shall be lawful for such tenant to surrender the said premises etc."

Section 10 of the Housing (Private Rented Dwellings) Act of 1982 provides that a tenant of a dwelling protected by the Act may surrender it by giving the landlord not less than one month's notice in writing of his/her intention to surrender.

Section 271 of the Bankruptcy (Ireland) Amendment Act 1872 enables the official assignee to surrender by way of disclaimer as can a liquidator of a company under the Companies Acts.

Such applications are to be made in LR Form 57A or LR Form 57B of the Land Registration Rules 2012 as appropriate together with a supporting affidavit

setting out fully the facts establishing the statutory basis of the claim and exhibiting the appropriate proofs. The original lease is to be lodged. The consent of the lessor (if available) is to be sought as same would constitute the best evidence in the circumstances. If same is not available, notice is to be served on the landlord of the claim and in default of objection the lease burden is to be cancelled and the leasehold folio (if opened) closed.

Such applications are to be passed to an Examiner of Titles for consideration and in any case where a doubt arises, the direction of the Deputy Registrar is to be sought.

Property Registration Authority.

1st December 2009

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