

19 June, 1998

Legal Advisory and Conveyancing Office
Circular Memorandum No. 32

Enquiries made in connection with title requisitions in property conveyancing

A large number of enquires are regularly received in district offices of LACO from practising solicitors raising requisitions on title in connection with property conveyancing cases handled by them and I list below some of the more common enquiries and requests raised in the letters :-

- a) request for supply of legible or better copies of Government leases, grants or other documents registered in the Land Registry;
- b) request for confirmation that certificates of compliance (“CC”) had been issued and for supply of copies of such certificates;
- c) request for interpretation of various leases or confirmation that there is no breach of lease covenants or conditions, or that no lease enforcement action will be taken by Government;
- d) request for confirmation that various lease approvals, e.g. the design, disposition and height, had been given by Government;
- e) request for confirmation that premium under Government leases or grants had been settled;
- f) request for confirmation that consents or approvals under the Lands Department Consent Scheme or DMCs had been issued and for supply of copies of consent or approval letters;

2 While LACO has been making an effort to make prompt responses to the above enquiries and requests, the continued flow of enquiries has an adverse impact on the efficient provision of legal services to Government in relation to land transactions, lease modification applications and the issue of consents and approvals under the Consent Scheme. The primary function of LACO is to provide legal advice on matters affecting land to the Lands Department, and to administer the department’s Consent Scheme for the forward sale of uncompleted units and approve Deeds of Mutual Covenant.

3 On item (a) above, solicitors should be aware that all land documents, e.g. Government leases, Conditions of Sale, modification letters etc. that are registered in the

Land Registry should have been retained by land owners and passed on to their successors in title as title documents. Solicitors should look to the present owners for original or certified copies of these documents in approving land titles, or request the Land Registrar to supply copies of the documents.

4 Occasionally, some copies of documents provided by the Land Registrar may not be legible or be complete. While this is a matter between solicitors and the Land Registrar, I suggest that solicitors should send staff to inspect the actual state of the original documents at the Land Registry for clarification. In any event, LACO will not be able to assist if the Land Registry cannot produce legible or indeed any copies of these documents to them. Solicitors should not send such requests to LACO in the future, as we have no better information or copies than the Land Registry.

5 In respect of some Government leases which were lost and not available in the Land Registry, solicitors should advise their clients generally whether or not a particular transaction, the subject of a missing Government lease, should proceed to completion. Any further clarification on missing Government leases or the terms thereof, where necessary, should be addressed to the Land Registrar and the District Lands Officer.

6 On the issue of CC in respect of some old leases (re: item (b) above), solicitors should note that CC will only be issued by Government after the original lessee or grantee under a Government lease or land grant has completed the development and complied with all positive obligations imposed under the said lease or grant. No CC will be issued by Government in respect of subsequent redevelopment of the same property where a previous CC had been issued. I also wish to refer to the contents of Land Office Circular Memorandum No. 77 issued by the former Registrar General (Land Officer) on 22nd January, 1985 which sets out what documents would be regarded as CC for the purpose of section 14(3) of the Conveyancing and Property Ordinance. A copy of this memorandum is attached for reference. This memorandum answers most of the common enquiries in relation to CC. It should no longer be necessary for solicitors to raise enquiries with LACO nor to the District Lands Officer in this respect.

7 As regards items (c) - (e) above, solicitors should note that LACO only provides legal advice to the Lands Department, District Lands Officers as the land authority under Government leases or grants and other Government departments. LACO will not provide legal advice to the general public nor to individual solicitors. As solicitors instructed by land owners, it is their own responsibility to advise clients on lease provisions. Other enquiries not related to lease interpretation, where required, should be addressed direct to the District Lands Officers instead of to LACO to avoid the waste of time by LACO to refer the requests to the District Lands Officers for action. Enquiries relating to approval of building plans, structural alterations etc. should be directed to the Director of Buildings.

8 LACO has received many enquiries referred to in (f) above from solicitors. A lot of time is spent by my staff in attempting to respond to such enquiries within very short periods of time (sometimes a day or two) specifically requested by solicitors in their letters.

9 Letters of consent or approval under the Consent Scheme are issued by LACO (or by its predecessor, the Registrar General (Land Officer)) to the solicitors firm acting for the developers in their applications for consent or approval. In responding to these enquires, LACO will only confirm that consent or approval of a particular nature had been given on a certain date. Solicitors will be advised to approach the original solicitors firm if they require to have copies of these letters or the terms of the consent or approval. LACO will not supply solicitors with plain nor certified copies of these letters. Since the name of the solicitors firm can be easily identified from the documents (e.g. the ASPs or DMCs) registered in the Land Registry, it will save much time of solicitors if they will themselves identify the name of the original solicitors firm and write to them direct, if such confirmation is actually required.

10. I also wish to point out that consent or approval letters issued prior to 1990 had been destroyed to achieve savings in office accommodation in accordance with Government's policy on disposal of old records. LACO may not therefore be able to give confirmation on consents or approval issued before 1990.

11. I should be grateful if solicitors would inform all their staff of the contents of this Circular Memorandum in order to reduce unnecessary enquires to LACO.

(T. E. Berry)
Deputy Director/Legal
for Director of Lands

To : All Solicitors

22nd January 1985

LAND OFFICE CIRCULAR MEMORANDUM NO. 77

**Conveyancing and Property Ordinance 1984 -
Certificates of Compliance (Section 14)**

Some conveyancing solicitors have experienced difficulties regarding the precise meaning and effect of section 14 of the Conveyancing and Property Ordinance 1984. I have dealt with many enquiries on the subject on an individual basis. In an effort to avoid further such enquiries and for the convenience of the profession I would like to explain here the meaning and effect of section 14 of the Ordinance as I understand it.

2. It is important to bear in mind at the outset that subsection (1) of section 14, the main provision, deals with the conversion of the equitable interest into a legal estate which is hinged on a question of fact. It provides simply that where the conditions upon compliance with which a person has a right to a Crown lease have been complied with (a) the equitable interest becomes a legal estate and (b) the Crown lease is deemed to have been issued. I stress again that compliance or non-compliance with the conditions precedent is a question of fact to be established in each case.

3. Subsection (2) of section 14 deals to a certain extent with this question of fact by providing that in the case of agreements for a Crown lease entered into before the 1st January 1970 the conditions precedent are automatically deemed to have been complied with. In those cases, therefore, the equitable interest has become the legal estate and the Crown lease is deemed for all purposes to have been issued (subsection (1)(a) and (b)).

4. Subsection (3) of section 14 merely provides a means of establishing the fact in the case of Crown leases entered into on or after the 1st January 1970. How does one know if the conditions precedent have been complied with or not? Subsection (3) of section 14 is designed to provide a means of dispelling uncertainty on this question and, as a matter of evidence of the fact, introduces what is known as the certificate of compliance issued by the Crown. The expression "the Crown" was used advisably so as to cover all of the many different types of certificates of compliance that have been issued by the Government from time to time since January 1970.

5. For the purposes of section 14(3) the following documents have been identified and are regarded by the Crown as certificates of compliance :

- (1) A letter from any one of the following Government authorities to the owner :
 - (a) Director of Public Works.
 - (b) Director of Lands and Survey.
 - (c) Registrar General (Land Officer).
 - (d) Secretary for the New Territories or his District Officers.
 - (e) Secretary for City and New Territories Administration or his District Officers.
 - (f) Director of Lands or his District Lands Officers.
- (2) A memorandum issued by the Government and annexed to the Land Office and (sometimes) the District Land Office duplicate of the lease conditions.
- (3) An endorsement on the Land Office/District Land Office duplicate of the lease conditions. Such endorsement is normally in the following terms :

“General and Special Conditions have been complied with”

or words to that effect.
- (4) A partial certificate of compliance, normally in the form of a letter from one of the Government authorities mentioned in (1) above, certifying total compliance in relation to a section of the lot.

6. In some of the District Land Offices a note will be found in the Remarks Column of the Deeds Register which may state :

- (a) “Letter of compliance issued on (date)”
- or
- (b) “Compliance certificate issued on (date)
ref : ENCL () in (file reference)”.

Normally no date, signature or initial appears under the note. It is confirmed that while such a note cannot be considered to be a certificate for the purposes of section 14(3) of the Ordinance the Government will accept it as conclusive evidence that the conditions have been complied with. It may be taken, therefore, that, as a matter of fact, the conditions have been complied with where such a note appears on the Register. This will then attract the provisions of section 14(1)(a) and (b) of the Ordinance and the interest concerned may then be treated for all purposes as a legal estate.

7. The following are not regarded by the Crown as certificates of compliance for the purposes of section 14(3) :-

- (1) A certificate certifying compliance with some but not all of the General and Special Conditions.
- (2) A certificate certifying total compliance in relation to a block or blocks in respect of which a section has not been carved out and which are therefore represented by undivided shares in the whole lot.
- (3) Letters and endorsements which merely say that the building covenant has been fulfilled.

8. The following arrangements will apply regarding the certificates of compliance referred to at (1) to (4) in paragraph 5 above seriatim :

- (1) The letter should be memorialized and registered in the Land Office/District Land Office.
- (2) If the letter in (1) above has not been issued or has been issued but has been mislaid, a photocopy of the memorandum should be memorialized and registered. It is confirmed that a plain photocopy will suffice for this purpose.
- (3) A plain photocopy of the page of the lease conditions on which the endorsement appears should be memorialized and registered. In some instances, however, the endorsement may not appear on the front page of the lease conditions which contains full particulars of the lot. In that event the front page should also be photocopied and memorialized together with the page on which the endorsement appears. A photocopy of a page which, on the face of it, is not related to the lot in question will not be accepted for registration.
- (4) The letter should be memorialized and registered in the Land Office/District Land Office.

9. In the event that, for whatever reason, none of the certificates referred to at (1) to (4) in paragraph 5 above are available, and it is clear that the conditions precedent have been complied with in full, an application may be made to the Lands Department/District Lands Office for a certificate of compliance.

10. What I have said above is by no means the last word on section 14 of this Ordinance. In due course the section may need to be amended to deal with cases where there are no conditions precedent, land extensions and the like. There may be other provisions in the Ordinance also which, after a time, may be found to be not entirely satisfactory from a conveyancing point of view and which may also need to be amended. I hope, therefore, that in the interests of good and clear conveyancing solicitors will make any representations they may have on the subject to the Law Society with a view, in due course, to recommending whatever amendments to the Ordinance may be considered appropriate.

11. It is emphasized that the view of section 14 expressed at paragraphs 2 to 4 above is my own only and, while I believe it to be correct, it is given quite without any commitment on my own part or on the part of the Government, and no liability will be accepted by me or by the Government on account of such opinion having been expressed. In the end solicitors must advise themselves and their clients on what they believe the legal position to be under section 14, including the effect of any particular certificate of compliance, as indeed they must on any other provision of the Ordinance.

(Noel M. Gleeson)
Registrar General
(Land Officer)

To : All Solicitors