



A new chapter in the CLLS Certificate of Title



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A new edition of the Certificate of Title, which is produced by the City of London Law Society Land Law Committee, was launched on 10 May 2023. The certificate is accepted as the standard by most firms in England and Wales and many lenders insist on it being used on finance transactions. It is one of the most widely used documents produced by the CLLS.

What does it do?

The certificate is most often used in a lending context (the borrower's solicitors providing the certificate to the lender for a property finance transaction); on corporate transactions (such as where a business owns one or more critical property assets); and on large transactions such as the disposal of portfolios.

A law firm (for example, acting for the borrower) will provide the certificate which contains information about the property and its leases, on which the recipient of the certificate (say, the lender) will rely. The law firm, described in this article as "the certifier", will have to liaise closely with the owner of the property (or solicitors on the owner's behalf) to obtain the requisite information.

The certificate is intended to be comprehensive and strike a reasonable balance between the interests of those to whom it is addressed and the solicitors who give it.

The new certificate is the eighth edition and it has undergone the most thorough review in a decade with a wide-ranging consultation having been carried out.

Even though the eighth edition has now been launched, there is no need for parties to cease using the seventh edition (2016 update) if it is currently being used on a transaction or the parties otherwise agree to use it, for example, where an existing certificate is being updated.

Form of certificate

While there have been a number of detailed changes for the eighth edition, the structure of the certificate remains the same, including:

- provisions covering who can rely on the certificate and the extent of the certifier's liability;
- the certificate from the firm as to the title to the relevant property, including any lease under which the property is held, the matters affecting the property, and the occupational letting documents;
- confirmations from the property owner; and
- the schedules including assumptions and qualifications and further details on the matters covered by the firm's certificate.

The certificate continues to include a series of statements describing material provisions of a typical headlease (for use where the title is wholly or partly leasehold) and an institutional occupational lease (for use where there are occupational letting documents). The certifier compares those statements against the provisions of any headlease or occupational letting documents for the property and highlights, through what is called "a disclosure", where there are material differences in the wording or its legal effect. This is helpful because it highlights aspects that are different from those usually encountered that may raise concerns.

There have been suggestions that the certificate's statements in relation to the occupational letting documents should be significantly streamlined to make it easier and more cost-effective to produce the certificate. The committee is mindful of the pricing of certificates and in its note to users suggests alternative methods of reporting where the certificate's level of detail is not required.

However, to make a significant reduction in the nature of the certificate's statements would undermine the confidence that recipients of the certificate have in its contents. The statements are intended to reflect the key attributes of the institutionally acceptable occupational lease and have been updated in the new edition to better reflect the Model Commercial Lease (modelcommerciallease.co.uk). The MCL is a widely used industry standard lease which seeks to achieve a relatively balanced position but is still broadly institutionally acceptable, and the committee thanks the authors of the MCL for their permission to use wording from the MCL in the certificate.

The documentation accompanying the certificate, including the confirmation letters, questionnaire, wrapper and supplemental enquiries have all been updated. The committee's short form report on title did not form part of this project and will be updated in due course.

The committee has made available on the CLLS's website a comparison document showing the changes from the seventh edition (2016 update). The note to users in the certificate provides further explanation of those changes.

Liability

The certifier takes on a potential liability in respect of the certificate if any of its contents are incorrect and often seeks to limit or cap such liability.

Reflecting this, the certificate now includes wording limiting the certifier's liability, albeit the amount of the cap on liability is a matter of negotiation between the parties. The amount may be linked to the value of the deal, property or loan, but the particular circumstances will dictate what is agreed. The certificate also includes a new deadline for the issuing and serving of proceedings in connection with the certificate.

Climate change

The certificate does not consider climate change risks to the property, except where this is highlighted by relevant searches carried out for the purposes of the certificate.

It does include new statements on data-sharing provisions in leases (which are important for addressing climate change), more extensive provisions on energy performance certificates and there is a new statement for the impact of tenant's alterations on the EPC rating.

The certificate's provisions for climate change are not more extensive, since that would not reflect most current leases on which the certificate reports. If in future it is generally considered that the certificate needs to address climate change issues in a more extensive way, the committee will consider further change as an update to the eighth edition. This approach was endorsed by most respondents to the consultation on the certificate.

Building Safety Act 2022

The certificate includes no specific reference to the 2022 Act although that Act might be relevant for certain of the certificate's statements, for example where there is a reference to statutory compliance. Matters relating to that Act are likely to be picked up on technical reports or surveys relating to the property's condition, but the certificate does not consider such reports or surveys except where specifically highlighted.

Residential and mixed-use buildings

There is a new section for residential and mixed-use buildings. The set of statements seeks to enable the certifier to establish whether there is a risk of certain specified legislation applying. If those statements highlight that there is such a risk, the certifier and the recipient of the certificate will need to consider this in more detail.

There are also new provisions in the certificate relating to tenants' claims to acquire a new lease or the freehold and to the protection of tenant's deposits under the relevant legislation.

Other matters

The certificate now expressly deals with the situation where the shares in the company that owns the property are being purchased as part of the transaction.

There is a new qualification that the certifier expresses no opinion on whether the National Security and Investment Act 2021 applies to any transaction and has not investigated any related aspects. This reflects the difficulties for the certifier of confirming whether the Act applies and avoids the certifier unwittingly taking on any liability if the Act applies and this is not highlighted in the certificate.

In the searches section, the chancel repair search has been removed as a specified search since it is questionable whether this search still needs to be done as a matter of course following the expiry in 2013 of the transitional provisions of the Land Registration Act 2002. The certificate allows for details to be provided of any search carried out that is not otherwise listed in the certificate, but which might be appropriate to a particular property.

The certificate now includes specific provisions for Wales, especially in the context of residential tenancies and land transaction tax. As before, the certificate is not suitable for use in Scotland.

Points to note

- New Certificate of Title launched on 10 May 2023
- The structure of the certificate remains the same
- New sections on residential and mixed-use property
- Lease statements better reflect the Model Commercial Lease

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The certificate is available in the precedent documents section of the [City of London Law Society website](#).

Comments on it can be made to the administrator at the City of London Law Society by emailing mail@citysolicitors.org.uk

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