



Conveyances, covenants and contracting out: An “almost A-Z” glossary of commercial real estate terms for overseas investors and occupiers

If you're new to the commercial real estate market in England and Wales, you could be forgiven for thinking that some of the folk you encounter are speaking a language that no-one else understands – from talking about conveyances, covenants and contracting out to dilapidations, easements or engrossments, there are plenty of important terms that may seem confusing at first. In this short glossary, we translate some of the key terms which you might come across on transactions into a language that everyone understands.

- > **Absolute Title** – also known as “title absolute”, this is the best class of title available at the Land Registry; if a property is registered with absolute title, the owner's title cannot be challenged.
- > **Break Notice** – if a lease contains a “break right” (in other words, a right for a specified party to serve notice to terminate the lease prior to expiry of the contractual term), the party wishing to terminate the lease must serve notice on the other party in accordance with the requirements in the lease. Once a break notice has been served, it is not possible to withdraw it. Break rights can be by reference to a fixed date or on a rolling basis and may have conditions attached to them.
- > **Certificate of Title** – a market standard type of report on title in a form produced by the City of London Law Society (Land Law Committee) including certain standard confirmations made by a firm of solicitors in respect of a property; often known as a “CoT”, this is commonly used in real estate finance and investment markets alike.
- > **Chancel Repair Liability** – an ancient liability that dates back to medieval times when local landowners paid a “tax” towards the upkeep of their local church. That tax became fixed on the land and liability to pay it passed to the successive owners of affected land. Only land within a Church of England parish which has a medieval or earlier church can have potential liability (either whole or part) to pay the costs of repair of the chancel of the local parish church. It is therefore important to run a search to identify whether the property is at risk as even though the number of properties affected by liability to pay for chancel repairs is very small, if a property is affected the liability can be great. See also “searches”.
- > **Contracting Out** – the common process by which a tenant's automatic statutory right to renew a business lease on expiry of the contractual term is excluded. See also “security of tenure”.
- > **Conveyance** – a document effecting the legal transfer of land from one person to another.
- > **Covenant** – agreements between owners of land which either restrict the use of land or impose an obligation on a landowner. They are classified as either restrictive (negative) or positive. When purchasing land, the title to that land should be investigated to determine, amongst other things, whether it is bound by any covenants.
- > **CPSEs** – this stands for “Commercial Property Standard Enquiries” and these are the standard enquiries raised by the buyer's or tenant's solicitors on commercial property transactions. The replies must be given by a seller or landlord (as applicable) and can reveal important information about a property.
- > **Demise** – the property let to a tenant under a lease.
- > **Dilapidations** – this is the term used to describe items of disrepair which are covered by the repairing covenant and yielding up obligations contained in a lease. The expression covers breaches of the tenant's covenants relating to the physical state of the premises when the lease ends. Often dilapidations claims end up with the tenant not being required to actually carry out the works and instead paying an equal amount to the agreed dilapidations claim once this has been settled.
- > **Easement** – an easement is a legal right benefitting a piece of land that is enjoyed over another piece of land owned by someone else, for example a right of way, a right to lay cables or a right to light.
- > **Engrossment** – the term used for the final form “execution version” of a document. Shortly prior to completion of a transaction engrossments will be prepared by the solicitors and issued to the parties for signing.
- > **Forfeiture** – this is the landlord's right to retake possession of the premises and determine a lease on the occurrence of a specified event in the lease (for example, breach of a tenant obligation such as non-payment of rent, breach of a tenant covenant or insolvency).
- > **Freehold** – this is a type of ownership of land which is effectively for ever, unlimited by time. A freeholder may choose to occupy the land itself or it may grant a lease for someone else to occupy it – in which case it passes on some of its rights but only for a finite period.
- > **Green Lease** – a lease which includes obligations on the parties to help manage and reduce the environmental impact and/or energy performance of the premises.
- > **Highway (also known as “public highway”)** – a road or footpath maintainable at the public expense and over which there is a public right of passage.



- > **Indemnity Insurance (also known as “title insurance” or “title indemnity insurance”)** – this can often be put in place to mitigate against a risk/defect which has been identified as part of the due diligence process. Whether or not this is an option will always depend on the nature of the risk in question.
- > **Index Map** – the index map contains information on all land and property that’s registered or being registered with the Land Registry. A search of the index map is one of the standard conveyancing searches and is used to ascertain whether the property is registered (or pending registration) or not and, if registered, its title number and to check that the property does not include other parcels of land (registered or unregistered) to which title has not been deduced. See also “searches”.
- > **Land Registry** – a government-run public repository of information on real estate set up to make it easier to check on the owner’s rights and liabilities. Nowadays the majority of land in England and Wales is registered at the Land Registry. The Land Registry is responsible for holding a reliable record of information about ownership of and interests affecting land and property, provide owners with a title (guaranteed by the government) and provides a title plan that indicates the property boundaries.
- > **Leasehold** – a type of ownership of land which has a definite, specified time limit. It may be for a long period – 99 years or more is not uncommon - in which case, if only a nominal rent is paid, its value may be close to that of the freehold; or it may be shorter and the value accordingly less.
- > **MEES** – stands for “Minimum Energy Efficiency Standards”, these are regulations introduced to target the least energy efficient properties and reduce the overall CO2 emissions in accordance with the UK’s targets for decarbonisation.
- > **Overage** – this term is generally used to describe a situation whereby the seller is to share in any increase in value in a property realised after the property has been sold. It is sometimes referred to as “clawback” or “deferred consideration”. Overage is often also linked to actual profit made by the purchaser/developer from the development of the land – allowing the seller to benefit from the expertise of the developer to unlock potential value in the land.
- > **PC** – this stands for “practical completion” and means the point at which a building is complete except for minor defects. It is often used to refer to the point at which a building has achieved “practical completion” under the building contract.
- > **Pre-emption** – also known as a “right of first refusal”, this is a right for the beneficiary to become a preferred purchaser if and when the grantor decides to sell the land. There is no obligation on the grantor to sell the land but just a negative obligation, in the event that the grantor does decide to sell, not to sell the land to any other person without first giving the grantee the opportunity to accept the offer.
- > **Rent Charge** – a rent charge is a periodical payment in respect of land that is not paid between landlord and tenant, nor (as interest) between mortgagor and mortgagee. Ownership of a rent charge can be vested in someone who has no interest in any land near to the land which is subject to the rent charge. The most common reason for a rent charge nowadays is as a means to enforce payment, between freeholders, of contributions to common parts maintenance costs. Non-payment (or non-compliance with the relevant covenants) can result in exercise of the right of re-entry by the holder of the rent charge.
- > **Searches** – a term which refers to the usual suite of conveyancing searches which are run by a buyer of land (or a tenant) with the relevant authorities. The nature of the searches will depend on the location of the property in question but will typically include a search of the local authority, the highways authority, the drainage and water authority, a desktop environmental search, a search of the index map and a chancel repair liability search. See also “index map” and “chancel repair liability”.
- > **Security of Tenure** – under the Landlord and Tenant Act 1954, a tenant has the statutory right to renew its tenancy at the end of the term if it occupies the premises for business purposes. However, when entering into a commercial lease, the landlord and tenant often agree to “contract out” of the provisions of the Act which results in the tenant having no security of tenure. See also “contracting out”.
- > **Surrender** – a consensual transaction between landlord and tenant (which can arise either expressly by deed or by operation of law arising from the conduct of the parties) pursuant to which a lease is terminated prior to expiry of the term.
- > **Title Deeds** – a bundle of documents which would historically have been used to prove ownership of title, but now that most land is registered, title is instead proven by the registered title. Nowadays, title deeds are still an important record of all documents entered into in respect of a property particularly in respect of any documents which are not registered at the Land Registry. Title deeds remain the means by which ownership is proven in relation to unregistered land.
- > **Unregistered Land** – most land in England and Wales is now registered at the Land Registry. However, if the land has not been registered any buyer will need to examine the title deeds - the accumulated documents that record all past transfers of ownership and any mortgages – as part of the due diligence process (instead of checking the title register). A purchase (amongst other types of transaction) will trigger compulsory first registration of the land.



- > **VP** – this stands for “vacant possession” which is a legal term of art describing the status of premises that broadly means ensuring that a landlord/property owner can both physically and legally occupy the premises at the end of a lease. In simple terms, a tenant must ensure that there are no items or people left on the premises, and reinstate the premises in accordance with its lease, although each case will turn on its facts.
- > **Wayleave** – a wayleave is an agreement under which a property owner gives a service provider (such as an electricity or telephone services provider) a right to install pipes or cables passing through or over the owner’s property and in turn, the property owner is under certain obligations for example, not to damage the apparatus.
- > **Wrapper** – a term used to describe a form of document which can upgrade a standard report on title to a full Certificate of Title. The wrapper “wraps around” the report on title and elevates it to a document which is equivalent to a Certificate of Title.



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