

A look at the 8th edition of the CLLS Certificate of Title



Often used in real estate secured lending transactions, refinances and portfolio acquisitions the [City of London Law Society Certificate of Title \(CoT\)](#) is now in its 8th edition as of June 2023.

It's been 7 years since the previous edition was released in 2016 and the old CoT, despite some recent patches made to accommodate the Economic Crime (Transparency and Enforcement) Act 2022 (think Companies House' new register of Overseas Entities), was in need of a review.

So what's changed that's worth a mention?

In no particular order:

A cap on the aggregate liability of the author law firm under the CoT

Nothing new here in terms of how CoTs are drafted in practice, but there is now a recognition that a liability cap is going to be a discussion point from the outset.

Valuers' confirmation

This has gone. No longer is there an expectation that the draft CoT will be sent to the valuers who are looking at the subject property for their confirmation that the property referenced in the CoT is indeed the property they have valued, nor that they have taken the CoT into account in their valuation.



Exclusions

A couple of new exclusions have been added in to reflect changes in the law and emerging issues:

1. Any opinion on climate change risk is excluded (as well as environmental matters and insurance matters – other than title insurance – as before). Although a very real issue which is affecting many across the globe today, the UK real estate market and the professionals working in it are yet to make a decision on how to assess and deal with climate change risk.
2. Any opinion on the application of the National Security and Investment Act 2021 is excluded. We think the hope here is that this should rarely crop up.

Planning – listed buildings

These provisions have been beefed up although references to the “...Listed part of the Property...” might cause issues since in reality a listing will usually catch the whole of the building and in some cases structures and/or objects within its curtilage.

Construction work and alterations

Anything built on the property or material alterations carried out in the previous 12 years is now to be disclosed. The previous edition required the author to look back only 6 years.

Residential and mixed use buildings legislation

Helpfully new wording has been introduced to reflect the fact that many transactions will include these elements and, if so, related legislation may apply involving for instance rights of first refusal, rights to manage, enfranchisement etc. However, the new wording is in some respects limited and may not of itself flush out potential issues regarding residential occupational leases where for example the statutory requirements on grant have not been satisfied by the landlord.

Property searches

The references to coal and chancel repair risk searches as standard have been removed. Searches will always be location dependent of course. However, whilst it is questionable whether a chancel repair risk 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, given that the cost is quite low for an initial search we think these are likely to remain as standard across the board for most lawyers on most real estate transactions.

How we can help

Whilst the certificate has undergone the most thorough review in a decade, the fundamental changes are to content as opposed to structure. This will be of considerable comfort to those involved in real estate finance transactions. It is also worth noting that even though the 8th edition has now been launched, parties may continue to use the previous edition if it is being used on a current transaction or the parties otherwise agree to use it, for example, where an existing certificate is being updated.

If you need any advice our [real estate team](#) is here to help.



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