

SCHEDULES

SCHEDULE 6

Sections 139 and 151.

CONVEYANCE OF FREEHOLD AND GRANT OF LEASE IN PURSUANCE OF RIGHT TO BUY

PART I

COMMON PROVISIONS

Rights to be conveyed or granted—general.

- 1 The conveyance or grant shall not exclude or restrict the general words implied under section 62 of the Law of Property Act 1925, unless the tenant consents or the exclusion or restriction is made for the purpose of preserving or recognising an existing interest of the landlord in tenant's incumbrances or an existing right or interest of another person.

Rights of support, passage of water, etc..

- 2 (1) The conveyance or grant shall, by virtue of this Schedule, have the effect stated in sub-paragraph (2) as regards—
- (a) rights of support for a building or part of a building;
 - (b) rights to the access of light and air to a building or part of a building;
 - (c) rights to the passage of water or of gas or other piped fuel, or to the drainage or disposal of water, sewage, smoke or fumes, or to the use or maintenance of pipes or other installations for such passage, drainage or disposal;
 - (d) rights to the use or maintenance of cables or other installations for the supply of electricity, for the telephone or for the receipt directly or by landline of visual or other wireless transmissions.
- (2) The effect is—
- (a) to grant with the dwelling-house all such easements and rights over other property, so far as the landlord is capable of granting them, as are necessary to secure to the tenant as nearly as may be the same rights as at the relevant time were available to him under or by virtue of the secure tenancy or an agreement collateral to it, or under or by virtue of a grant, reservation or agreement made on the severance of the dwelling-house from other property then comprised in the same tenancy; and
 - (b) to make the dwelling-house subject to all such easements and rights for the benefit of other property as are capable of existing in law and are necessary to secure to the person interested in the other property as nearly as may be the same rights as at the relevant time were available against the tenant under or by virtue of the secure tenancy or an agreement collateral to it, or under or by virtue of a grant, reservation or agreement made as mentioned in paragraph (a).

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(3) This paragraph—

- (a) does not restrict any wider operation which the conveyance or grant may have apart from this paragraph; but
- (b) is subject to any provision to the contrary that may be included in the conveyance or grant with the consent of the tenant.

Rights of way.

3 The conveyance or grant shall include—

- (a) such provisions (if any) as the tenant may require for the purpose of securing to him rights of way over land not comprised in the dwelling-house, so far as the landlord is capable of granting them, being rights of way that are necessary for the reasonable enjoyment of the dwelling-house; and
- (b) such provisions (if any) as the landlord may require for the purpose of making the dwelling-house subject to rights of way necessary for the reasonable enjoyment of other property, being property in which at the relevant time the landlord has an interest, or to rights of way granted or agreed to be granted before the relevant time by the landlord or by the person then entitled to the reversion on the tenancy.

Covenants and conditions.

4 The conveyance or grant shall include such provisions (if any) as the landlord may require to secure that the tenant is bound by, or to indemnify the landlord against breaches of, restrictive covenants (that is to say, covenants or agreements restrictive of the use of any land or premises) which affect the dwelling-house otherwise than by virtue of the secure tenancy or an agreement collateral to it and are enforceable for the benefit of other property.

5 Subject to paragraph 6, and to Parts II and III of this Schedule, the conveyance or grant may include such covenants and conditions as are reasonable in the circumstances.

No charge to be made for landlord's consent or approval.

6 A provision of the conveyance or lease is void in so far as it purports to enable the landlord to charge the tenant a sum for or in connection with the giving of a consent or approval.

Meaning of "incumbrances" and "tenant's incumbrance".

7 In this Schedule—

“incumbrances” includes personal liabilities attaching in respect of the ownership of land or an interest in land though not charged on the land or interest; and

“tenant's incumbrance” means—

- (a) an incumbrance on the secure tenancy which is also an incumbrance on the reversion, and
- (b) an interest derived, directly or indirectly, out of the secure tenancy.

PART II

CONVEYANCE OF FREEHOLD

General.

- 8 The conveyance shall not exclude or restrict the all estate clause implied under section 63 of the Law of Property Act 1925, unless the tenant consents or the exclusion or restriction is made for the purpose of preserving or recognising an existing interest of the landlord in tenant's incumbrances or an existing right or interest of another person.
- 9 (1) The conveyance shall be of an estate in fee simple absolute, subject to—
- (a) tenant's incumbrances,
 - (b) burdens (other than burdens created by the conveyance) in respect of the upkeep or regulation for the benefit of any locality of any land, building, structure, works, ways or watercourses;
- but otherwise free from incumbrances.
- (2) Nothing in sub-paragraph (1) shall be taken as affecting the operation of paragraph 5 of this Schedule (reasonable covenants and conditions).

Covenants.

- 10 The conveyance shall be expressed to be made by the landlord as beneficial owner (thereby implying the covenant set out in Part I of Schedule 2 to the Law of Property Act 1925 (covenant for title)).

PART III

LEASES

General.

- 11 A lease shall be for the appropriate term defined in paragraph 12 (but subject to sub-paragraph (3) of that paragraph) and at a rent not exceeding £10 per annum, and the following provisions have effect with respect to the other terms of the lease.

The appropriate term.

- 12 (1) If at the time the grant is made the landlord's interest in the dwelling-house is not less than a lease for a term of which more than 125 years and five days are unexpired, the appropriate term is a term of not less than 125 years.
- (2) In any other case the appropriate term is a term expiring five days before the term of the landlord's lease of the dwelling-house (or, as the case may require, five days before the first date on which the term of any lease under which the landlord holds any part of the dwelling-house) is to expire.
- (3) If the dwelling-house is a flat contained in a building, which also contains one or more other flats and the landlord has, since 8th August 1980, granted a lease of one or more of them for the appropriate term, the lease of the dwelling-house may be for

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a term expiring at the end of the term for which the other lease (or one of the other leases) was granted.

Common use of premises and facilities.

- 13 Where the dwelling house is a flat and the tenant enjoyed, during the secure tenancy, the use in common with others of any premises, facilities or services, the lease shall include rights to the like enjoyment, so far as the landlord is capable of granting them, unless otherwise agreed between the landlord and the tenant.

Covenants by the landlord.

- 14 (1) This paragraph applies where the dwelling-house is a flat.
- (2) There are implied covenants by the landlord—
- (a) to keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated (including drains, gutters and external pipes) and to make good any defect affecting that structure;
- (b) to keep in repair any other property over or in respect of which the tenant has rights by virtue of this Schedule;
- (c) to ensure, so far as practicable, that services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services;
- but subject to paragraph 15(3) (restrictions where landlord's interest is leasehold).
- (3) The covenant to keep in repair implied by sub-paragraph (2)(a) includes a requirement that the landlord shall rebuild or reinstate the dwelling-house and the building in which it is situated in the case of destruction or damage by fire, tempest, flood or any other cause against the risk of which it is normal practice to insure.
- (4) The county court may, by order made with the consent of the parties, authorise the inclusion in the lease or in an agreement collateral to it of provisions excluding or modifying the obligations of the landlord under the covenants implied by this paragraph, if it appears to the court that it is reasonable to do so.
- 15 (1) This paragraph applies where the landlord's interest in the dwelling-house is leasehold.
- (2) There is implied a covenant by the landlord to pay the rent reserved by the landlord's lease and, except in so far as they fall to be discharged by the tenant, to discharge its obligations under the covenants contained in that lease.
- (3) A covenant implied by virtue of paragraph 14 (implied covenants where dwelling-house is a flat) shall not impose on the landlord an obligation which the landlord is not entitled to discharge under the provisions of the landlord's lease or a superior lease.
- (4) Where the landlord's lease or a superior lease, or an agreement collateral to the landlord's lease or a superior lease, contains a covenant by a person imposing obligations which, but for sub-paragraph (3), would be imposed by a covenant implied by virtue of paragraph 14, there is implied a covenant by the landlord to use its best endeavours to secure that that person's obligations under the first-mentioned covenant are discharged.

Covenant by tenant.

- 16 Unless otherwise agreed between the landlord and the tenant, there is implied a covenant by the tenant—
- (a) where the dwelling-house is a house, to keep the dwelling-house in good repair (including decorative repair);
 - (b) where the dwelling-house is a flat, to keep the interior of the dwelling-house in such repair.

Avoidance of certain provisions.

- 17 (1) A provision of the lease, or of an agreement collateral to it, is void in so far as it purports to prohibit or restrict the assignment of the lease or the subletting, wholly or in part, of the dwelling-house.
- (2) Sub-paragraph (1) has effect subject to section 157 (restriction on disposal of dwelling-houses in National Parks, etc.).
- 18 (1) Subject to the following provisions of this paragraph, where the dwelling-house is a flat, a provision of the lease or of an agreement collateral to it is void in so far as it purports—
- (a) to enable the landlord to recover from the tenant any part of costs incurred by the landlord in discharging or insuring against the obligations imposed by the covenants implied by virtue of paragraph 14(2)(a) or (b) (landlord's obligations with respect to repair of dwelling-house, etc.), or
 - (b) to enable any person to recover from the tenant any part of costs incurred, whether by him or by another person, in discharging or insuring against any obligations to the like effect as the obligations which would be so imposed but for paragraph 15(3) (obligations not to be implied which landlord would not be entitled to discharge).
- (2) A provision is not void by virtue of sub-paragraph (1) in so far as it requires the tenant to bear a reasonable part of the costs of carrying out repairs not amounting to the making good of structural defects.
- (3) A provision is not void by virtue of sub-paragraph (1) in so far as it requires the tenant to bear a reasonable part of costs incurred in respect of a structural defect—
- (a) of the existence of which the landlord informed the tenant in the notice under section 125 (landlord's notice of purchase price, etc.), stating the landlord's estimate of the amount (at current prices) which would be payable by the tenant towards the cost of making it good, or
 - (b) of the existence of which the landlord becomes aware ten years or more after the grant of the lease.
- (4) Where the lease acknowledges the right of the tenant and his successors in title to production of the relevant policy, a provision is not void by virtue of sub-paragraph (1) in so far as it requires the tenant to bear a reasonable part of the costs of insuring against risks involving such repairs or the making good of such defects.
- (5) Any estimated amount stated as mentioned in sub-paragraph (3)(a) (estimate of costs to be borne by tenant in respect of structural defect) shall be disregarded for the purposes of any statement under section 125(4) (estimate of service charges payable).

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- 19 A provision of the lease, or of an agreement collateral to it, is void in so far as it purports to authorise a forfeiture, or to impose on the tenant a penalty or disability, in the event of his enforcing or relying on the preceding provisions of this Schedule.

PART IV

CHARGES

Grant of lease.

- 20 A charge (however created or arising) on the interest of the landlord which is not a tenant's incumbrance does not affect a lease granted in pursuance of the right to buy.

Conveyance of freehold.

- 21 (1) This paragraph applies to a charge (however created or arising) on the freehold where the freehold is conveyed in pursuance of the right to buy.
- (2) If the charge is not a tenant's incumbrance and is not a rentcharge the conveyance is effective to release the freehold from the charge; but the release does not affect the personal liability of the landlord or any other person in respect of any obligation which the charge was created to secure.
- (3) If the charge is a rentcharge the conveyance shall be made subject to the charge; but if the rentcharge also affects other land—
- (a) the conveyance shall contain a covenant by the landlord to indemnify the tenant and his successors in title in respect of any liability arising under the rentcharge, and
- (b) if the rent charge is of a kind which may be redeemed under the Rentcharges Act 1977 the landlord shall immediately after the conveyance take such steps as are necessary to redeem the rentcharge so far as it affects land owned by him.
- (4) In this paragraph "rentcharge" has the same meaning as in the Rentcharges Act 1977; and—
- (a) for the purposes of sub-paragraph (3) land is owned by a person if he is the owner of it within the meaning of section 13(1) of that Act, and
- (b) for the purposes of that sub-paragraph and that Act land which has been conveyed by the landlord in pursuance of the right to buy but subject to the rentcharge shall be treated as if it had not been so conveyed but had continued to be owned by him.