



Do I need to know the difference between Full and Limited Title Guarantee?

Well yes, definitely. If you buy a limited title guarantee you are normally buying less valuable than a property with full value guarantee. Your solicitor should pick this up for you. If you're not sure then just check with him or her before you buy.

It is normal practice for the seller to provide covenants for title, in standard form, by selling with "full" or "limited" title guarantee, in accordance with the Law of Property (Miscellaneous Provisions) Act 1994. The effect of this wording is that, following completion, the buyer can sue the seller for breach of the title guarantee. The seller will normally sell the property with full title guarantee, unless the seller is a trustee, personal representative or mortgagee, in which case he will normally sell the property with limited title guarantee. A liquidator selling a property, or a seller who cannot prove good title to his property, may sell with no title guarantee at all, in which case no covenants for title are given, and there is nothing in respect of which the buyer can sue.

Where a seller transfers the property with full title guarantee, the following covenants for title are implied:

1. That the seller has the right to dispose of the property in the manner purported;
2. That the seller will at his own cost do all that he reasonably can to give the transferee the title he purports to give;
3. That the seller is disposing of his whole interest in the property, where that interest is registered, and of the whole lease, where the interest is leasehold (clearly this implied covenant may need to be amended on a sale or lease of part);
4. That the seller is disposing of a freehold, where it is unclear whether the interest is freehold or leasehold (a highly unlikely situation where the property is registered at the Land Registry, but the seller should in any event state in the contract that the property is leasehold if it is not a freehold property, in view of this implied covenant);

In the case of a subsisting lease, the seller covenants that the lease is still subsisting and that there is no subsisting breach which might result in forfeiture (Condition 3.2.2 of both the Standard Conditions of Sale and the Standard Commercial Property Conditions expressly exclude from this covenant any wants of repair which may entitle the landlord to forfeit the lease on the grounds of a breach of the repairing covenant. Where, however, there is any other breach of covenant, even if the buyer is fully aware of this, the contract must expressly exclude that breach from the implied covenant for title);

In the case of a mortgage of a property which is subject to a rentcharge or lease, the seller covenants that the mortgagor will observe and perform the obligations under the rentcharge or lease;

5. That the transferor is disposing of the property free from all charges and encumbrances and from all other third party rights, not being rights that the transferor does not and could not reasonably be expected to know about (Condition 3.1.2 of both the Standard Conditions of Sale and the Standard Commercial Property Conditions state those incumbrances subject to which the property is sold, but the contract will often go on to list additional incumbrances)

Where the transfer is made with limited title guarantee, all the above implied covenants are given, only the final implied covenant set out above is changed. The seller covenants that the transferor has not encumbered the property nor granted third party rights, and is not aware that anyone else has done so since the last disposal for value, but there is no covenant relating to the transferor's predecessors in title, unlike in the case of a transfer made with full title guarantee.