

Releasing a Restrictive Covenant

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A person may find that the legal title to the land which they own or which they are interested in acquiring is restricted in some way. Such restrictions on title are normally referred to as restrictive covenants and whilst they are generally more commonly found in leasehold title, they can affect land held under freehold title also.

Restrictive covenants vary in nature but will generally restrict the landowner from using his land in a particular way.

In Northern Ireland there are two main ways of having a restrictive covenant released from title:

1. Buying Out a Restrictive Covenant

This will only be an option where the landowner who wants to have the restrictive covenant released can identify the relevant party who will be entitled to the benefit of the restrictive covenant i.e. the party or successor in title of the party who originally imposed the restriction on the land.

This method will simply be a matter of negotiation between the parties and the bargaining position of both will very much depend how essential it is to the landowner to have the restriction released.

If agreement can be reached between the parties a Deed of Release or Deed of Variation will need to be completed in order to legally remove or modify the restrictive covenant from the land in question.

2. Application to the Lands Tribunal

Article 5 of the Property (Northern Ireland) Order 1978 grants the Lands Tribunal for Northern Ireland the power to make an order to modify or wholly or partially extinguish a restrictive covenant on title where they are satisfied that the restrictive covenant unreasonably impedes the enjoyment of the land or if not modified or extinguished would do so.

A landowner who finds that his / her land is affected by a restrictive covenant that they wish to remove can make an application to the Lands Tribunal using a prescribed application form. Once an application has been lodged there are various matters which the Tribunal must consider when making their decision as to whether a restrictive covenant should be modified or extinguished.

The Tribunal will also require the application to be advertised allowing any interested parties the opportunity to object to the application or to make representations. In addition the Tribunal may direct enquiries to be made of any governmental department, district council or public body and can direct for notice of the application to be given to any occupier or mortgagee of the land in question or to the occupiers or mortgagees of the land which benefits from the restriction.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.

Once the Lands Tribunal has considered the application and they decide to modify or extinguish the restrictive covenant they may:

- add or substitute a new restriction which they feel is reasonable in view of the modification or extinguishment of the existing restriction.
- direct the applicant to pay the person who was entitled to the benefit of the restriction either:-
 - (i) a sum to compensate him / her for any loss or disadvantage suffered in consequence of the modification or extinguishment of the restriction; or
 - (ii) a sum to make up for any effect which the restriction had at the time when it was imposed in reducing the consideration then received from the land effected by it.

Where the Tribunal grants an order to modify or extinguish a restrictive covenant a Deed of Release or Deed of Variation will need to be completed accordingly.

If you require further information on removing or modifying a restrictive covenant on title please contact a member of the Property Department for further advice.

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