

Land Law and Conveyancing: (7) Positive Covenants over Freehold Land and Other Proposals

This report [LRC 70-2003 Report on Land Law and Conveyancing Law: \(7\) Positive Covenants over Freehold Land and other Proposals](#) is concerned with six distinct areas of land law and conveyancing law which are in need of reform. First, the Commission examines the issue of covenants (promises) over freehold land. Owners of freehold land often wish to enter into covenants relating to adjoining land, e.g. where the owner of a piece of land sells off part of that land he or she may be concerned about the future use of the portion sold. A solution to this is to enter into a covenant with the purchaser of the sold-off portion. However, problems arise as to the validity and enforceability of such covenants on subsequent owners of the affected lands. The Commission provides a solution to these problems by recommending draft legislation to deal with the enforceability of freehold covenants by and against subsequent owners. Secondly, the Report deals with a technical issue relating to succession law and the definition of "purchaser" in the *Succession Act 1965*. Thirdly the Commission deals with the situation where two or more persons who hold land as joint tenants die in circumstances whereby it is impossible to say which of them survived the other. Usually when two or more people hold land as joint tenants, the interest of the deceased joint tenant automatically passes to the surviving joint tenant. The Commission proposes a change in the law to say that where two or more joint tenants die in circumstances whereby it is impossible to say who survived the other, the interest in the land will separate on death and each joint tenant's 'share' will pass to their respective next-of-kin. Fourthly, the Commission proposes draft legislation to deal with a technical land registration issue. Fifthly, the Commission examines the issue of a joint tenant of lands unilaterally severing the joint tenancy. Agreement between the parties is needed to enter into a joint tenancy and certain conclusions flow from land being so held. The Commission, therefore, recommends that agreement should also be required for one joint tenant to sever the joint tenancy and thereby change the legal nature of the holding. Finally, the Commission recommends the amendment of the *Succession Act 1965* and the *Statute of Limitations 1957* to provide uniform periods of limitation regarding claims involving a deceased's estate.