

## CONVEYANCING FACTSHEET 4 COVENANTS

Covenants are obligations which affect a property, or of which a property has the benefit. In other words, if you buy a property, it may come with an obligation to do, or not to do something. Equally, the property may come with the right to make a neighbour do something or not do something.

Examples of Covenants are

- Not to use a property as a business but only as a house in which to live. This is called a “Restrictive Covenant”, in other words, it is restricting you from doing something.
- Not to cause a nuisance to a neighbour, or to play music or create other noise outside certain hours. This is also a restrictive covenant and is an example of a covenant often found in a lease to a flat.
- To maintain a fence or other boundary structure. This is what is known as a “Positive Covenant”, i.e. it is requiring you to do something (as opposed to not doing something).
- To contribute towards the cost of maintaining a shared right to way.

Covenants are obligations which generally affect a property for all time. This means that if you buy the property you also assume that obligation. With positive obligations (see above), you are usually required to sign a covenant (or promise) with the person from whom you buy that you will observe those covenants. Due to a legal technicality, the obligation to observe a restrictive covenant (see above) passes automatically with the land.

Covenants are binding promises which can be enforced by the people who have the benefit of them. These will usually, but not always, be owners of neighbouring land. You must only buy a property subject to a covenant if you are prepared to observe it. When you come to sell that property, you will be asked if you have observed the obligations.

The most lengthy sets of obligations usually appear in leasehold properties (usually flats) and in relation to new houses on housing estates where developers are very keen to ensure that everybody observes certain standards and obligations.

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