

• GUIDE TO BUYING LEASEHOLD RESIDENTIAL PROPERTY IN ENGLAND & WALES

INTRODUCTION

The purpose of this guide is to give you as an owner or purchaser of leasehold property a basic understanding of your rights and responsibilities as a tenant.

THE PARTIES TO THE LEASE

The Landlord (sometimes described as Lessor)

The landlord is the freeholder of the building in which the leasehold property is located. If you are acquiring a lease, the current landlord may not be the same person who originally granted the lease, as they may have since purchased the freehold of the building. You should also note that the landlord may not be involved in the management of the building at all, as the obligations of landlord may have been delegated to a management company (see below) or the landlord may have appointed a managing agent to run the building.

The Tenant (sometimes described as Lessee)

If you own leasehold property then you are the tenant. The name on the lease if you are purchasing a lease that has already been granted will be the original tenant.

Management Companies

A management company will often be a party to the lease. In the lease, the management company covenants to both the landlord and the tenant that it will provide specified services, which usually relate to the common parts of the building (such as cleaning and maintaining shared areas). Frequently, the tenants of the building will be the shareholders of the management company and the directors of the management company are appointed from the tenants.

On a new development, the freeholder often retains control of the management company until the sale of the last unit in the development. This allows greater flexibility for the freeholder whilst the units are being sold.

The management company may also be used to purchase the freehold of the building, and the developer may have agreed to transfer the freehold to the management company following the sale of the last unit.

Managing Agents

Managing agents may be appointed by either the landlord or the management company to carry out the landlord or the management company's obligations under the lease. The managing agent is normally independent of the landlord / management company. In some leases, there may be more than one managing agent, with the landlord appointing one to collect the ground rent, and the management company appointing another to collect the service charge and carry out the management of the common parts.

COMMON PARTS (SOMETIMES DESCRIBED AS COMMUNAL AREAS)

Normally in a lease of residential property the structure of the building and the surrounding area (such as gardens, car parks driveways) are excluded from the lease so that the property being leased is almost always the interior "skin" of the property in question. The structure of the building and the surrounding area (if any) is retained by the landlord who remains responsible (or the management company becomes responsible) for repair, maintenance and insurance.

Typical common parts include:

Gardens

Where there are gardens they are normally maintained for the shared use and quiet enjoyment of all of the tenants in the building and their visitors. There may be limits or restrictions on the activities that can be carried out in the garden area (quite often activities such as ball games are prohibited). If you have "green fingers" you will need the consent of the landlord or management company before you do anything in the gardens.

Parking

More often than not, specific flats will have the right to park in pre-allocated parking spaces. Usually, tenants with a right to park will have to pay an additional rent and / or service charge for the use of this benefit.

Bin stores

In most developments there is a communal bin store, where tenants have the right to either keep their bin or dispose of their rubbish in a communal bin.

Bicycle storage

More and more frequently, planners insist on incorporating bicycle stores in an effort to restrict and discourage the use of cars. As with parking, there may be specific stores granted to specific apartments, or alternatively, they are provided for general use.

INSURANCE

The landlord or the management company will usually be responsible for insuring the structure of the building and the common parts. This costs is normally recovered from the tenants by way of the service charge. You should note that:

The landlord's insurance policy would normally provide cover for the structure of the building and the common parts (including any of the landlord's fittings and furnishings within the common parts. The landlord or the management company may receive a commission on the insurance premium.

If the building, or any part or it, is damaged or destroyed to the extent that it becomes uninhabitable, then the insurer will normally cover the cost of alternative accommodation. The rent and service charge will normally be suspended until the flat or the building is once again habitable, and the insurance covers the landlord for this loss.

The landlord or the management company will also normally take out a public liability insurance policy to protect themselves and the tenants against any claims that arise from accidents that occur in the common parts.

You should remember that the landlord or management company does not insure the contents of your property and that it is your responsibility to insure the contents.

ONGOING COSTS OF LEASEHOLD RESIDENTIAL PROPERTY

Service Charge

The service charge is the proportion of the charge attributable to your property for the cost of maintaining, repairing and insuring the structure of the building and the common parts. The service charge is normally calculated on a square footage basis, but in some developments, it may be on a more approximate share. In addition to the costs of repairing, cleaning, maintaining and insuring the structure and the common parts, the service charge may also include managing agents fees, accounting fees (including audit) and VAT.

In some developments, the hot water and heating costs may also be provided by the management company and recovered through the service charge.

Ground rent

The lease will also normally provide for a rent (known as a ground rent) to be paid to the landlord. In some leases this may be a peppercorn (which is usually not collected!). The rent is normally not collected where the freehold of the building has been transferred to the management company and where the tenants are all members of that management company.

Other outgoings

As tenant you are responsible for the payment of utility bills, contents insurance and also any taxes or rates levied on the property.

YOUR OBLIGATIONS AS TENANT

Usually you are responsible for the repair, maintenance, cleansing and interior decoration of your flat. However, to ensure that the other tenants in the building may also enjoy their property there are further obligations on you as tenant. The majority of them are common sense such as keeping noise to an acceptable level. The landlord or the management company may also have the ability to create further rules to manage the tenants and to ensure that peace and harmony are preserved.

Keeping pets

Many leases restrict or prevent the tenants from keeping pets at the property. This should be checked on a case by case basis. Often the landlord's prior written consent will be required and where this is given, it is usually on the proviso that the pet will not cause a nuisance to your neighbours. You should remember that if the pet in question does in the landlord's opinion cause an annoyance, you may be asked to remove it from the property.

Alterations

There are normally restrictions on what alterations you can make to your flat. You should check your lease very carefully before carrying out any works at all and check with the landlord or management company whether their consent to your proposed alterations is needed. If they do need to consent, you will be asked to provide full details of your alterations and will be asked to enter into a licence for alterations. You will need to meet the landlord and / or the managing company's costs for this document and they often also charge an administration fee.

Renting your leasehold property

There may be provisions in your lease which restrict who can occupy your property (particularly important if you have purchased using a company, as occupation may be limited to the directors of that company). The lease may also place restrictions on the length of the tenancy that you wish to enter. It is important to check your lease carefully before granting a tenancy.

Selling your leasehold property

If you want to sell your leasehold property, you should also check the terms of your lease at an early stage. The landlord or management company's permission is often needed before a sale (known as an assignment) can take place and there may be further requirements to be met if you are selling to a company or someone who lives overseas.

FOR MORE INFORMATION, PLEASE CONTACT:



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