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Residential Leasehold Property

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Your guide to Residential Property Lease

As the prospective purchaser of a Leasehold Property, you need to fully understand the nature of Leasehold ownership so that you are clear what your rights and responsibilities will be when entering into this type of agreement.

What is Leasehold?

Leasehold properties can be in purpose built blocks, converted houses, above commercial or retail premises or sometimes a house. Leasehold ownership of a property is simply, the right to occupy and use the property for a period of time which is known as '**the term**' of the Lease. For most residential Leases the Lease will be for a term of 99, 125 or even 999 years and the property can be bought and sold during that term. The term will have commenced at some time in the past and since it is for a fixed term from the beginning the length of the Lease will decrease year by year. If you are having a mortgage to assist with the purchase of the property you should be aware that a lender (bank or building society) will only normally lend money for the purchase of a property provided that there are at least thirty years (although some lenders require more than this) remaining on the Lease term in addition to the length of your mortgage. For example, if you are borrowing from a bank for twenty-five years then the lender will require there to be at least fifty-five years left on the Lease term when you buy the property. We would advise that in reality, you would want a considerably longer term.

The Lease will contain a description of the property itself and it will normally include everything within the four walls of the property including the floorboards and plaster of the walls and ceiling but it would not usually include any external or structural parts such as roof or foundations or load bearing walls. Those structural parts of the building, and other parts which are used by the other property owners in the building e.g. the stairs lift path and driveways etc. will be owned by the Landlord and it is normal for a Lease to provide for the Landlord to be responsible for the maintenance and repair of these structural and common parts.

The Landlord might be an individual or a company and there is often a residents management company. If the latter, then you as one of the property owners will have a share in the management company and will effectively become together with the other property owners your own Landlord. Even if the freehold is not actually owned by the management company there are rights to manage properties, additional details of which we can provide you with if you would like them.

What are the responsibilities of the parties?

A Lease will more than likely contain contractual obligations on both the Landlord and the Tenant and it is very important that you are aware of your obligations and insuring the payment of rent, a contribution towards the cost of maintaining the building as a whole (i.e. a service charge), to keep the inside of the property in good order and condition, to behave in a neighbourly manner and not to do certain things without the Landlords consent for example altering the property, carrying out structural repairs or subletting the property etc.

The purpose of the covenants on the Tenant contained in the Lease is to protect the rights of everyone with an interest in the building and they are there for your protection rather than to impose unnecessary restrictions on you.

The obligations on the Landlord will normally include the obligation to manage and maintain the structure exterior and common areas of the building itself, to collect in the rent and service charge contributions from the Tenants, to keep accurate accounts of the money that it is collecting in and spending, and to insure the block as a whole. Landlords will not however be responsible for insuring the property contents and that is a matter for the Tenant to arrange if he or she wishes. The Lease should also require the Landlord to enforce any breach of the covenants by the other property owners if you ask him or her to do so. It is likely that the Landlord will ask you to cover any costs he or she incurs.

What other rights do you as the property owner have?

There are a wide range of rights in statute for Tenants and the following is just a brief précis of some of them:-

- **Information**

Your Landlord must provide his name and contact address within the UK and that must be stated on every demand for service charges and rent. You can demand a summary of the service charge, details of insurance cover and you can inspect the accounts and other documents referred to.

- **Consultation on major works**

The Landlord cannot carry out major works to the building without first consulting the property owners in a proper manner. The Landlord will have to obtain a number of quotes for the work to be done and notify you of them. Should the Landlord fail to do this he or she may not be able to recover the costs.

- **Consultation on long term agreements**

The Landlord cannot enter into certain agreements or contracts for any services over twelve months without first consulting the Leaseholder.

- **Challenging service charge**

Leaseholders can apply to the Leasehold Valuation Tribunal to seek a determination of the reasonableness of the charges, whether they have been paid or not.

- **Challenging administration charges**

Leaseholders can apply to the Leasehold Valuation Tribunal to seek determination of the reasonableness of other charges arising from the Lease e.g. the charge for providing a consent to alteration or to subletting or for providing certain information.

- **Right to manage**

If the Leaseholders want to change the management of the property they can do so by using the right to manage. This is a “no fault” process and will allow the Leaseholders as a group of property owners to decide the management arrangements for the property in the future.

- **Appointment of a Manager**

If the Landlords management of the building is unsatisfactory then the Leaseholders can apply to the Leasehold Valuation Tribunal for the appointment of a new Manager.

- **Extending the Lease**

As the unexpired term of the Lease reduces an individual Leaseholder who satisfies certain conditions can demand a new Lease from the Landlord with the price to be agreed between the parties or if that is not possible to be set by the Leasehold Valuation Tribunal.

- **Buying the freehold**

Groups of Leaseholders who satisfy certain conditions can jointly purchase the freehold. Once again the price has to be agreed between the parties, or if that is not possible it will be determined by the Leasehold Valuation Tribunal.

- **Right of first refusal**

Where a Landlord proposes to sell his or her interest in the building he or she must first offer it to the Leaseholders and if he fails to do so he or she can be prosecuted.

Ground Rents

Becoming the Tenant of a Leasehold Property

When a person purchases a Leasehold Property they become the Tenant of that property. Whilst you will normally be responsible for maintaining and repairing the interior of the property the Landlord is normally responsible for the maintenance and repair of the building recovering those sums by way of a **service charge** - detailed in the next section of this guide.

Ground Rent billing

In most Leases a Ground Rent will also be due. This can be billed annually, or every 6 months depending on the Lease. Ground Rent is simply a payment that is made to the Landlord for the use of the property.

Historically, these would have been at relatively low level, perhaps £50 a year or in some cases a peppercorn (effectively zero rent). A lot of Leases provide for a low ground rent that cause few concerns to the Tenant and Lender.

In recent times however there has been a shift towards shorter Lease terms. Terms of 99 and 125 years are not uncommon and often these will have a higher starting ground rent of, say £250 per year. In itself that is not an issue, however many Leases provide for the rent to increase during the Term and these increases can result in the Ground Rent increasing dramatically. In certain cases the Ground Rent can increase from a couple of hundred pounds to thousands of pounds during the Term.

The reasons increasing Ground Rents are of concern (both to Tenants and Lenders alike) are as follows:

1. Upon the grant of the Lease, the Tenant would have paid a premium for the property (the 'purchase price' if you will) and the Landlord will be benefiting twice from having received the Premium and a high Ground Rent which can impact on the value of the property in the future if increases in rent are higher than inflation which is often the case.
2. Commonly the only reason for imposing these Ground Rents is in order that the Developer can sell the freehold reversion to a new Landlord, an investment company, who will pay handsomely for the prospect of thousands of pounds of ground rents at some stage in the future.
3. If the Ground Rent exceeds £250 and is not paid, the Landlord is entitled to issue court proceedings seeking to terminate the Lease. Under the provisions of the Housing Act if the Ground Rent remains due when the matter goes to court the court has an obligation to terminate the Lease.

It is the above point that means many Mortgage Lenders are extremely wary of lending against properties with escalating ground rents.

Please visit the CML website at www.cml.org.uk/lenders-handbook/ for specific instructions from each Lender as to their approach to ground rents.

4. If you do not need a mortgage, bear in mind that when you come to sell, a buyer might do and Escalating Ground Rents are likely to have an adverse impact on valuation.

Ground rents are currently under review by the Government and legislation may be brought in to raise the £250 limit to provide assurances to Tenants and Lenders alike.

We would strongly advise against anyone purchasing a Leasehold House.

"What can I do about existing escalating ground rents?"

If you bought from new, certain developers are offering schemes to revert to index linked rent reviews which are a little more palatable.

Alternatively you could look to get together with other Tenants and seek to **'buy the freehold'** to then remove the need to pay yourselves ground rent. This would be at a premium and you would need to pay the costs of the Landlord.

You could negotiate directly with the Landlord to **'buy out'** the ground rents but they are under no obligation to sell.

Service Charges

As stated above the Landlord has obligations under the Lease to carry out his duties which will include maintaining and repairing the building, providing lifts, lighting and cleaning the common areas and insuring the property. Sometimes the Landlord will delegate these responsibilities to Managing Agents and if so then their costs will need to be met. The service charges are payments by the property owners to the Landlord to meet the cost of the services stipulated in the Lease.

Service charges can vary from year to year and they may go up or down. The Landlord will provide annual accounts so that the Tenants can see how much money has been paid to the Landlord and how much he has spent during the year. Most Leases require the Tenants to pay for a service charge in advance, by half yearly, quarterly or monthly instalments. At the end of the year Tenants are liable to make up any shortfall; any surplus is carried forward to the following year.

There are detailed rules to determine what a Landlord can recover by way of costs and in a nutshell they can only recover those costs which are reasonable. As Tenants you have rights to challenge service charges if you feel they are unreasonable and you can refer your dissatisfaction to the Leasehold Valuation Tribunal.

We will endeavour to find out for you what the current and future service charges are likely to be and we will ask whether there is any major expenditure likely to be incurred in the next year or so. We will also ask the Landlord whether there is a reserve fund which has been set aside to meet future costs.

What are sinking or reserve funds?

Most Leases require the Tenants to contribute each year to a '**sinking fund**' or a '**reserve**' to cover future major works such as external redecoration, lift replacement, new roof etc. Without such a reserve the service charge payment in any particular year when such work was done could be very high and therefore with a view to smoothing out the costs over a longer period of time a service charge will normally include a contribution towards the reserve fund.

When you eventually sell the property you are very unlikely to receive back your '**share**' of the reserve fund as that will remain with the Landlord for the benefit of the purchaser of the property.

What happens if you do not pay the rents and service charge?

It will be your obligation as the Tenant to pay the service charge and ground rent promptly under the terms of the Lease. If they are not paid, and if your Landlord can satisfy a court or a Leasehold Valuation Tribunal, that the charges were properly and reasonably incurred the Landlord may commence forfeiture proceedings and if successful this will allow the Landlord to obtain a court order to repossess your property.

Please do not hesitate to contact us to discuss any points which arise from this guide or throughout the matter should you have any queries.

Glossary

Leaseholder - the person who has bought the Lease with the right to occupy the property for a fixed number of years.

Landlord - either owns the building, has a long Lease on it or is a 3rd party within the Lease with rights to recover Service Charges towards the costs of maintaining the building.

Lease - a contract between you and the Landlord detailing your agreement over the property.

Term - the length of the Lease (how long you can occupy the property.)

Lender - any Mortgage Lender seeking to secure funding against the property.

Ground Rent - the annual amount of rent payable to the Landlord by the Tenant in addition to any service charge payment.

Service Charges - monies collected to maintain the structure of the building and common parts and to cover the cost of any services provided.

Leasehold facts - Common misconceptions

"I have bought my property, you can't tell me what to do"

You don't own the bricks and mortar or the land on which it is built; you have bought the right to live in the property for a long time. The Lease tells you what you can and can't do, what your Landlord must do, the services that must be provided and the amount you must pay for them.

"I pay you £3,000 to manage my property"

The amount of the service charge paid to the Managing Agent as management fee is usually quite small – pence per day per property. Most of what you pay covers the actual costs incurred in providing services, such as; cleaning, maintenance, insurance, utilities, on-site staff etc.

"Can't you just write it off?"

Service charges cover the actual costs incurred. They provide no profit. Communal living includes collective responsibility for shared costs. There is no 'magic pot' from which money can be taken to write off your share.

"I bought my property so I shouldn't have to pay service charges"

You bought the exclusive right to live in the property and use the common parts. The structure of the building and common parts still need to be maintained. The Landlord retains the obligation to maintain these areas but also has the right to recover the costs incurred as service charges. The Lease will tell you precisely what is exclusively yours and what rights and obligations you share with others.

"I bought my property so why do I need permission to alter my property?"

You have bought a Lease, giving you the right to occupy the property (without ownership), albeit for a very long time. You will almost certainly need a licence because the Landlord is required to ensure that works do not have an effect on the structure of the building or the rights of other Leaseholders. You can't do as you please, you must seek consent when the Lease requires you to do so.

"You are the managing agent and my washing machine doesn't work"

The Landlord's and Managing Agent's responsibilities usually stop at the front door of the property. Your washing machine is your own personal property and your own obligation to repair or replace.

"It's only a car parking space so why is there a service charge?"

Communal living includes collective responsibility for shared costs. Car parks require maintenance over the long term and often have all the common features of properties, sometimes even more. Entry systems, sprinklers, lighting, ventilation, pumps.

"I live on the ground floor so why should I pay towards the lift costs?"

The obligation to pay towards the upkeep of facilities is usually related to the right to use those facilities. You have a right to use the lift whether you need to use it or not. Occasionally Leases do provide for all lift costs to be met by those Leaseholders living on the upper floors but this is not the norm. It is much more usual for Leases to provide for all Leaseholders to cover a proportion of all communal costs.

Leasehold facts - solving any issues from a Leaseholder's point of view

"If I am unhappy with the service provided by my Manager how do I complain?"

Your Manager should have a clear procedure for handling complaints about their services and this should be readily available upon request, either in hard copy or electronic form.

"Can you tell me more about this procedure?"

There should be no more than 3 stages to the procedure. It should tell you to whom complaints should be made in the first instance and the steps you can follow if you remain dissatisfied following each stage.

"Is there a timescale that my Manager is required to follow?"

The whole procedure should take no more than 8 weeks and you should receive a full response at each stage of the complaint handling procedure. If your Manager has good reason to be unable to respond within the prescribed response times, you should receive an explanation and be kept updated.

"Do I have to complain in writing?"

No. Your Manager should not require you to complain in writing. You may complain verbally and your Manager may respond verbally in turn. Your Manager should clarify that you are happy with the response and a written record of your complaint and agreed outcome should be kept.

The complaint handling procedure should allow you the right to a face-to-face hearing with a person, or a panel at a senior level within the organisation. Your Manager should also be willing to offer mediation and conciliation to try and resolve your complaint at an early stage.

"What, if after all that, I remain dissatisfied?"

Your Manager should belong to a Government-approved redress scheme, or Ombudsman's Service. Details of this should be readily available and your Manager is obliged to give you access to it. If you remain dissatisfied, you may refer your complaint to this body and your Manager is bound by their decision.

You can find out further details by visiting the Lease Advisory Service at: www.lease-advice.org

We hope that this short guide has helped you in understanding more about what steps are involved when purchasing your home. We would be pleased to meet with you to discuss any questions that you may have.

Please call us on 01305 768888

We will then put you in touch with a member of our experienced Property team.

Please visit www.pengillys.co.uk where full details of our Property team are available.

For further details about Pengillys and how we work, please refer to our Terms of Business and Privacy Policy which are available on our website or on request as printed documents.

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Similarly, please do not email us bank details for payment of any proceeds of sale. If you do so, it is entirely at your own risk and we will endeavour to verify those details by telephone before making payment but accept no responsibility if monies are transferred to an incorrect account.

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