



GUIDE TO LEASEHOLD PROPERTIES

WHAT IS A LEASEHOLD PROPERTY?

There are two ways you can hold land, freehold and leasehold. Most houses are freehold and virtually all flats are leasehold. The basic difference is that if you buy a freehold then you own it indefinitely. If you buy a leasehold then eventually the landlord gets the property back at the end of the lease. Lease is just another word for contract. A lease is a contract between landlord and tenant setting out their obligations to each other. For the contract to be called a lease it must give the tenant exclusive possession of the property for a certain period of time (aka the term) in exchange for the payment of a rent. Lease terms for residential property are usually at least 80 years and there are statutory rights for most tenants to renew their leases, so this isn't usually a problem. There is nothing wrong with owning a leasehold property as long as the lease has been drafted properly. Your conveyancer will check the terms of the lease as part of the conveyancing process.

WHY DO FLATS NEED TO BE LEASEHOLD?

One of the reasons that flats are sold leasehold is so that the repairing obligations for the structure of the building can be enforced. In contrast, positive freehold repairing obligations cannot be enforced. This is a problem with land law that has been unresolved for a very long time. With leasehold property the positive and negative obligations can always be enforced between the landlord and current tenant.

Let's assume that there are two freehold flats, Steve has just bought the freehold of his first floor flat and the roof. John has just bought the downstairs freehold flat and the foundations. If Steve doesn't repair the roof and guttering, damp and flooding could ruin John's flat. However because "positive" freehold covenants are not enforceable against the other flat owner, John has no way of making Steve maintain the roof or gutters. Similarly, if a large crack formed on the ground floor flat meaning that the first-floor flat became dangerous to live in, there would be nothing that Steve could do to make John comply with his "covenants" to maintain his flat.

However, if the flats had been leasehold with a common landlord owning the structure, both John & Steve could force the landlord to repair the roof and walls although they have to accept that they would pay the cost of this through service charge provisions in their respective leases.

GROUND RENTS

Most residential flat leases require the tenant to pay a small ground rent to the landlord. Sometimes this is a nominal rent of a few pounds a year or even what is known as a "peppercorn" rent (meaning

no actual payment is needed). However, often a rent can be £150 or more a year and can be subject to increase. The Landlord does this to create a valuable investment in the freehold interest.

If ground rent increased periodically you have to check that it does not eventually rise to unacceptable amounts. For example if it starts at £200 and doubles every 50 years and the lease is a long one, say 250 or 999 years this could make the flat unsaleable.

Some landlords also use the terms of the leases as a way of getting additional fees from the tenants each time the tenant wants to sell or make improvements to the property. The lease will also require the tenant to register notices of the sale of the lease with them. Landlords will charge for providing information about service charges and insurance to your buyer.

SERVICE CHARGES & INSURANCE

Most landlords arrange insurance for the structure of the building and most leases contain a service charge provision that allows the landlord to divide up the cost of insuring and maintaining the building between the tenants. There are statutory controls over how a landlord must go about asking for service charges and if they do not follow these requirements, the service charge may be irrecoverable. For further information see Leasehold Advice Service below.

THE LEASEHOLD ADVICE SERVICE

You can find lots of helpful advice on the subjects mentioned in this note at the Leasehold Advisory Service online portal found online at: www.lease-advice.org

There are many advice guides, videos, podcasts and leaflets to download that will give you more information, or you can ask your conveyancer.

If you are thinking of extending your lease, there is an online calculator that will give you an indication of the price of a new lease plus other helpful guides to the process.

Talk to us!

Please ask us to explain anything in this guide or discuss any unusual circumstances. We can then advise on what is best for you.

This is a general guide only, and each situation may be different and may need specific advice.

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