

Buying a Leasehold?

What you need to know

The Basics

You NEED to think of a leasehold as a very long tenancy agreement – i.e. you are allowed to use the property for a certain period of time subject to the terms of the 'tenancy agreement' which is the 'Lease'.

When the lease expires, the property will then belong entirely to the Landlord again. The Landlord is usually the freeholder and ultimate owner of the property and owns everything under the ground up to the sky.

Therefore, it is not possible to freeholds of flats as they would be up in the air!

It is also a method of control whereby if you own a flat in a block, the lease will usually require you to contribute maintenance and repair of the structure of the building. You are also required to comply with other rules and requirements for the enjoyment of the building.

Whilst there are similarities between a lease and other tenancies (or rentals) on a short term basis including the terms 'Landlord' and 'Tenant', a lease is NOT like a short term tenancy (where you rent the property for 6 months or so). The Landlord is not required to come out and fix your washing machine/plumbing. The Landlord's

responsibility is solely for the structure of the building. You will be required to maintain and repair the areas 'leased' to you (there will be a description of the area you are responsible for in the lease and is normally the inside of the property including the floors and ceilings and can also include windows and doors). All the equipment inside the flat will also be yours to maintain and repair (e.g. plumbing, electrics).

On the following website there are some really good advice which will help you get to grips with the terminology of leaseholds:

<https://www.lease-advice.org/advice/leasehold-infosheets>



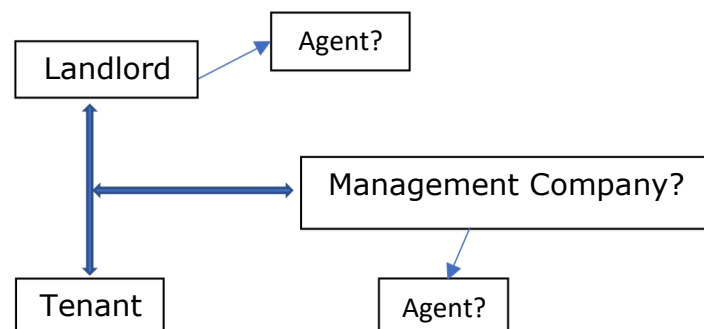
However, learning about leases (and this is important as you are buying one!) can be a minefield – this leaflet seeks to set out the basic terminology of leaseholds and the implications for you when buying a lease (which explains why it takes so long!).

Responsibilities

There are different ways to look after a building – it could be a straightforward Landlord/Tenant relationship where by the Landlord does all the maintenance and repair. Or there could be a Landlord, a

separate Management Company and yourselves as tenants. The Landlord is usually responsible for ground rent and insurance, the management company is usually responsible for service charges – the arrangements as to the respective responsibilities will be set up in the lease.

Any responsibilities given by the Landlord or appointed Management Company to a third party to carry out on their behalfs (e.g. if a Landlord appoints another company to carry out its responsibilities), this third party is called an "agent". We set out to explain the structure of the various responsibilities for the particular flat you are purchasing.



Service Charges

These charges are paid to the Landlord/Management Company where responsibility has been given in the lease to them for insurance, maintenance and repair of the structure of the building and any wider communal areas (e.g. car parking area, cycle store, etc.). In your lease there will be an explanation of:

- When service charges are to be paid;
- What expenses are recoverable as part of the service charges (e.g. gardeners fees, accountants' fees, electricity, repairs, insurance, contribution towards reserves, etc.). This may also include ~~any~~ administrative charges processing consents during the life of the lease and on transfer of the property to another owner.

It is usual practice for you to pay an 'estimated' service charge for accounting year (this is sometimes in line with the calendar year (1 Jan to 31 Dec) or may align with the financial year (1 April – 31 March the following year) or can be any other period set over a year.

When the 'accounting' year is over, the 'estimated' expenses will be set-off against the Landlord/Management Company's actual expenditure. If there is a shortfall between what you have paid, and the amount spent by Landlord you will normally ~~be~~ required to repay any immediately. If there is an overpayment, you are credited to your account for the next years' service charges.

The demand for payment of service charges should normally be accompanied by a summary of your rights and obligations (i.e. what you can do if you have issues with any of the charges made).

Please note that service charges are not fixed – they can go up as well as down.

If the purchase of your flat takes place before the end of the accounting year the

service charges for the year will be apportioned between you and the seller according to the period of your ownership. We will explain how 'apportionments' work in the course of conveyancing and provide you with appropriate advice based on our findings.

Section 20 Notices

A section 20 Notice is where the Landlord is required to give you advance warning of major works being required to the property or where the Landlord intends to enter into a contract with a provider for 12 months or more. The Landlord is required to consult with you as to the proposals.

This is a 3 stage consultation process that the Landlord needs to follow if they anticipate that your service charges will increase by £250 or more per annum than your current payment (or in the case of long term contracts, increasing by more than £100 per annum).

We will explain the process in further detail in the course of your transaction, though whether or not any of these types of notices are in progress or anticipated is part of the information gathering process and you will

~~This information~~ accordingly.

should be provided by the party who looks after the building (Landlord/Management Company).



Reserve Funds/Sinking Funds

This is money collected regularly towards major works which may be due over the years (for example, roof repairs, external redecoration or lift replacement). It is collected over several years so that when major works are required, some of the monies in this 'reserve' can be used towards

Buying A Leasehold Flat
the major repairs to reduce the final bill to leaseholders at the time.

It is good management of the building to have such a fund in place.

Ground Rent

Asalease is a type of tenancy agreement, itisnormal to see a provision requiring you topay'rent'. In a lease this is known as a groundrent. Sometimes this can be zero, butcommonly seen from anywhere between £50-£250 per annum (may be higher if purchasing in London). We will also be lookingout for any statements in the lease whichallows the Landlord to increase the groundrent.



Information Gathering – The Conveyancing Bit!

Leasehold Information Forms

Leasehold Information Form (2nd edition) TAT

Address of the property
Postcode

Full names of the seller

Seller's solicitor
Name of solicitors firm

Address

Email

Reference number

Definitions

- 'Seller' means all sellers together where the property is owned by more than one person
- 'Buyer' means all buyers together where the property is being bought by more than one person
- 'Property' means the leasehold property being sold
- 'Building' means the building containing the property
- 'Neighbour' means those occupying flats in the building

Instructions to the seller

The seller should provide all relevant documentation relating to the lease when they return the completed form to their solicitor. This may include documents given to the seller when they purchased the property, or documents subsequently given to the seller by those managing the property.

Instructions to the seller and the buyer

Please read the notes on T&L Property Information Form

1 of 6
www.lawociety.org.uk
The Law Society
Leasehold Information Form

As part of the contract package the seller will be required to complete a document called a "Leasehold Information Form" this gives information about the lease as the way that it works according to the Seller's knowledge.

Although some of the information requested in this form may form part of the "freeholder information pack" described below, there are some other pertinent questions as to whether the seller has had any issues with the Landlord and whether the seller is aware of any potential charges that may be levied by the Landlord.

This questionnaire also covers whether or not the seller has had any issues with the Landlord or in relation to the management of the building during their ownership. This is quite important as it may put you off purchasing if you know there is likely to be a problem/ongoing dispute with Landlord/Management Company (it will really depend on what the issue is as sometimes what someone sees as a problem would not be an issue to you).

If you would like to see a blank example of this document with the questions, please let us know. A copy of the document completed by the Seller will be provided in the course of reporting to you.

Freeholder Information Packs:

This is in an information pack that the seller is required to pay for and obtain (through their solicitors) from the Freeholder or Management Company (depending on who runs the buildings). Bear this in mind when you come to sell, as you will need to pay for this information when you come to sell as the information will change over the course of time. Sometimes information is required from both the freeholder and management company depending on the manner

in which the lease has been set up. There is an industry standard questionnaire titled "Leasehold Property Enquiries" (or sometimes referred to as **LP1** for short).

Information required from the Landlord but be aware that some professional management companies do not always follow the format provided in the questionnaire, though we would expect the basic information to be provided. (If you would like to see a blank example, please let us know).

We expect this pack to provide information as follows:

- A statement of account confirming what the seller has been paying to date in respect of rent and service charges and whether or not they owe any arrears. It is important to establish whether or not there are any arrears as this will need to be paid off by the Seller (or their solicitors) for the Seller's period of ownership before completion. Otherwise, any payment for arrears will be passed onto you as the leaseholder. This therefore needs to be investigated so you don't end up being responsible for the seller's debt. We will use this information to 'apportion' monies owed for the seller's period of ownership and any monies that are due starting from your period of ownership;
- Details of any fees that the buyer is required to pay on completion to transfer any accounts into their name. This could include fees for:
 - **Notice of Assignment (transfer):** this is to say you now own the property;
 - **Notice of Charge:** notice that you have taken out a mortgage on the property. This is required where the buildings insurance requires the lender's interest to be noted on the policy;
 - **Deed of Covenant Fee:** A fee for processing a document which creates a direct contractual relationship between the incoming buyer and the freeholder/management company);
 - **Certificate of compliance fee:** this is to provide a letter to the Land Registry confirming that the provisions of the lease have been complied with);
 - **Licence to Assign:** Sometimes the lease may specify that consent is required from the Landlord before the lease can be transferred. There is normally a fee for this, but this fee is only payable if a specific requirement is set out in the lease for this consent.

Some or all of these fees may be payable depending on the terms laid out in the lease. The pack should also give information about whether or not the Landlord/Management Company are intending to carry out future work to the property resulting in an 'anticipated' increase in your service charges. This only goes 2 years into the future, but can potentially flag up some immediate issues, especially if the property is being sold to avoid paying these charges!

LEASEHOLD PROPERTY ENQUIRIES		LP1
Property:		
Seller:		
<small>These enquiries are asked on behalf of buyers. The Seller should only respond to these enquiries if they are the Landlord, the Management Company, the Managing Agent or the Residents' or Tenants' Association or are representing any of these.</small>		
TERM	DEFINITION	
Ground Rent	The rent payable to the landlord by the lessee as required by the lease.	
HMO	A House in Multiple Occupation as defined by section 257 of the Housing Act 2004.	
Landlord	The person or company which has granted a lease over the Property to the owner of the Property.	
Lessee	The owner of properties in the Managed Area.	
Managed Area	The properties including the building containing the Property, together with any land, managed by or on behalf of the Landlord under the terms of the lease. Managed Areas are sometimes also called common parts.	
Management Company	A management company referred to in the lease, or a Right to Manage Company created under the Commonhold & Leasehold Reform Act 2002, to provide services and administer the terms of the lease either directly or through managing agents.	
Managing Agent	A person or organisation which acts on behalf of the landlord, management company or Right to Manage Company, within the terms of reference, subject to any legal restrictions.	
Property	The property known by the above address, including any land and outbuildings related to the site.	
Reserve Fund	A fund collected from the Lessees which allows the build-up of monies to pay for repairs and the replacement of major items such as lifts or to equalise capital expenditure (such as external decoration), providing essential assets in the Service Charge. Reference to Reserve Fund includes any sinking fund or replacement fund.	
Residents/Tenants' Association	A group of some or all of the Lessees with or without a formal constitution or corporate status, or a recognised residents association which is 'recognised' by law and with a formal constitution.	
Right to Manage Company	A company created by the Lessees that manages the Managed Area on behalf of the Landlord or Management Company, within their terms of reference, subject to any limitations.	
Service Charge	The amount payable by a lessee as a contribution to the costs of services, repairs, maintenance, insurance, improvements or costs of management etc. as set out in the lease. The amount payable may vary according to the costs incurred to be incurred.	
Section 20	Section 20 of the Landlord & Tenant Act 1985, which requires the Landlord or Managing Agents to consult with the Lessees about certain proposed works.	

Buildings Insurance

It is normal practice for leasehold properties to be insured by the Landlord. Please note that we will request a copy of the buildings insurance which can sometimes be a bulky document that covers all the properties owned by the Landlord. It is important for you to understand the risks that are covered and the procedure for making a claim (if necessary). We recommend you take out your own contents insurance as the Landlord's policy will not usually cover your personal belongings (e.g. laptops, white goods, damage to clothing, etc.). Say for example, if there was a leak or fire that spread into your property from a neighbouring property, the buildings insurance only covers the structure of the building rather than any of your personal items so it would be a good idea to have this in place.



Special Note regarding Shared Ownership:

If you are purchasing a shared ownership lease, the above provisions normally apply, though please see our separate information leaflet explaining what goes into a shared ownership lease and the procedures.

Problems in the course of your ownership with service charges / disputes



The website www.lease-advice.org is a really useful source of information providing you with initial guidance of what to do if you have major issues with the management of the building.

As you can see there is a vast amount of information gathering required, especially if there is more than one third party involved (e.g. Landlord, separate Management Company or Agent). It is important that you allow us the time to process this information correctly and resolve any issues with the seller's solicitors. Otherwise, any issues once you have completed the transaction will need to be resolved at your own cost.

NexaLaw



CASE STUDIES

The above is a lot of information to go through and take in, perhaps it might be easier to understand how it applies in practice and the sorts of issues that arise. Let's take a look at a few case studies:

Case study 1: Escalating Ground Rent

This is now becoming a prevalent issue whereby leases can be issued with clauses doubling the ground rent. The issue here is what the starting rent is and how often it will double or increase. We will need to check with your lender (if you are taking a mortgage) as to the frequency of the increase and in which manner it is increased. Sometimes it can be increased in line with inflation, other times it can be a straightforward 'doubling' at frequent periods. We will provide you with specific advice if we spot this type of clause in your lease. We came across one where the ground rent was increased every 25 years in line with inflation. We obtained the lender's permission to proceed due to the infrequency of the ground rent increase.

Case study 2: Missing right to use a parking space

On an existing lease, the seller indicated on the Property Information Form that they were using an 'allocated' parking space. On checking the terms of the lease there was no 'right' included to use the parking space. We explained to the client that the lease would need to be varied in order to give her the right to legally use the parking space. If the issue was not rectified by us at the time of purchase, this would mean for our buyer that someone could 'legally' stop her from using the parking space during her ownership as there was no right given in the lease. Secondly this would mean the issue would re-arise at the point when our client wished to sell the property in the future, meaning our buying client would have to pay additional fees to rectify this issue. This resolved by the seller agreeing to pay the Landlord for a Deed of Variation giving the right to use the parking space. The document was then registered at the Land Registry with our client's application to become the registered owner.

Case study 3: Section 20 Notice (very high charges)

We received an LPE1 indicating that section 20 notice consultations were in progress. The Management Company had indicated that roof repairs were required to a number of blocks that they managed. At the time of issuing the LPE1 the Management Company were not able to confirm the amount each leaseholder would be charged. Upon pressing the seller's solicitors to obtain this information, the Management Company confirmed that each leaseholder would be charged approximately £20,000 - £25,000 for the repair work. Our client decided that they would not proceed as this was an additional expense that they could not afford (even if the seller was willing to give a contribution, they would still have to find a substantial amount themselves which would not add any value to the property)

Case study 4: Section 20 Notice (not so high charges)

The LPE1 revealed that the Landlord was planning to do some upgrade work to the fire safety within a block of flats. Whilst the overall cost to the Landlord was anticipated at around £14,000, each individual leaseholder would only have to contribute around £1200 each. Our client decided that this was a cost that they would be able to bear, knowing that it was a cost that would be incurred in the near future.

Case study 5: Service Charges

We came across a recent LPE1 that advised that no service charges were collected. This was an existing lease with 6 properties in the building. The Landlord was a company that bought and managed several properties and owned the whole building. The intention was to pass on the management of the building to the residents living in the building (a 'residents' run management company) once all the flats had been sold. The client was advised that the lease allowed for service charges to be collected and that contributions would need to be made towards buildings insurance and maintenance and repair of the building, so he should not be under the illusion that no charges would be payable during his ownership! Though as the management of the building would be residents' run, the client was advised to take part when the residents management company became active and the sorts of issues he should be taking forward (for example, setting up a reserve fund).

The above are just examples of issues that we have come across. Rest assured that we will flag up any relevant issues to you. Unfortunately there is no 'standard' lease, every lease is different and that is why we require the time to ensure it is checked thoroughly and you are advised accordingly.

Nexa Law