



Complex Legal Structures in relation to shared ownership

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Shared Ownership - Complex Legal Structures

Why is it important to know the 'legal structure' and if it something complex?

This is the start of a complex legal structure - the arrangement (usually in relation to flats) can be explained as follows:

A 'simple' legal structure relating to leasehold is an agreement (usually the Lease) between you and the Landlord.

The Landlord is the freeholder/owns the building. Where it becomes complex is if there are third parties involved on the site (e.g. a Management Company), or where the Landlord does not own the building and they are also a leaseholder themselves.

You can have a 'complex' legal structure on a house or a flat, but there are slight differences and questions you can ask, **to determine if there is going to be something that may cost you 'extra' or cause complexity that you are not comfortable with.**



Freeholder

Freeholder owns the property ultimately after the Head Lease expires (Head Lease means the first lease relating to the land)

Head Lease

This is the first lease affecting the land. It can be for one property, or cover a number of properties. There may be a ground rent payable under this Lease to the Freeholder.

Underlease

If the Housing Association have a Head Lease, this means the shared ownership lease will be granted on an 'underlease' basis. This means: (a) that there is a lease that takes priority over yours; and (b) you are usually required to reimburse the Housing Association for costs incurred under the Head Lease.

Management Companies

Throw into this mix a Management Company - sometimes they are appointed as an 'agent' or in their own right as a party to the lease to look after a building or the wider estate, things can get complicated/confusing as to who is supposed to be doing what and who you need to pay.

Let's get to grip with terminology:



“Landlord”

a person or company who owns a building or an area of land and is paid by other people for the use of it

“Leaseholder”

a person who has the right to use a property under the terms of a lease

“Lease”

a legal agreement by which money is paid in order to use land for an agreed period of time. This is usually “padded out” with lots of other terms and conditions in relation to the use of the property.

“Management Company”

A company that manages the building and/or common areas on behalf of other people. They are usually paid for this service.

“Ground Rent”

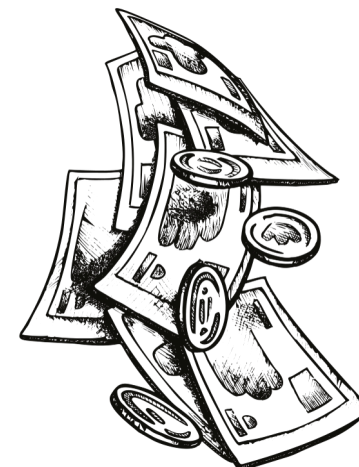
an annual payment in relation to the land. This can increase at set periods depending on the lease, or can be set at a ‘peppercorn’ (meaning no monetary payment is required)

“Specified Rent”

In relation to shared ownership leases - the rent you pay on the part you do not own. It usually rises annually.

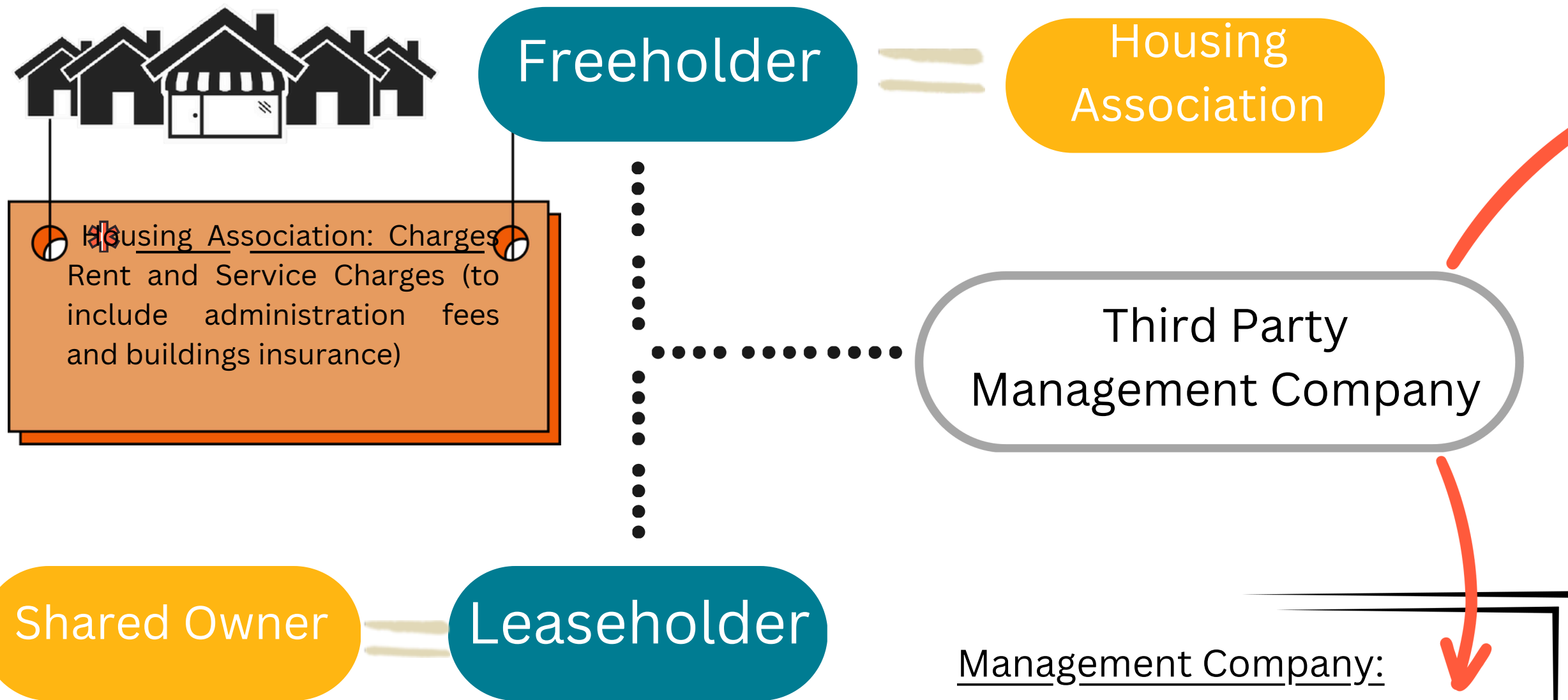
“Service Charge”

These are charges made for services which normally include repairs, maintenance, insurance and management. It is usually charged by an ‘estimated’ amount which is offset against actual expenditure at the end of the service charge year.



HOUSES

Normally you see this structure:



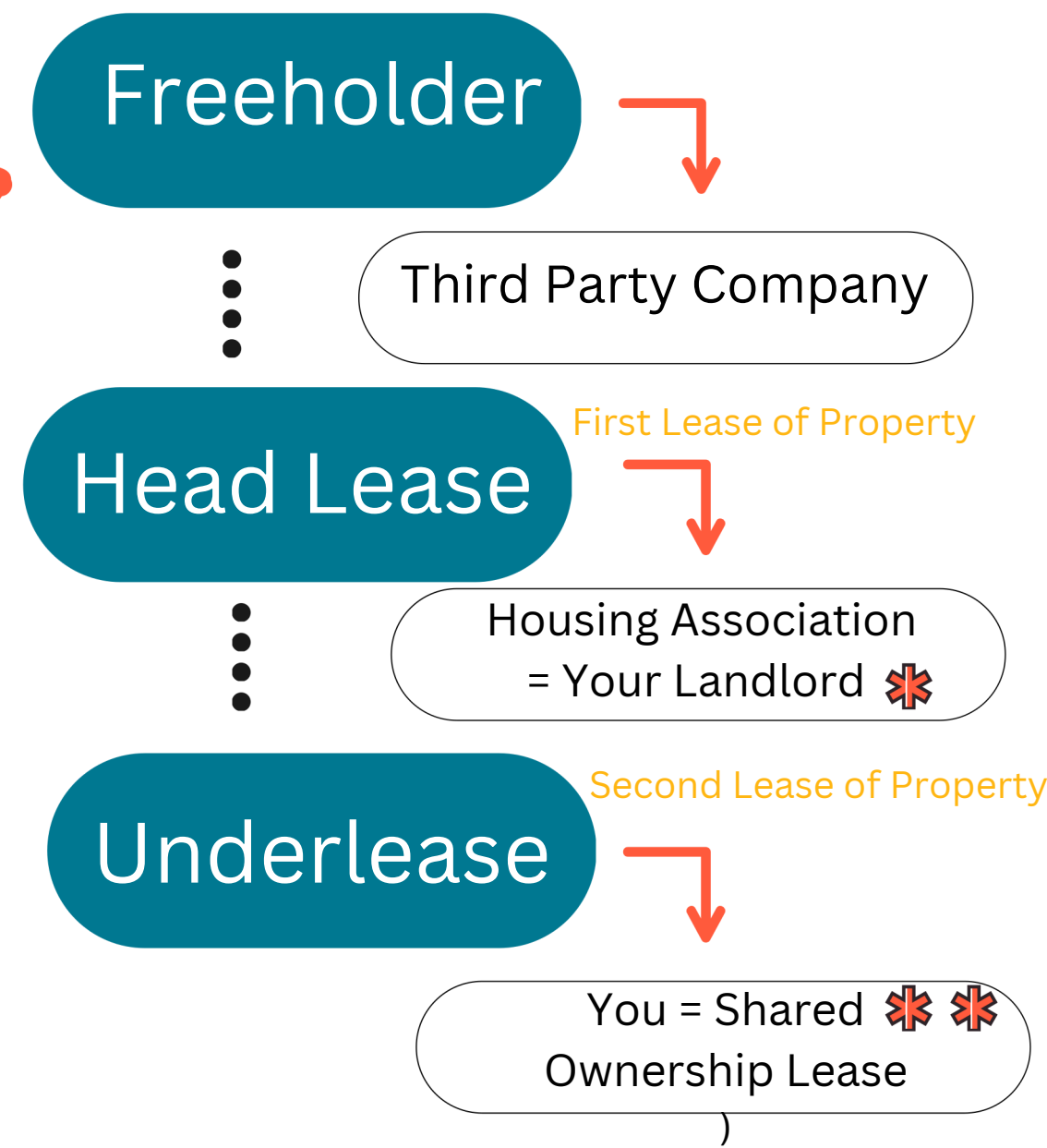
Housing Association: Charges Rent and Service Charges (to include administration fees and buildings insurance)

Shared Owner = Leaseholder

- ** Shared owner:**
- Pays Rent and Service Charges
 - ~~Maintains~~ Maintains and repairs entirely including any garage & parking
 - reimburses Freeholder for any 3rd party payments/costs

- Management Company:**
- * Looks after wider estate areas (normally specified in transfer to housing association) = estate service charge. Service charges are controlled by third parties on the freehold. Shared owners (and housing association) not consulted as to costs.
 - * Unlikely to be any assistance to challenge expenses. Additional administration fee added for processing the costs to shared owner;

Alternative structure
(not a great arrangement):



What this means (in addition to **)

1. There is an additional layer of ownership above yours - costs may be high to obtain permissions/consents (e.g. if you wish to keep a pet, build a conservatory, etc.);
2. Whilst you may have the right to obtain 100% ownership, you will only acquire the Head Lease interest (meaning you will remain as a leaseholder). You will then have to pay again if you want to acquire the freehold of the property.

FLATS

Does your housing association own the freehold?



Yes

Housing Association owns freehold

Shared owner = Leaseholder

- Pays rent on share not owned (increasing annually)
- May pay ground rent (either imposed by Head Lease or by Housing Association)
- Looks after inside of flat
- Pays towards upkeep of building and flat managed by third party or housing association
- Additional administration fees for buildings insurance and service charges
- Consultation required by housing association to increase service charges

MANAGEMENT COMPANIES

Now embedded whether housing association owns freehold or a Head Lease

- Looks after wider estate areas (normally specified in transfer to housing association) = estate service charge. Service charges are controlled by third parties on the freehold. Shared owners (and housing association) not consulted as to costs if levied on freehold. Housing Association unlikely to be any assistance to challenge expenses. There may be more than one management company on site (one for the building, one for the wider estate that makes things more complicated as to who does what).

No

Housing Association is a leaseholder themselves (Head Leaseholder)

- Level of ownership above housing association (so permission required from third party for pets/works, etc.) May be ground rent in the Head Lease which is passed onto shared owner
- Housing Association should be consulted where service charges likely to rise above £100 per annum for a contract or £250 for a one-off expense (but not always apparent if the consultation process is passed down to the shared owner); Housing Association unlikely to be any assistance to challenge expenses handed to them via the Head Lease; Additional administration fee added for processing the costs to shared owner; Upon 100% ownership, Underlease remains in place (so cannot remove housing association entirely from equation (unless the Head Lease is solely for the property but usually Head Lease covers a number of properties).