

LEASEHOLD PROPERTIES

This factsheet relates to owner-occupied long leasehold properties, not properties which are tenanted.

A leasehold property can be a house but is more commonly a flat. The flat can be purpose built, often as part of a large development, or part of a property conversion, such as a house divided into several separate dwellings.

The reason flats are leasehold properties is to ensure the covenants affecting each property can be reasonably enforced within the legal framework. Each lease is for a fixed term, generally 99 or 125 years.

What is a leaseholder?

The owner of the flat is referred to as the 'leaseholder' or 'lessee' whose rights and obligations are contained in the lease. You should ensure you are familiar with the terms of the lease as it will regulate what you can and cannot do within the flat and the building as a whole.

Your lease will also detail the exact extent of the ownership of your property, including the joists, the floor, the ceiling and the window frames. Generally each leaseholder within a development or a conversion has the same rights and responsibilities, except for matters relating to their specific property.

Leaseholder responsibilities

Your rights and obligations as a leaseholder are contained in the lease to the property. This details the extent of your ownership, the rights you have as an owner, as well as any obligations (i.e. to pay any

service charge) and any rules affecting the use and enjoyment of the property.

Your responsibilities will usually include:

- all internal decoration to your property
- all internal plumbing and wiring, although it is always best to check your lease on this for exact details
- repairs to internal plasterwork and some joists
- internal window frames (but sometimes not the glass), although this can vary, especially if double-glazed

Leaseholder rights

Leaseholders' have certain statutory rights in addition to the rights set out in the lease. Briefly, these are:

Information: Your freeholder (see below) must provide their name and a contact address within England or Wales which must be stated on every demand for ground rent and service charges. You have a right to request these details and also summaries of all costs for the services provided as part of the lease.

Consultation on major (qualifying) works: The freeholder cannot carry out major works to the building where it costs any leaseholder more than £250 without first consulting the leaseholders. This is known as a section 20 consultation (see below).

Consultation on long-term agreements: The landlord cannot enter into certain agreements or contracts for any service over twelve months where the cost to any leaseholder is more than £100 per year without first consulting the leaseholders.

Challenging service charges: Leaseholders can challenge the reasonableness of a service charge demand and if necessary take the matter to a tribunal to decide the issue.

Challenging administration charges: The freeholder can sometimes make charges for administration matters such as consenting to alterations or subletting e.g. allowing you to let your property to a tenant. These charges must be reasonable and can be challenged if not.

Right to manage: If the leaseholders want to manage the property as a whole, even if the freeholder is doing a good job, a group of leaseholders may apply for the right to manage (not own) the property. This right does not apply where the landlord is a local authority or there are non-qualifying tenants i.e. where your lease is less than 21 years in length.

Appointing a manager: If the landlord's management is deficient, leaseholders can apply for the appointment of a manager (except where the landlord is a housing association or local authority).
Extending a lease: An individual leaseholder who satisfies certain conditions (see below) can demand a new lease from the landlord, adding 90 years to the existing lease, with the price to be agreed between the parties or, if this is not possible, set by the First-tier Property Tribunal. The right to extend is subject to your meeting the criteria of a qualifying tenant (see below).

Buying the freehold: Groups of leaseholders who satisfy certain conditions can get together and force the landlord to sell the freehold to them. This is known as collective enfranchisement, see below for further details.

Right of first refusal: In most cases, where the landlord proposes to sell his interest in the building, he must offer it to the leaseholders first (provided they qualify) or he can be prosecuted. There are some exceptions to this, including housing associations and local authority landlords. See below for further details.

Right to vary a lease: A lease can be varied at any time with the agreement of all interested parties.

Otherwise an application can be made on various grounds, which can include that it does not make proper provision for such things as the repair or maintenance of the building or insurance etc.

What is a freeholder?

The freeholder owns the parts of the building not owned or occupied by any leaseholders. This usually means the freeholder owns the roof, the exterior walls, the foundations and parts of the building used by all occupants, such as the entrance hall and access ways.

The freeholder is sometimes referred to as the landlord and can be a person or a company, including a local authority or a housing association. It is also quite common for the leaseholder to own the freehold of the building through a residents' management company where all owners are shareholders and effectively their own landlord. This is frequently the case where the flat is part of a converted building, such as a large house. In this case, upon the sale of a property, the share in the management company is transferred to the new owner. The company must operate in accordance with company law with directors appointed and accounts properly filed at Companies House.

What is the role of the freeholder?

The rights and responsibilities of the freeholder are contained in the terms of the lease. Generally, they include:

- insuring the exterior and structure of the property, including against the usual risks such as subsidence. This insurance will not generally include the internal parts of your property
- repairs to the common areas of the building and retained parts, such as the roof, foundations and the exterior
- enforcing the covenants in the lease. This means if any leaseholder acts in a way prohibited by the terms of the lease, it is for the freeholder to take the necessary action where appropriate
- allowing the leaseholder to enjoy the property (known as quiet enjoyment) and not to harass them
- collecting the service charge as necessary for any repairs and maintenance to be completed

If you do not know the name of your freeholder you can apply to the managing agent for the details, if there is one, or search at the Land Registry for the information using the link [here](#). There may be a small charge for this service.

Managing agents

A managing agent can be appointed by the freeholder, particularly when a leasehold property is part of a large development. We often speak to callers who are confused by the relationship of the freeholder and the management company and may be disappointed by the service received from either or both. Generally, the management company acts on behalf of the freeholder and should carry out the roles and responsibilities of the freeholder under the terms of your lease.

The lease

When buying a leasehold property you must ensure that you understand the terms of the lease. It is recommended that your legal advisor explains the terms to you and any problems or concerns you have are explained and resolved before you commit to buying the property.

You can obtain a copy of the lease from the Land Registry and it is useful to have a copy for reference. A lease is always stated to be for a defined number of years, which may vary from 99 to 999 years. The amount of time left on the lease reduces as the property is bought, sold and occupied by different owners. The number of years left on a lease can sometimes affect the ability to sell a flat if is considered to be too low for a mortgage company to accept as good security for any loan.

There are rights for an owner (see below) in these circumstances to apply to extend the lease. You should do this, if possible, before it decreases to the extent additional costs may apply.

Extending a lease

When buying or selling a leasehold property consideration should be given to the term of years left on the lease. If that term is too low, either to be marketable or to satisfy a mortgage lender's strict lending criteria, it may be desirable/necessary to

apply for the extension prior to the sale. The cost of this will be part of the sale/purchase price.

Once you have been living in a property as the leaseholder for more than two years, you may have the right to extend your lease using the statutory procedure under the Leasehold Reform Act 1993. Once the notice has been successfully lodged, you may have the right to an extension of 90 years to the current term. If you use this process you will be responsible for the freeholder's reasonable costs in dealing with this and you will also have to pay a fee for the extension.

The sum you pay the freeholder may be affected by the remaining length/term of your lease. If you have 80 years or less remaining on your lease you may be subject to an additional fee. This is known as a marriage fee because the value of the property, plus a longer lease, exceed the combined value of the separate entities.

You can also negotiate informally with the freeholder to extend the lease, with recourse to the Leasehold Valuation Tribunal (LVT) in the case of a disagreement. The Association of Leasehold Enfranchisement Practitioners has members who are specialists in helping owners of flats extend their leases.

For more detailed guidance visit the Leasehold Advisory Service advice [here](#). You will also find a lease extension calculator, which may be useful as a guide of the likely cost of the extension.

Service charges

It is a freeholder's responsibility to arrange certain repairs under the terms of the lease but this obligation is subject to the leaseholder's requirement to pay a proportion of the cost of any work.

This work can be ongoing regular repairs and maintenance or one-off matters such as the roof. Under the Landlord and Tenant Act 1985 (sections 21 and 22) you have the right to request a summary of the service charge account and to see all receipts. This right applies to the last accounting year or the previous twelve months if there are no accounting years.

All leaseholders normally have to pay a service charge to their landlord/managing agents. Charges can vary from property to property and from year to year. The proportion of the total amounts which are payable will be set out in your lease. Apart from the rent, these sums may be divided by the total number of flats or relate to the size of your flat.

Generally, your annual costs may include:

- ground rent for the land on which the property is built
- a proportion of the buildings insurance arranged by the freeholder
- a proportion of the service charge to pay for such things as cleaning and maintenance of the building and common parts e.g. those parts of the building you share with others
- a contribution to the 'sinking' fund - a long-term fund to deal with future major works

The sums required to pay for any work may be recovered as part of the service charge or can be taken from any 'sinking fund'. All charges for work done must be reasonable and it is possible in some cases to challenge the reasonableness before a First-tier Tribunal (property chamber). If you refuse to pay any charges levied by your freeholder it may be possible for the freeholder to commence court proceedings against you to recover outstanding sums and associated administration charges.

In some cases, where there are arrears of service charges, your freeholder may inform your mortgage company of the situation. The result of this may be that your mortgage lender decides to pay the arrears (rather than have the flat repossessed) and add the amount to your total loan on which interest would have to be paid.

When purchasing a leasehold property, your legal advisor should enquire whether there are any large expenses anticipated for maintenance or refurbishment of the building which may affect the amounts you are required to pay after your purchase.

Disputes with a freeholder

Service charges

The trigger to pay your service charge arises when you receive a service charge demand. There is generally only one legal situation where it is acceptable for a leaseholder to withhold any service charge payment, which is when your freeholder has not included a summary of rights and obligations with the service charge statement. This obligation is required under section 153 of the Commonhold and Leasehold Reform Act 2002.

The summary should be attached to a service charge demand and will advise you of your rights to challenge if you feel it is unreasonable. If this is present there is no right to withhold payment of the charge. Indeed it is usually the case that extra costs are incurred for failing to pay on time, which could make any protest quite expensive.

Freeholder carrying out work

Your freeholder has a statutory duty to consult with all leaseholders where works to the property are likely to cost more than £250 or more than £100 per flat and is part of a long-term agreement. This obligation is contained within section 20 of the Landlord and Tenant Act 1985. In such cases, your freeholder must serve you with a relevant notice which must:

- generally describe and estimate costs of the work to be done or give details of a place where the details can be inspected
- provide reasons why the work is needed
- invite any comments within 30 days
- invite for nominations of businesses from which further estimates should be obtained

In these circumstances your freeholder must give you at least two copies of estimates for the work and let you have the opportunity to comment and suggest other contractors where possible.

Failure to comply with this procedure may result in your freeholder being unable to recover your share of the cost or limited to a maximum recovery of £250. Generally, where there is a complete failure to consult in the correct way, your freeholder would

be responsible for the total sum and not be able to recover this amount from the leaseholders.

For more information on this subject and detailed guidance see the Leasehold Advisory Service website [here](#).

Freeholder refusing to carry out work

If your freeholder refuses to do repairs required under the lease, he/she is breaking the terms. You must obtain evidence of the failure to repair and you will need professional help to take any action. There are a range of options, which include:

- court action, which can be expensive and time-consuming
- making an application to the First-tier Property Tribunal to have a manager appointed. This would require a notice to be served on the freeholder giving them reasonable time to remedy the breach
- considering purchasing the freehold (see below)
- setting up a right to manage company, which enables leaseholders to force the freeholder to transfer the management functions to that company

There would need to be discussion with other leaseholders if considering any of these actions. High administration charges

Administration charges, which are in addition to any rent, insurance or service charges, are generally used for:

- fees for the freeholder to grant approval to matters such as alterations to the flat
- the provision of copies of documents
- costs arising from non-payment of amounts under the lease
- costs connected with a breach of the lease

Any such charge must be reasonable and should be accompanied by a summary of your rights as a leaseholder and your obligations in respect of the charges. If this is not included, the charges may not be payable.

If your lease also includes the right for the freeholder to recover legal costs incurred as a result of non-payment of rent or other breach of the lease (including non-payment of a service charge) these will be classed as an administration charge and must also be reasonable. If they are reasonable they are payable by the individual leaseholder who has incurred them, not divided between all leaseholders. The right to challenge administration charges was introduced in 2002. You may be able to apply to a tribunal if you think the charges are unreasonable.

Selling and buying the freehold

Can my freeholder sell their interest?

Your freeholder can sell the freehold should they wish to do so. However, in some cases the freeholder will need to give you the right of first refusal to buy the freehold. This right is provided by the Landlord and

Tenant Act 1987. Generally the main requirements are:

- the building must contain at least two flats
- no more than 50 per cent of the building can be used for business or other non-residential purposes
- at least half of the building must be used/occupied by 'qualifying tenants' - this is a technical term and can exclude some owner/occupiers

As set out by the Leasehold Advisory Service it is important to understand:

- it is not a means of forcing a freeholder to sell his freehold interest in a property (this is provided by the enfranchisement provisions of the Leasehold Reform, Housing and Urban Development Act 1993). It is an opportunity for the leaseholders to purchase that interest before it is offered on the open market or by auction.
- the right follows a freeholder's decision to sell and the tenants can only react to the freeholder's offer. He can withdraw the offer at any time before the contract is binding.
- the right is available both to leaseholders and regulated (fair rent) tenants but not to houses occupied as single dwellings.
- the price is set by the freeholder or by auction where the freeholder decides to sell that way.

However, the freeholder cannot sell or offer the interest to another party on different terms, or at a lower price than originally offered within twelve months of the notice, unless he/she again offers the right to the existing leaseholders on the new terms and/or at the lower figure.

- the price set may, in some circumstances, be lower than that which could be achieved through a collective enfranchisement. However, it could also be higher.
- the requirement to make the offer and the procedure involved is set out in the Act. If a freeholder fails to comply with any of these statutory requirements he commits a criminal offence. The requirements also apply where the freeholder's interest is being sold by a receiver, a trustee in bankruptcy or an executor following grant of probate.
- the right is not available to tenants of local authorities, housing associations, nor, in some cases, where the landlord lives in the building.

Can I buy the freehold?

If the freeholder does not want to sell, you may, with other owners in the block, be able to force this under a right called 'collective enfranchisement'.

To qualify you must first check the freehold building has at least two flats and at least two-thirds of those flats must be owned by 'qualifying tenants'. For more detailed information on this please see the Leasehold Advisory Service website [here](#).

Buying the freehold of a house where you already own the leasehold is known as enfranchisement and can be a complex process. The right to buy the freehold is given in the Leasehold Reform Act 1967. It provides the framework for a formal claim but it may be that if you approach the freeholder directly they will agree to the sale on an informal basis.

In order to qualify to make this application you will need to have owned the property for at least two years. You will need professional help to assess the value of the freehold. For more information see the Leasehold Advisory Service [here](#).

Note: Many of the links in this information are to LEASE, The Leasehold Advisory Service. This is a Non-Departmental Public Body funded by Government to provide free legal advice to leaseholders, landlords, professional advisers, managers and others on the law affecting residential leasehold in England and Wales.

LEASE is funded by the Department for Communities and Local Government and the Welsh Government. It is a good source of information and advice and also has a free helpline for further assistance.



NOTE: Please be aware there are links contained within this factsheet that may take you to external sites, we are not responsible for their content. This is a general advice and information factsheet only and should not be treated as a definitive guide and does not constitute legal or professional advice. We are not a law firm and information is not intended to create a solicitor client relationship. Law Express does not accept any responsibility for any loss which may arise from relying on information contained in this factsheet. This is not a substitute for legal advice and specific and personal legal advice should be taken on any individual matter. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This factsheet is correct at time of going to print. The law set out in this factsheet applies to England and Wales unless otherwise stated.

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