



# Normanton CHAMBERS

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## Coronavirus Amendment To Tribunal Rules

📅 May 2020

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## LEASEHOLD OWNERSHIP

### 1. “What is leasehold ownership?”

Leasehold ownership is more than a mere tenancy. Although like all other tenancies, such as an assured or assured shorthold tenancy, leasehold ownership is based on a lease, it is also a form of property right, which, if the lease contained no restrictions (although they always do), would give the leasehold owner exactly the same rights as a freehold owner but only for the duration of the lease, called “the term”. As with a freehold, a leasehold interest needs to be registered at Land Registry.

### 2. “The lease – is it important?”

The lease is a contract between the leaseholder and the landlord and governs the rights and liabilities of the leaseholder and the landlord in relation to matters such as liability for rent, repairs and service charges (the leaseholder’s contribution to the costs of maintaining and managing the building). The lease provides for any limitations or obligations as to the use and occupation of the property and how the landlord and tenant should conduct themselves towards each other and any other tenants. It is an important document and leaseholders should ensure that they have a copy and that they understand it.

The wording of leases is usually in technical language and will vary from property to property. Leaseholders who find it difficult to understand their lease should get advice from a solicitor and insist that they provide a report on its terms when they are instructed to deal with the purchase.

It is important for any intending buyer to know, among other things, what the landlord is required to do in relation to managing and maintaining the structure, exterior and common areas of the property, what the leaseholder’s obligations will be in relation to rent and service charges, and whether there are any unusual or onerous covenants in relation to the leaseholder’s use and enjoyment of the property.

It is important to note that when a flat changes hands, the

seller passes on all the rights and responsibilities of the lease to the purchaser, including any future payments of service charges that have not yet been identified (subject to the laws on limitation).

### 3. “What should I understand before I buy a leasehold flat?”

Leasehold flats can be in purpose-built blocks, in converted houses or above commercial or retail premises. The lease will usually cover (or “demise”) everything within the four walls of the flat, including floorboards and plaster to walls and ceiling, but will not usually include the external or structural walls. Often the structure and common parts of the building and the land on which it stands will remain in the ownership of the landlord. The landlord is generally responsible for the maintenance and repair of the building but particular attention should be paid to the landlord’s responsibilities both in relation to the flat and the common parts, services and other flats in the building and how any costs recoverable are apportioned between flats. This is because the costs are recoverable through the service charges and billed to the leaseholders, and, secondly, a badly drafted lease may not make it clear exactly are the responsibilities of the landlord and the tenant.

The landlord can be a person or a company, local authority or housing association. It is also common for the leaseholders to own the freehold of the building, through a residents’ management company, effectively becoming their own landlord. In certain circumstances leaseholders of a block of flats can apply to extend the term of their leases or to purchase the freehold from a private landlord through a nominee, generally a residents’ management company.

### 4. The length of the term remaining

The remaining term of the lease can be important for two reasons. First, when the outstanding term of a lease drops below 80 years, the premium to extend the lease increases because “marriage value” becomes payable. “Marriage value” in the case of a long lessee acquiring the freehold reversion of his

lease is the extra value released by marrying the freehold reversion with the existing lease. In a lease extension the marriage value is the difference in value between existing interests of the long lessee, freeholder and any intermediate leases and their combined value after the grant of the extended lease. It is more costly to extend a lease once the term drops below 80 years.

Second, as a lease nears the end of its term its value starts to drop markedly. This can be overcome by applying for a lease extension or collective enfranchisement (purchasing the freehold) but, unless the seller of the flat has assigned their existing right to apply to the buyer, the buyer will have to wait until he or she has owned the lease for at least 2 years before becoming entitled to serve the requisite notice (known as a "Section 42 Notice"). It is, of course, necessary for the seller to have owned the flat for at least two years or to have taken an assignment from their previous seller for them to have a right to assign. The assignment has to be made before or at the same time as the lease is legally assigned. It cannot be done after.

## **5. Service charges?**

As explained above service charges are generally payments by the leaseholder to the landlord for all the services the landlord provides. Usually, such charges vary from year to year according to the cost of the services provided

What can (and cannot) be charged by the landlord and the proportion of the charge to be paid by the individual leaseholder will all be set out in the lease. Most modern leases allow for the landlord to collect service charges in advance, repaying any surplus or collecting any shortfall at the end of the year. This is often referred to as a balancing charge.

Sometimes a lease provides for a "fixed service charge", that is a charge set at a fixed amount, which is not related to the cost actually expended. Normally, such charges are index-linked to inflation or the cost of living but sometimes a lease will provide for them to simply to increase over time.

The landlord can only recover variable service charges to the extent that the costs are reasonable. Leaseholders have powerful rights to challenge charges they feel are unreasonable by applying to a tribunal (the First-tier Tribunal (Property Chamber) in England and the Leasehold Valuation Tribunal in Wales). There are restrictions on a landlord's ability to forfeit a lease while a service charge dispute is outstanding. Apportionment of service charges between flats is harder to challenge if the apportionment is fixed in the lease.

Fixed service charges cannot be challenged in this way and from time to time leaseholders have been shocked when they failed to consider not only what the fixed service charge is at the time of purchase but to what it will rise in future.

When considering the purchase of leasehold flat, it is important to find out, for personal budgetary purposes, what the current and future service charges are likely to be. Buyers should also check if there is a reserve fund, and what plans there are for major works that could affect the service charge in the next few years after your purchase.

## **6. What are the major works and why should I be worried about this?**

The Landlord is required to consult the leaseholder in a prescribed form if he/she enters into an agreement with a contractor/ supplier for specified works where a charge of at least £250.00 is payable by at least 1 leaseholder.

If the Landlord does not serve the proper notices and fails to follow the consultation procedure the tenant's liability to pay these charges is limited to £250.00. The notice requirements are governed by legislation.

Leaseholders should be aware that the tribunal has a power to dispense with the requirements of the consultation procedure. The power of dispensation had been most often used where there is an emergency and the consultation procedure was not appropriate but a recent decision of the Supreme Court has made it more likely that dispensations will be granted in future.

## **7. Should I buy a leasehold flat?**

Property law in England and Wales effectively requires that flats be leasehold, although some leasehold flats are now sold with a share of the freehold, through participation in a residents' management company.

However, owning a leasehold flat should not be a concern as long as you know and appreciate your rights and obligations and, like any property purchase, get appropriate advice when considering a purchase.

This is an overview and should not be regarded as a complete or definitive description of the relevant law. The law pertains to the English and Welsh jurisdiction only. If you are in any doubt about your rights and duties then seek specific advice.

This article was written with Rawdon Crozier and first featured in the Negotiator Magazine.