

Lease Advice

Written by Shula Rich
of Brighton Leaseholders
Association.

Free advice and information
on leasehold, right to manage
agents, leasehold disputes.



What is leasehold?



I suggest we view it as one of several systems for the management and ownership of flats (also houses).

In every country there's some system for owning and managing blocks with flats. Here it's the "leasehold" system.

Our system - now unique to England - for running shared apartment blocks - has led to protest about the position of the freeholder as a land owner, about managing agents exploiting their position, and disputes between occupants resulting in half a block taking the other to a Tribunal!

This Guide is the result of my experience with leasehold issues since 1991. It is intended to clarify the reality of leasehold, and provide an aid to handling any disputes which can arise. Please keep it as a contribution towards happiness and financial security.

Shula Rich BA MSc

Look in Hansard and you'll find her thanked in Parliament for her part in changing entrenched leasehold law. A leaseholder since the 70's, and Chair of a resident freehold company since 1996, Shula knows leasehold from both sides. She deals with queries for the National Federation of Residential Landlords, and Brighton Leaseholders Association. She wrote the first course on leasehold for leaseholders, and now writes new courses for estate managers for the National Federation of Property Professionals.

Twelve Facts About Leasehold

Here are twelve facts about leasehold that everyone, whatever their interest, agrees.

1. Majority

In 2008 Leasehold is still the majority way of 'owning' a flat, despite the introduction of Commonhold in 2002.

2. Permission

Leaseholders do not actually own the property. They just have permission - subject to conditions to live there for the years left on the lease.

3. Time

Leaseholders buy a time period not a property.

4. Freeholder

The actual property owner is still the freeholder, who is also in control.

5. Maintenance

Lessees pay the freeholder for the upkeep of the building.

6. Return

The less time left on the lease the less the lease is worth because it has to be returned - free of charge - to the freeholder, who sells it again.

7. Security

When their lease ends their homes are still there, but lessees have to leave, or may rent them back from the freeholder but without any long term security.

8. Costs

As time passes, maintenance of the building and services costs more. The leaseholder pays for this but on the freeholders' instructions

9. Value

As time passes the lease also gets shorter, and a leasehold property loses value in two ways: it costs more to maintain, and the freeholder can charge more to lengthen its lease.

10. Two Million

There are more than 2 million leaseholds in England and in 2007 property developers created more new leaseholds than individual houses.

11. Profits

Property developers have more opportunities for continuing profits under the leasehold system than under commonhold.

12. Lessees

Leaseholders who have bought their freeholds are still leaseholders and are still bound by their leases.

Buying The Freehold

Resident Management Companies

Owning the freehold together. The universally recommended way out of continuing disputes with the freeholder.

Leaseholders have the legal right to join with other flats and buy out the freeholder's interest. This is subject to rules, which change with each Act of Parliament.

Leaseholders with share of freehold are still leaseholders, but they are now also freeholders. Jargon calls them RMC's - Resident Management Companies.

This is the leaseholder wearing two hats. First hat - leaseholder - second hat - freeholder. As freeholders they still have to run the block in line with the lease - the original agreement between the leaseholder and the freeholder. As leaseholders they also have 'rights' given to them by Law, 'rights' which change with each Act - but in case of dispute they now have to write to themselves!

The big difference is that the freeholder is no longer an 'outside' body - an insurance company, a pension fund, a property developer, or an outside individual.

The freehold is now owned by a company made up entirely of leaseholders themselves. All leaseholders may not be members of the new company - or even agree it - some may stay as leaseholders, without a share.

Even when leaseholders own the freehold it's not always a recipe for a better run block, but it offers more possibilities if the participants continue to co-operate.

“If I were to buy a flat today I would only buy it if I could have a share of freehold ”
Sue

Rules of The Game

Over the years I've been involved in leasehold issues it's become clear to me that there are two separate levels of understanding. The first is at a fundamental level – what is the leasehold system? Why can it sometimes lead to so many disputes? This is the most important level, but rarely if ever clearly recognised as requiring an explanation, especially if you're a leaseholder.

At the second level there are the rules of leasehold. These are called 'laws,' These change with successive governments. Once we have an understanding of the fundamentals, rules which seem illogical, sometimes not even moral, become clear – even (unfortunately) correct in the circumstances.

For example – forfeiture – this remains a threat because all the leaseholder has bought is an agreement. Break the rules and the agreement can be void.

Because it is possible for one individual to have so much control (unlike commonhold) the leasehold system is intrinsically open to abuse, so rules have been developed to try to control the abuses.

Compare leasehold law to the rules of a game. The game stays the same - leasehold - but the rules, 'laws', are varied as governments, interest groups, and economics shape legislation.

The rules at present are convoluted and voluminous. They apply to all leaseholds whether owned by a resident management company or an outside freeholder. They apply to two leaseholders in a block, or two hundred.



Shula Rich is the author of "Complete Guide to Running Your Block", and "How to be a success at Block Management".

Other articles, radio programmes and TV appearances can be viewed on her website www.shularich.co.uk

Right To Manage Companies

The Right to Manage (RTM) is generally thought of as unhelpful and over complicated.

Using an RTM Company, leaseholders are at last managing their block, but the freeholder can still profit from the 'wasting lease' and with each year below 80, leases become more expensive to extend. In addition, freeholders can challenge an RTM Company at a Tribunal, and be members themselves. after the Company takes over management.

In favour of RTM, lessees may have been involved in continuing disputes with a freeholder who previously, had the final word. Now the freeholder has only a minority vote in the company. Agents may have treated leaseholders

with disdain, or be poorly informed. Maintenance work may have been over priced, over specified, or never carried out at all.

An RTM company can avoid all this, and was intended to come before owning the freehold, where practical. There is no charge for it, apart from legal fees. It takes only 50% of leaseholders. Its not even necessary to show the freeholder is at fault.

As RTM has been considered so complicated this Guide includes a summary of procedures (16-17). It is in fact a straightforward, if involved process. Though not a complete guide, this lists the minimum necessary for RTM and will help to decide when and if legal / professional help is needed.

“It’s quite a shock and it’s appalling that there are four of us here in this building and yet one person, whom I’ve never even met, who’s never set foot in the property, has so much control ”
Andrew

RTM – A Brief Guide To The Rules

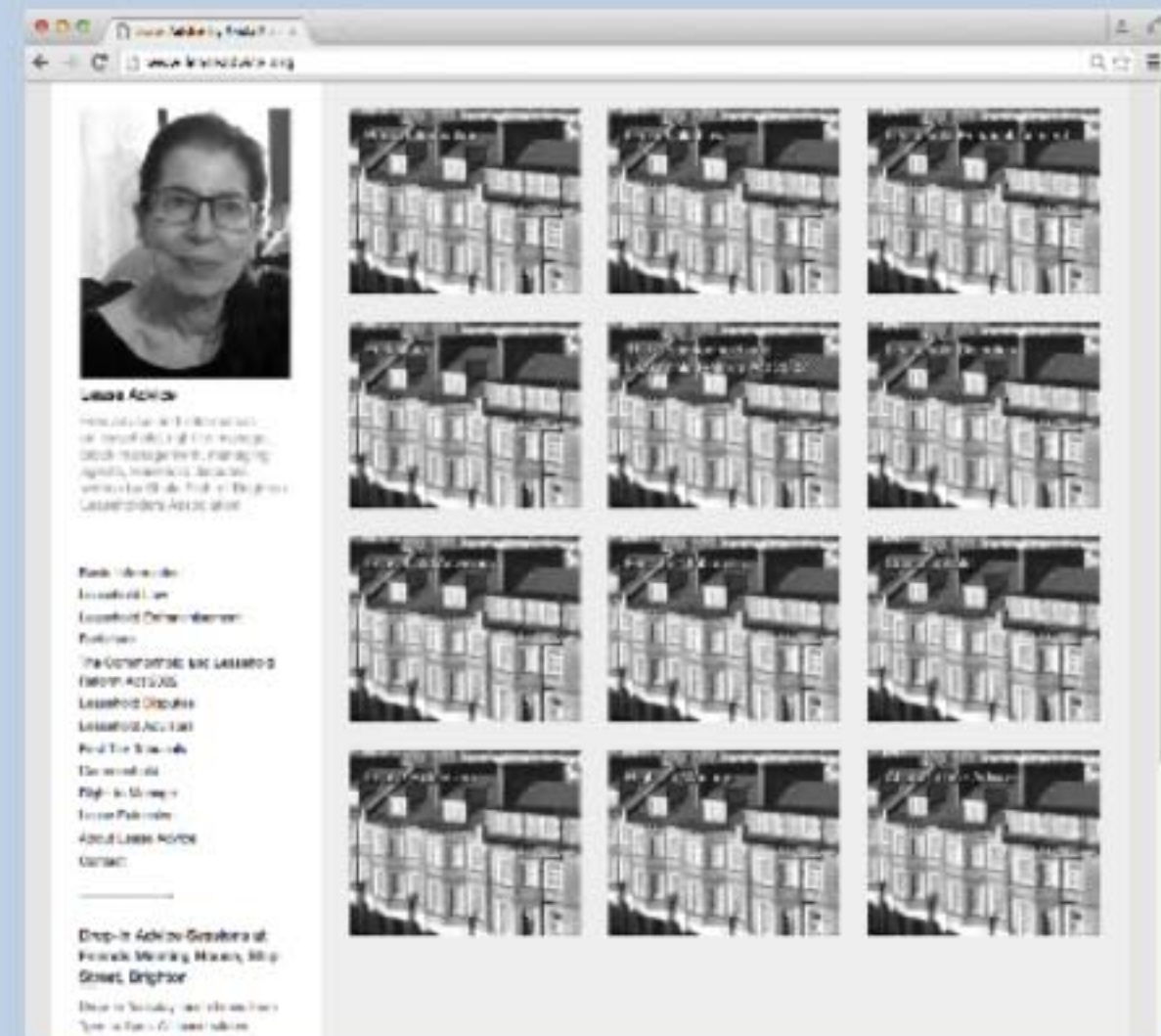
1. Leaseholders form and register an RTM Company (RTM Co.)
2. The RTM Co. may serve S82-Right to Information Notice. If served the Landlord must respond within 28 days. Either the Landlord or RTM Co. may serve S83-Right of Access Notice.
3. Either party has 10 days to agree an “Access Date” to inspect the property.
4. The RTM Co. must serve S78-Notice Inviting Participation on all “Qualifying Leaseholders” who are not already members of the RTM Company. Take-up must be at least 50%.
5. Waiting at least 14 days after serving S78 the RTM Co. must send S79 Notice of Claim to the landlord which –
 - a) Allows one month (ending on the “Determination Date”) for the landlord to give S84 Counter Notice (optional) disputing or accepting the claim
 - b) Proposes an “Acquisition Date” which must be at least three months after the named “Determination Date”.
6. In case of dispute the RTM Co. must apply to an LVT (Leasehold Valuation Tribunal) within two months of receiving S84 Counter Notice. The “Acquisition Date” is three months after an LVT or landlord agrees the tenants’ claim.
7. On the “Determination Date” or as soon as reasonably practical’ the Landlord must serve S92 Contractor Notices and Contract Notices.
8. The RTM Company may serve S93 Duty to Provide Information Notice. The landlord must respond within 28 days, but is not obliged to reply until after the “Acquisition Date”.

9. On the “Acquisition Date” and thereafter, The RTM Company must:

- a) Accept the Landlord’s membership, with the right to take the RTM Company to a Leasehold Valuation Tribunal in case of dispute
- b) Allocate votes to the Landlord in proportion to his/her interests
- c) Appoint their own managing agents or manage themselves
- d) Determine all work and contracts in relation to the building
- e) Give the landlord 30 days notice if it intends to approve assignments, change of use or structural alterations.

10. The landlord must transfer all Uncommitted Service Charges to the RTM Co. on the Acquisition Date (“or as soon after that date as is reasonably practical”).

This should not be taken as a complete guide to RTM – it is an indication of the procedures and responsibilities which are involved.



www.leaseadvice.org

Language of Power

A cultural studies analysis of the language of leasehold

Look carefully at the language of leasehold law - leaseholders are always 'talked down' to.

For example the term 'your landlord' is condescending. 'The landlord' reflects a more equal relationship. The term 'landlord' with its feudal overtones infers a greater degree of power. Today this perception of power can still be acquired by simply going to an auction, and buying a freehold.

No qualifications are required from a landlord to manage a freehold. If leaseholders want to take on the management of their block under RTM (Right to Manage) they have to list their skills to fellow leaseholders.

If leaseholders do not obey a 'covenant' the landlord can take away (forfeit) their homes - there is no reciprocal right. The role of landlord signifies an authority not given to leaseholders. The law has followed the assumption in the language.

Another illustration of the working of the hegemony - the language of the ruling group are the 'put down' words frequently used in letters to leaseholders: "you are confused" "I suggest you consult your legal advisors" "delinquent lessee" (a leaseholder who did not pay his bill) "Tenant Demand" (to head a service charge bill.) Letters are written in intimidating business language and typed with bold underlined subject headings.

The law of leasehold and freehold mirrors the language of landlord and tenant.

Leaseholders however now have considerable powers - try reversing the language in the examples given.

Service Charges

Summary of tenants' rights and obligations

From October 2007 a notice has to be sent by all freeholders to leaseholders with every service charge bill.

Ironically the notice tells us, that if this notice is not received then there is no obligation to pay the service charge.

However small the block, the notice must be sent out by any and every freeholder, to all leaseholders. This is the first time that the legal rules have been so widely publicized.

The form and contents of the notice are set out in Statutory Instrument 1257. The full notice is available on www.leaseadvice.org. The extracts below contain the most vital points for leaseholders – highlighted.

1. This summary, which briefly sets out your rights and obligations in relation to variable service charges, must by law accompany a demand for service charges. Unless a summary is sent to you with a demand, you may withhold the service charge.
3. You have the right to ask a leasehold valuation tribunal to determine whether you are liable to pay service charges for services, repairs, maintenance, improvements, insurance or management. You may make a request before or after you have paid the service charge.
5. Where you seek a determination from a leasehold valuation tribunal, you will have to pay an application fee and, where the matter proceeds to a hearing, a hearing fee, unless you qualify for a waiver or reduction. The total fees payable will not exceed £500, but making an application may incur additional costs, such as professional fees, which you may also have to pay.

However, you do not have these rights where:

- a) matter has been agreed or admitted by you
- b) a matter has already been, or is to be, referred to arbitration
- c) a matter has been decided by a court

7. If your landlord proposes works on a building or any other premises that will cost you or any other tenant more than £250, or proposes to enter into an agreement for works or services which will last for more than 12 months and will cost you or any other tenant more than £100 in any 12 month accounting period, your contribution will be limited to these amounts unless your landlord has properly consulted on the proposed works or agreement or a leasehold valuation tribunal has agreed that consultation is not required.

9. You have the right to write to your landlord to request a written summary of the costs which make up the service charges. The summary must be given to you within 1 month of your request or 6 months from the end of the period to which the summary relates whichever is the later.

10. You have the right, within 6 months of receiving a written summary of costs, to require the landlord to provide you with reasonable facilities to inspect the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them.

12. Your lease may give your landlord a right of re-entry or forfeiture where you have failed to pay charges which are properly due under the lease. However, to exercise this right, the landlord must meet all the legal requirements and obtain a court order.

A court order will only be granted if you have admitted you are liable to pay the amount or it is finally determined by a court, tribunal or by arbitration that the amount is due. The court has a wide discretion in granting such an order and it will take into account all the circumstances of the case.