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THE LEASEHOLD ADVISORY SERVICE

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

SERVICE CHARGES, GROUND RENT & FORFEITURE

Service charges, Ground Rent and forfeiture

Addendum

The provisions of the Commonhold and Leasehold Reform Act 2002 are being introduced incrementally and some of the rights and procedures set out in this booklet have not yet been commenced. Also, there have been some minor changes to the statutory consultation procedure since publication. Reference should be made to this sheet in the reading of the booklet.

Pages 7 – Demands for service charges – the requirement for the statutory summary of the leaseholder's rights has not yet been commenced and is not likely to be until 2006.

Pages 7/8 – Administration charges – any demand for an administration charge must be accompanied by a statement of the leaseholder's statutory rights, it is not valid without this.

Page 8 – Designated trust accounts – whilst most landlords are presently required to hold leaseholders' monies in trust (section 42, Landlord and Tenant Act 1987) the requirements for designated single accounts and leaseholders' rights to annual information on the accounts have not yet been commenced. These provisions are not expected to be in operation before 2006.

Page 9 – Regular Statements of Account – the requirement for landlords to issue a regular statement of account has not yet been commenced and is not likely to be in operation before 2006. Until then leaseholders can rely on their existing rights under Section 21, Landlord and Tenant Act 1985 to demand a summary from the landlord.

Page 10 – Consultation on major works – the landlord's first notice to the leaseholders proposing the works must also include a statement as to why the landlord considers the works necessary. *For more information see our leaflet "S20 Consultation".*

Page 11 – the landlord's notice following award of the contract must include a summary of any observations received by him from the leaseholders and his response to them.

Page 11 – Consultation on long-term agreements – again, the landlord's first notice must include a statement as to why the landlord considers the agreement necessary and his final notice must include a summary of observations received and his response to them.

Page 13 – Works under long-term agreements – where the landlord receives observations from any leaseholder he must reply within 21 days to the person who made the observations, in writing, stating his response to the observations.

Page 17 – Forfeiture and possession – If the landlord serves a section s146 Notice without the leaseholder's admission of the breach or a determination by the LVT, court or arbitral tribunal, the notice is not valid.

Page 17 – Action for breech of covenant- Arbitration clauses are not void, they are of no effect unless a lessee agrees "post-dispute" to refer the matter to arbitration.

Contents

This leaflet is not meant to describe or give a full interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties, then seek specific advice.

Service charges

Service charges are one of the principal areas for dispute between leaseholders and their landlords. This leaflet sets out the provisions the law has made in relation to various matters, including:

- *the setting and recovery of service charges;*
- *the rights of both the leaseholder and the landlord to challenge or substantiate the charges before a Leasehold Valuation Tribunal;*
- *the obligations placed upon the landlord to consult the leaseholders before carrying out works or entering into agreements;*
- *the statutory controls on demands;*
- *accounting for the charges.*

The law also sets out how and when ground rent may be collected and how the landlord can pursue arrears or non-payment. The leaflet looks at recovery of ground rent and at the procedures and obligations of the parties on forfeiture of the lease.

The leaflet is primarily directed towards leaseholders; however, variable service charges may also be payable by some tenants. The advice provided applies to all tenants whose lease or tenancy agreement provides for payment of a service charge which varies from year to year.

What are service charges?

Service charges are levied by landlords to recover the costs they incur in providing services to a dwelling. The way in which the service charge is organised is set out in the tenant's lease or tenancy agreement. The charge normally covers the cost of such matters as general maintenance and repairs, insurance of the building and, where the services are provided, central heating, lifts, porterage, lighting and cleaning of common areas etc. The charges may also include the costs of management by the landlord or by a professional managing agent and for contributions to a reserve fund.

Details of 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. The landlord, or, sometimes, a management company that is party to the lease, provides the services, while the leaseholders pay for them. The landlord will generally make no financial contribution, but sometimes he has to pay for the services before he can recover their costs.

Some landlords levy charges for consents to alter flats or provide information when a flat is being sold. These are not service charges but administration charges and are dealt with separately *(see page 7)*.

Variable or fixed?

Originally, the costs of services were included in rental payments, but as costs and inflation escalated, landlords wanted to make sure they recovered all their costs every year. Some old leases still provide for a fixed charge to be levied. These charges cannot be varied, regardless of the actual costs to the landlord. However, most service charges are based

on the actual or estimated cost of the services and thus vary from year to year. These are known as variable service charges.

Service charge structure

The lease will dictate the format of the charge. It will usually give the dates of the service charge period. More often than not the period is a year, but sometimes it is a half-year or a quarter.

The lease will usually set out the percentage payable by the lessee, but sometimes the lease just stipulates a 'fair' or 'just' proportion. If differing groups of occupiers benefit from different services, there may provision for more than one percentage to be paid.

The lease will say whether advance payments are to be made and, if so, whether they are based on the previous year's cost or an estimate of the cost in the year to come. There will always be provision for a final charge at the year end when the actual costs are known. If interim payments have been made, and they exceed expenditure, the final 'charge' will be a credit.

If the leases in a block do not provide for interim payments, that can present a real difficulty for all concerned. Theoretically, the landlord has to buy all the services before he is reimbursed. If the lease allows him to recover interest, then at least he can afford to fund the costs, but if not, it costs the landlord to provide the services, which may make him reluctant to fulfil his obligations.

Generally, in return for the ability to levy a service charge, the landlord is under an obligation under the lease to provide the services.

Limits on service charges

Charges can go up or down without any limit, but the landlord can only recover those costs which are reasonable. Leaseholders have rights to challenge service charges they feel are unreasonable at the Leasehold Valuation Tribunal (LVT).

When considering the purchase of a leasehold flat, it is important to find out, for personal budgetary purposes, what the current and future service charges are likely to be.

What are reserve funds?

Many leases provide for the landlord to collect sums in advance to create one or more reserve or 'sinking' funds. The purposes of such funds are to build up a sum of money to cover the cost of irregular and expensive works such as external decorations or lift replacement.

There are usually two reasons for maintaining such a fund. The first is to ensure that all occupiers contribute to major works, not just those who are in occupation at the time they are carried out. The second is to even out the annual charges and to assist with leaseholders' budgeting.

Leases sometimes say how much is to be contributed each year, but usually they do not and it is left to the landlord to determine the contributions. Best practice is to calculate the contributions by reference to budget costs for the works covered by the funds and the periods before the works are to be undertaken.

Reserve funds should earn interest, which goes some way to meet increasing budget costs.

Contributions to the reserve fund are generally not repayable when a flat is sold, but may be if the lease so provides.

The power to recover service charges

It is important to understand that the landlord's power to levy a service charge and a leaseholder's obligation to pay it are governed by the provisions of the lease. The lease is a contract between the leaseholder and the landlord and there is **no obligation to pay anything other than what is provided for in the lease.**

The lease may contain specific terms obliging the landlord to carry out certain works or provide certain services and, if a service charge is to be payable, the lease must contain a power for the landlord to recover the cost of those works or services from the leaseholder. It must specify whether the charge is recoverable in advance or in arrears of the provision of works or services and whether it is to be collected on a regular basis, perhaps annually or on a specified quarter-day, or whether it is to be levied as costs arise. The lease may be very specific in its wording, setting out quite precisely the works or services to be chargeable; alternatively the clauses may be very general, simply referring to costs of the repair and maintenance of the structure of building.

It can generally be assumed that a service charge will be payable and will cover the repair and maintenance of the fabric of the building and the fittings, the lift or the boilers etc, as well as cleaning, lighting and maintenance of common areas. Other obligations depend on the scope of services provided. In some cases this is done simply by referring to the landlord's costs in meeting his obligations, as set out in one of the schedules to the lease.

There are a number of matters which must be referred to if the landlord is to be able to recover the costs:

- works of improvement – as a general rule, leases in the private sector do not oblige leaseholders to contribute to costs of works of improvement to the building. However, leases from local authorities and housing associations often do contain such provision.
- management costs – the fact that the landlord manages the building, either himself or through a managing agent, does not automatically mean that he can recover management charges. This must be provided for in the lease.
- legal costs – as with management costs, these must be referred to in the lease. If recoverable, they can include the cost of recovering arrears or for repossession in case of another breach of the lease.
- caretaking and porterage – where these are recoverable, the lease should be clear as to what is included in the charge: a resident or non-resident service, and, if resident, whether accommodation must be provided rent-free or not. The cost of a resident caretaker or porter will normally be higher than for a non-resident.
- heating, cleaning, garden maintenance, alarm systems – again, the landlord's obligation to provide the service and the leaseholder's obligation to pay are usually referred to in the lease. In some cases this may be done simply by a reference to the landlord's obligations, as set out in one of the schedules to the lease.

The general principle of a lease is that the landlord is not obliged to provide any service which is not covered by the lease, and the leaseholder is not responsible for payment where there is no specific obligation in the lease.

Where any doubt arises, reference should be made to the wording of the lease.

The requirement for reasonableness

Usually the lease simply provides for the landlord to recover his outlay for managing the services at the building from the leaseholders. The landlord is reimbursed for his expenditure, but is not given the opportunity to make a profit from the management. Where the landlord wishes financial reward for his expertise or agency, he must make sure the lease makes the necessary provision.

The law also expects the landlord to behave in a 'reasonable' manner with regard to his expenditure on the building. The landlord has a long-term interest in maintaining the condition and the value of his investment. The leaseholder may have a much shorter-term view, only intending to remain in the unit for a few years. These different viewpoints often lead to dispute.

A landlord is not usually bound to minimise the costs. However, the law states that service charges must be 'reasonable'.

Application to the Leasehold Valuation Tribunal

There is no statutory definition of what is 'reasonable'. Both landlords and leaseholders have a right to ask a Leasehold Valuation Tribunal (LVT) whether a charge, or a proposed charge, is reasonable. The Tribunal will consider the evidence presented and then make a determination on the matter.

An application may be made to the LVT whether or not the charge has already been paid. It can be in respect of costs already incurred for works, services or other charges or in respect of an estimate or budget. However, if the charges have been agreed by the parties or determined by a court or by post-dispute arbitration, no application to an LVT can be made.

The questions the LVT will ask are:

- was it, or would it be, in the circumstances, reasonable for the costs to be incurred and, if so:
  - were or will the works or services provided be to a reasonable standard?
  - what are the landlord's procedures for assessing and controlling the costs, including supervision?

The parties may present evidence on any of these matters and question the evidence given by the other party.

The LVT may also determine:

- whether the service charge is payable under the lease;
- to whom;
- the date on which it may be payable; and
- the manner of payment (for example, if it may be paid by direct debit or standing order).

Full details of the procedures and requirements for applying to the LVT are set out in our leaflets *Application to the Leasehold Valuation Tribunal – Service Charges* and *The LVT Users' Guide*.

The law

The Landlord and Tenant Act 1985 sets out the basic ground rules for service charges, defining what is considered a service charge, setting out requirements for reasonableness and for prior consultation of leaseholders.

Section 18 (1) of the Act (as amended by the Commonhold and Leasehold Reform Act 2002) defines a service charge as '**an amount payable by a tenant of a dwelling as part of or in addition to the rent**

a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management; and

b) the whole or part of which varies or may vary according to the relevant costs.'

The items included in (a) are those required to be reasonable and on which a LVT may make a determination of reasonableness.

Note that the provision does not overrule the lease. The item or service must still be included in the lease in order to be chargeable.

Demands for service charges

All demands for service charges must be in writing and must be accompanied by a summary of the leaseholders' obligations and statutory rights relating to service charges. *The summary is prescribed by the Government and a copy is included in the back pocket of this booklet.* '

Where the Notice of Demand does not comply with the statutory requirement, the leaseholder is entitled to withhold the payment demanded until such times as a proper notice is served.

If the leaseholder has withheld the charge under his legal right to do so, the landlord cannot attempt to take any action to enforce payment. Any provision in the lease relating to non-payment by the leaseholder will be ineffective until the landlord complies with the requirements and serves a valid notice.

Normally the lease will provide for the service charges to be demanded in advance, but occasions will arise when the demands are issued after completion of the works or provision of the service. In these cases a statutory time limit applies: **the landlord must issue the demand within 18 months of his incurring the cost**. If the demand is provided later than this, the landlord cannot recover the costs at all, unless a notice is served during the 18 months stating that costs have been incurred and that the tenant will be required to contribute to them by payment of a service charge.

Administration charges

The 2002 Act introduced controls on administration charges. These are defined as '**an amount payable by a tenant as part of or in addition to rent, which is payable directly or indirectly for:**

– the grant of approvals under the lease or applications for such approvals;

– the provision of information or documents by or on behalf of the landlord;

– costs arising from non-payment of a sum due to the landlord;

– costs arising in connection with a breach (or alleged breach) of the lease.'

Any administration charge levied by the landlord must be reasonable in order for the landlord to recover the charge.

The leaseholder has two courses of remedy, depending on whether the charge is variable or not:

- where the charge is variable, the leaseholder may make an application to the LVT for a determination of reasonableness, as with service charges. A variable administrative charge is one where the amount of the charge is not specified in the lease or calculated according to a formula specified in the lease.
- where the charge is fixed by the lease or a formula in the lease, the leaseholder may apply to the LVT to vary the lease, on the grounds that the amount specified is unreasonable or that the formula is unreasonable. If the LVT is satisfied, it may make an order to vary the terms of the lease, to substitute a reasonable amount or to amend the formula, either as requested by the leaseholder or as the Tribunal finds appropriate.

Designated trust accounts

In collecting service charges or in holding sinking funds or reserve accounts, the landlord is put in a position of holding the leaseholders' money for purposes of future expenditure to their benefit – in other words, acting as trustee for the funds. The law requires that the monies be held in an account designated as a trust account for the building or estate to which it relates and that no other funds are to be held in that account. The leaseholders have the right to information relating to the account.

Note that local authorities and registered housing associations are exempt from this requirement.

There may be one or more accounts, but they must be confined to the flats contributing to the same service charge. This will be as set out in the lease, the obligations and respective contributions of the leaseholders and the landlord's obligations in respect of the maintenance and upkeep of the building, group of buildings or estate.

This is best illustrated by example:

Example 1

A house converted into five flats. The lease refers to the upkeep of the building and the five service charge contributions are each 20% of the total. In this case, the service charge relates only to the building and a separate designated trust account must be established for that building only.

Example 2

An estate of five separate blocks each of 20 flats, sharing parking and garden areas. The lease refers to the upkeep of the whole estate and the shared amenities. The service charge for each flat is 1% of the total. In this case, the service charge relates to the whole estate of 100 flats and the designated trust account will be in respect of the estate, not each separate block.

An individual leaseholder (or the secretary of a recognised tenants' association) may ask in writing to inspect and take copies of the bank statements and any other documents, in order to verify that the landlord is complying with the statutory requirements. The landlord has 21 days to comply with the request. Thus the leaseholder can be clear where his service charge monies are being held and, from an inspection of the accounts, confirm that the correct sums are in place.

Where the landlord fails to comply with the requirement to hold the funds in a separate designated trust account there are two consequences:

- **withholding of service charges** – if a leaseholder has reasonable grounds to believe that the landlord is not complying with the law then he has a legal right to withhold payment of his service

charge and the landlord cannot take any action under the provisions of the lease for recovery.

- **prosecution and conviction** – failure to comply is an offence subject to summary conviction and a fine. Where the landlord is a company or other corporate body the prosecution can include the directors, managers or secretary of the company or the company's agent.

Regular statements of account

The landlord must provide a statement of account in respect of each service charge period to each service charge payer. Most service charge periods are 12 months, so that landlord has to provide an annual summary setting out the service charge position for the leaseholder's flat and the block or estate as a whole. This must be provided within six months of the end of the accounting period. For example, if the service charge year ends on 31st March, the statement must be issued to the leaseholder before 30th September.

The form and content of the statement are governed by regulations. The statement must be set out as a balance sheet and must show:

- the service charge for the flat, and the block or estate, for the period;
- all the costs which make up the charge;
- the amount by which the leaseholder of the flat and the leaseholders of the block or estate are in credit both at the beginning and end of the period.

A qualified accountant must certify that the statement is a fair picture of the service charge position and that it is sufficiently supported by receipts, accounts and other documents. A statement of the leaseholder's obligations and legal rights relating to service charges must also be included (this is prescribed by regulations).

The leaseholder does not need to request the statement – it must be supplied as a matter of course by the landlord. If it is not provided, either in time or substantially complying with the correct form, the consequences are as for the designated trust account:

- **withholding of service charges** – the leaseholder has a statutory right to withhold payment of his service charge until the landlord complies. The amount to be withheld is an amount equivalent to the service charge paid during the period to which the statement should relate, plus the amount by which the leaseholder was in credit at the beginning of that period.

  The leaseholder must, of course, pay the withheld charge as soon as the landlord complies fully with the requirement. If the landlord has good reason for non-compliance, he can apply to the LVT. If the Tribunal is satisfied that the landlord has a reasonable excuse, it may require the leaseholder to pay the outstanding charge.
- **prosecution and conviction** – failure to comply is an offence subject to summary conviction and a fine. *Note that councils and other public authorities are exempt from such prosecution.*

Rights to further information

As well as receiving the summary, the leaseholder has the right to inspect documents relating to his charge, either as a follow-up to provide more detail on the summary or for other purposes. **Within a period of six months from receipt of the summary**, the service charge payer (or the secretary of a recognised tenants' association) may write to the landlord requiring him to:

- allow access to and the inspection of the accounts, receipts and any other documents relevant to the service charge information in the summary and to provide facilities for them to be copied; or
- send copies of all the relevant documents or provide facilities for them to be collected, as required.

If an inspection is requested, facilities must be provided within 21 days of the request. If the landlord has not provided the summary, the six-month limit runs from the date on which the summary is eventually provided.

There are further rights of investigation of service charges and management provided by the right to a management audit under the Leasehold Reform Act 1993 and the right to appoint a surveyor under the Housing Act 1996. Full details of those rights are set out in our leaflet 'Management Audit and the Appointment of a Surveyor'.

Consultation

The law requires that the leaseholder must be consulted before the landlord carries out works above a certain value or enters into a long-term agreement for the provision of services.

Consultation on major works

Where a landlord proposes to carry out works of repair, maintenance or improvement which would cost an individual service charge payer more than £250, he must, before proceeding, **formally consult** all those expected to contribute to the cost. This has the dual effect of giving notice of his intentions to the leaseholders and seeking their view on the proposed works.

- The landlord must **serve a notice** on each leaseholder (and on the secretary of the recognised tenants' association, if there is one), which:
  - describes in general terms the proposed works or specifies where a description of the proposed works can be inspected and the hours during which it can be inspected. The inspection facilities must be made available free of charge, at a specified time and place. If, at that time and place, there are no facilities for copying, then the landlord must, on request, provide a copy of the description;
  - identifies the persons the landlord has asked, or proposes to ask, for an estimate of the costs;
  - invites observations in writing and states where the observation should be sent;
  - invites the leaseholder (and the recognised tenants' association) to nominate a person from whom the landlord should try to obtain an estimate.
- The leaseholder (and the tenants' association) has **a period of 30 days in which to send views to the landlord** and, if they choose, to nominate an alternative contractor of their choice.
- If **more than one nomination of an alternative contractor** is made, then the landlord must try to obtain an estimate from:
  (a) the person who received the most nominations; or
  (b) if two or more people received the same number of nominations, then he can seek an estimate from any one of these nominees;
  (c) if neither (a) or (b) applies, then he must obtain an estimate from any nominee.

- After this, **the landlord must supply at least two estimates for the work**; alternatively he may make the estimates available for inspection by the leaseholders and the secretary of the recognised tenants' association. One of the estimates must be from a contractor wholly unconnected with the landlord, that is, not an associated or subsidiary company or one in the ownership of the landlord. Where the leaseholders or the association has nominated a contractor, the landlord must try to obtain an estimate from that contractor and must include this in the estimates submitted or made available to the leaseholders.

  Again, he must **invite observations.**

- The landlord must **'have regard to' the observations** he has received. This does not mean he is obliged to follow or act on the comments, but, if challenged later at the LVT on the reasonableness of the costs, he will need to show that he paid regard to observations or provide justification of why he did not.

- **If any leaseholder, or the association, made any observations or nominated an alternative contractor**, then, as soon as reasonably practicable after entering into the contract, **the landlord must serve a further notice** on all previous recipients stating his reasons for awarding the contract; or, instead of serving notice, he can specify the place and hours at which a statement of those reasons may be inspected. Again, this can be referred to in any dispute before an LVT.

- In cases where the **works are considered urgent**, for example a leaking roof or a dangerous structure, or in other cases where the landlord wishes to proceed quickly, the landlord may apply to the LVT for an order to dispense with the consultation procedure. In such a case, the LVT will notify all service charge payers of the proposal.

If the landlord fails to carry out the consultation process in the correct form and has not sought a dispensation from the LVT, he will be unable to recover the cost of the works from the leaseholders beyond the statutory limit of £250 per leaseholder.

Consultation on long-term agreements

Where the landlord proposes to let a contract for the provision of services for a period of more than 12 months, and the apportioned cost to any individual leaseholder is £100 a year or more, he must also consult the service charge payers before proceeding.

The contract could be, for example, for maintenance of the lift, a door-entry system or an alarm system in a retirement scheme, for window or other cleaning, for garden maintenance or simply for supplies of materials – ie, any contract which will produce a charge upon the leaseholders. (The procedure also relates to long-term contracts for maintenance or building works and this is considered separately below. However, contracts of employment are exempt from the consultation procedure.)

- The process and timescale are similar to those for major works. The landlord must **serve a notice** on each leaseholder (and on the secretary of the recognised tenants' association if one exists) which:

  – describes in general terms the proposed arrangement or specifies the place and hours where a description of the proposed agreement can be inspected. If facilities for making copies are not made available, on request and free of charge, the landlord must provide a copy of the description;

  – identifies the proposed contractor, if known at this stage;

– **invites observations** and states where the observations should be sent;

– invites the leaseholder, or the association, to nominate a person from whom the landlord should try to obtain an estimate.

- The **time period** for this, as for major works, **is 30 days**. The landlord shall, after considering the leaseholders' or association's observations, proceed to obtain estimates from his chosen contractors. **If a leaseholder or the association nominates an alternative contractor, the landlord must try to obtain an estimate from that contractor.**
- He must then **serve a further notice** on the leaseholders or the association setting out the estimates (as for major works), but in this case must also include a statement which:

  – identifies the proposed contractor;

  – identifies any connection between the contractor and the landlord;

  – where reasonably practicable, sets out the estimate of cost to the service charge payer. If that is not possible, then an estimate for the cost as it relates to the building or other relevant premises must be set out;

  – where the proposed agreement relates to the appointment of a managing agent, the statement must indicate whether the agent is a member of a professional body or trade association (for example, RICS (Royal Institution of Chartered Surveyors), ARMA (Association of Residential Managing Agents) or ARHM (Association of Retirement Housing Managers) and whether he subscribes to a code of practice or voluntary accreditation scheme.

- Again, the notice must invite observations and state the address and timescale (minimum 30 days). As with major works, the landlord must '**have regard to**' **the observations** and, where observations or nominations were received from the leaseholders or a recognised tenants association, give his reasons in writing for awarding the contract.

As with major works, the landlord will not be able to recover charges beyond the statutory amount (£100 per leaseholder per annum) if he fails to carry out the consultation procedure.

Works under long-term agreements

In some cases, the landlord may wish to enter into a long-term agreement for maintenance, repair and improvement works to the building and this requires a different consultation process. Such arrangements are becoming increasingly common where the landlord is a local authority or a registered social landlord. In the public sector the Government has encouraged Private Finance Initiatives, where the landlord contracts with a major company for a long period (often up to 30 years) to provide all works to an estate or to all the buildings in the landlord's control.

From the leaseholder's point of view, the position is very different from normal arrangements. The consultation simply takes place on the award of the long-term agreement with the contractor and not on the individual schemes of works. These will be carried out under the rates agreed in the contract.

The initial award of the long-term agreement will be subject to the procedures described above for long-term agreements. For any subsequent proposals for major works, the landlord must still serve

the major works consultation notice, but will not invite the nomination of an alternative contractor as one is already in place. The landlord is still obliged to 'have regard to' any observation received before proceeding.

EU implications for consultation

Some very large contracts may come within the rules for tendering within the European Union (the EU procurement rules), which require public advertisement in the Official Journal of the European Communities. In these cases the above procedures are a little different, with no right for the nomination of a contractor. The issue is too complicated to cover in a general note and, where the situation applies, individual advice should be sought from LEASE or a solicitor.

Insurance

Insurance by the landlord

Usually the lease provides for the landlord to arrange the insurance of the building (not the contents) and charge the cost as a service charge. This is the normal arrangement for buildings divided into flats, since it is important that there should be one single policy covering all risks to the building as a whole. As a service charge item, the cost of the insurance may be challenged before or verified by the LVT in the usual way.

The landlord may be required to supply details of the insurance to the leaseholders who pay for it. An individual leaseholder or the secretary of a recognised tenants' association can ask the landlord for a written summary, or for a copy of the policy.

The request must be made in writing and the landlord must comply within 21 days of receiving it.

- Where the request is for a **written** summary, the summary must show:
  - the sum for which the property is insured;
  - the name of the insurer;
  - the risks covered in the policy.

The landlord can only be required to provide the summary once in each insurance period (usually a year).

- Where the request is for **sight of** the policy, the landlord must provide reasonable access for inspection of the policy and any other relevant documents which provide evidence of payment, including receipts, and facilities for copying them. Alternatively, the request may be for the landlord to provide the copies of the policy and specified documents himself and to send then to the leaseholder or association or arrange for them to be collected.

The landlord may not charge for the inspection of the policy or documents, although he can charge for copying facilities or for providing the copies.

Insurance through the landlord's nominated insurer

Some leases, usually of houses, require the leaseholder to insure the property with an insurer nominated by the landlord. The purpose of such clauses is to ensure cover from a reputable company, but it has been abused by some landlords to force leaseholders to incur unreasonable costs, including agency commissions payable to the landlord. **The leaseholder has a right by law to place the insurance with his own**

choice of insurer, so long as he gives notice to the landlord and complies with certain requirements relating to the cover arranged.

The insurance arranged by the leaseholder must:

- be with an 'authorised insurer', which means an insurer operating within the requirements of the Financial Services and Markets Act 2000;
- cover the interest of the leaseholder and the landlord;
- provide cover to a sum not less than the amount required under the lease;
- cover all the risks which the lease requires be covered by insurance.

As long as these reasonable conditions are met, the leaseholder cannot be required to insure through the landlord's nominee; he may arrange his own insurance, but must serve a Notice of Cover on the landlord no later than 14 days after having placed the insurance (or within 14 days of any request by the landlord). The notice must be in the prescribed form and must specify:

– the name of the insurer;

– the risks covered by the policy;

– the amount and period of the cover.

A sample Notice of Cover is included in the back pocket of this booklet.

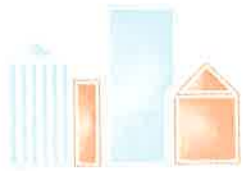
Service charges: conclusions

It is the central principle of service charges, and perhaps the cause of much of the ill feeling and dispute which often arise, that it is the landlord who takes the decisions as to how to commit the expenditure of the leaseholders' money. This applies in all situations where flats are centrally managed and applies equally where the leaseholders themselves manage their building.

However, legislation has provided protection to the service charge payer and imposed rigorous obligations upon the provider:

- charges must be reasonable and may be challenged at the LVT;
- service charge payers must be consulted before the landlord commences qualifying major works or enters into a long-term contract;
- demands for payment must be within time limits and must include a summary of rights and obligations;
- service charge funds must be held in a designated trust account and the service charge payers have rights to information;
- the landlord must account for all expenditure through an annual summary and leaseholders have rights to inspection of the accounts;
- service charge payers have a right to withhold payments where the landlord fails to meet his obligations regarding statements of account or designated trust accounts.

Ground rent



Because leasehold is a tenancy, it usually is subject to the payment of a rent (usually nominal) to the landlord, theoretically for the use of the ground on which the building stands. The payment of ground rent (as with any rent) is specified by the lease and should be paid on the due date. Although it is the leaseholder's responsibility to pay the rent, this must be subject to prior notification from the landlord. The rent cannot be legally recovered by the landlord unless he has first asked for it.

Notices for payment of ground rent (demands)

The leaseholder is not liable to pay the ground rent unless the landlord has demanded it. The demand must be in the prescribed form and must specify:

- the amount of the rent due;
- the date in advance on which the leaseholder is liable to pay it, or, if the demand is sent after the due date, the date on which it would have been payable under the terms of the lease.

The Notice of Demand must include a summary of the leaseholder's legal rights and obligations. The date specified for payment must be no less than 30 days but no more than 60 days after date of service of the notice. It may be sent by post to the address of the house or flat to which it relates, unless the leaseholder has previously notified the landlord of an alternative address.

The landlord cannot begin any legal steps for recovery of the rent, including action for forfeiture and possession, unless he has previously served the demand in the correct format, given the correct period of notice and the leaseholder has failed to respond.

Forfeiture and possession

The final sanction for a landlord faced with a leaseholder in breach of his lease due to the failure to pay the service charges or ground rent is to take steps to forfeit the lease and to repossess the house or flat. This is a right in law, but it is not possible to obtain possession without a court order. The process is commenced, generally, by the service of a notice under Section 146 of the Law of Property Act 1925, the Notice of Seeking Possession.

In practice, very few landlords enforce the procedures up to the point of their gaining possession of the house or flat, but they serve the s146 Notice as a means of enforcing a payment of arrears, or to correct a breach of a covenant of the lease. The misuse of the process in some instances has led to a significant revision of the procedures. The landlord has to prove the arrears or breach of covenant before he can serve a s146 Notice. There are also controls on the use of forfeiture to recover very small sums.

The landlord cannot serve a s146 Notice unless:

- the leaseholder has admitted arrears or the breach; or
- the breach has been determined by the Leasehold Valuation Tribunal, a court or arbitration.

If the landlord serves a s146 Notice without the leaseholder's admission or a determination by the LVT, it is simply not valid and of no effect.

Action for breach of covenant

Where the landlord believes or considers that the leaseholder has committed a breach of the lease, for example, by unauthorised sub-letting, by causing a nuisance to others, or by carrying out unauthorised alterations, he must first advise the leaseholder of his suspicions and ask the leaseholder to agree that the breach occurred.

If the leaseholder agrees, then it would be reasonable for him also to agree to remedy the breach. But, if this cannot be achieved, once the leaseholder has admitted the breach, the landlord can proceed with service of the s146 Notice. The leaseholder then has the option of either complying or arguing his case before the court, at the risk of losing the dwelling.

If the leaseholder does not admit the breach, then the landlord may apply to the local LVT for a hearing to determine the facts. The landlord can only serve his s146 Notice if the LVT rules that the breach has occurred.

The s146 Notice may be served no sooner than 14 days after the final determination; this is to provide the leaseholder with a reasonable period to rectify the situation. The date of the final determination is not the date of the LVT decision, but the date of the conclusion of any appeal or the end of the period in which an appeal could have been made.

Sometimes there will be a clause in the lease which requires that all disputes must go to arbitration. In that the LVT is unable to hear cases where the parties have agreed to arbitration, such a clause would prevent any application to the LVT. However, under the 2002 Act, such clauses are considered void and of no effect.

Action for service charge arrears

This follows much the same procedure as for breach of covenant, but there is an additional protection for the leaseholder, namely the challenge to the reasonableness of the charges.

In this case the leaseholder must agree, or the LVT determine, not only that there are arrears owing, but also that the amount is reasonable. The leaseholder may be prepared to admit to the arrears, that there are unpaid service charges, but not to admit that the amount claimed by the landlord is reasonable. Forfeiture cannot be commenced unless or until it has been admitted or determined that there has been a breach through non-payment **and** that the amount due is reasonable.

Therefore the landlord's task in taking action for service charge arrears is greater than for a breach of some other covenant. If the leaseholder will not admit the charge or its reasonableness, then the landlord must apply to the LVT for a determination of reasonableness and be prepared to produce evidence to substantiate his claim. The leaseholder will have full opportunity to challenge the charge. The LVT must determine both that arrears are payable **and** the amount of those arrears. The landlord's case for recovery of possession may only be based on the sum determined by the LVT.

The leaseholder has a period of 14 days from the date of the final determination by the LVT to pay the determined sum. After that the landlord may commence the forfeiture procedure by serving an s146 Notice.

No forfeiture notice for small amounts

In addition to the above, the landlord may not serve a forfeiture notice where the sum of money claimed is below a certain limit or has been outstanding for less than a specified term.

These limits are set by regulation and at present this requires that forfeiture may not be commenced in respect of arrears of rent, service charges, administration charges (or a combination of these) **unless the sum exceeds £350.**

However, this cannot be a licence for leaseholders to continually withhold sums to this level and the landlord may take action on sums below the prescribed level if they have been **outstanding for a period of more than three years.**

In most cases it will be simpler, and more effective, for the landlord to pursue alternative courses of action for such sums, for example, to instigate recovery procedures through the Small Claims Court, rather than the heavier-handed route of forfeiture.

Useful addresses

Leasehold Valuation Tribunals

London
10 Alfred Place, London WC1E 7LR
020 7446 7700

Northern
20th Floor, Sunley Towers, Picadilly Plaza, Manchester M1 4BE
0845 100 2614

Southern
1st Floor, Midland House, 1 Market Avenue, Chichester PO19 1JU
0845 100 2617

Midlands
2nd Floor, East Wing, Ladywood House, 45-46 Stephenson Street, Birmingham B2 4DH
0845 100 2615

Eastern
Great Eastern House, Tenison Road, Cambridge CB1 2TR
0845 100 2616

Wales
1st Floor, West Wing, Southgate House, Wood Street, Cardiff CF1 1EW
029 2023 1687

Other useful addresses

Association of Residential Managing Agents
178 Battersea Park Road, SW11 4ND
020 7978 2607

Association of Retirement Housing Managers
3rd Floor, 89 Albert Embankment, London SE1 7TP
020 7820 1839

The Royal Institution of Chartered Surveyors
12 Great George Street, Parliament Square, London SW1P 3AD
020 7222 7000

The Federation of Private Residents' Associations
Enterprise House, 113-115 George Lane, South Woodford, London E18 1AB
020 8530 8464

LEASE

THE LEASEHOLD
ADVISORY SERVICE

31 Worship Street, London EC2A 2DX
Telephone: 020 7374 5380 or local rate on 0845 345 1993 Fax: 020 7374 5380
Email: info@lease-advice.org Website: www.lease-advice.org