

Leasehold Properties - Client Guide

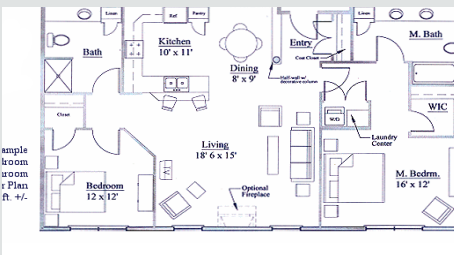
Why are flats leasehold? | Ground rents | Lease extensions

Check the lease plan

Your conveyancer will send you the lease plan to check. It is very important you make sure that it is correct, and that the boundaries, the position of any parking spaces, paths, balconies, bin stores and communal areas are correctly shown on the plan. Often the lease plans prepared by builders do not reflect what they have actually built, or what you may have been told by the sales office.

Even if the flat is not a new-build, it may be that the previous owner did not check the lease plan was correct when they bought it, and so you need to check it yourself.

You must tell your conveyancer if something doesn't seem quite right. You cannot rely on the Land Registry plan being accurate, or assume that someone has checked this before. In any case, the Land Registry practice is now to simply refer to the entire building rather than individual lease plans.



Management companies

Sometimes you will have shares in the Management Company for your flat, and you may be a Director. If so, it is very important you make sure that the company records are appropriately filed each year. If not, the company may be struck off Companies Registry. This may make it impossible to sell your flat until it has been reconstituted.

If the Management Company owns the freehold, this may be very expensive, as the freehold will have vested in the Crown. Failing to deal with the management of or maintenance of the building properly may make the flats unsaleable.



What is Leasehold Property?

There are two ways you can hold land, freehold and leasehold. Most houses are freehold, and virtually all flats are leasehold. The basic difference is that, if you buy a freehold then you own it indefinitely. If you have a leasehold, then eventually the landlord gets the property back at the end of the lease. Lease terms for residential property are usually at least 80 years, and there are statutory rights for most tenants to renew their leases, so this isn't usually a problem. There is nothing wrong with owning leasehold property, as long as the lease has been drafted properly. Your conveyancer will check the terms of the lease as part of the conveyancing process.

Why do flats need be leasehold?

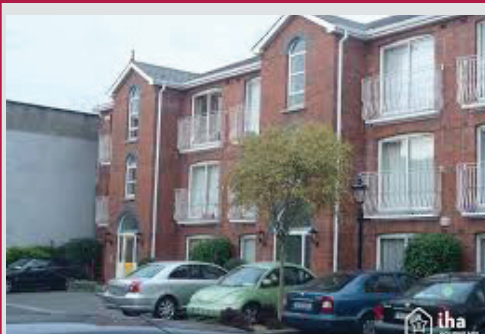
The reason that flats are sold leasehold is so that the repairing obligations for the structure of the building can always be enforced between the current landlord and the current tenant. In contrast, positive freehold repairing obligations cannot be enforced against successor freehold owners.

This is a problem with land law that has remained unresolved for a very long time. With leasehold property, the positive and negative obligations can always be enforced between the current landlord and the current tenant.

Let's assume that there are two freehold flats, Steve has just bought the freehold of his first-floor flat and the roof, and John has just bought the downstairs freehold flat and the foundations. If John doesn't repair the roof and guttering, damp and flooding could ruin John's flat. However, because 'positive' freehold covenants are not enforceable against the other flat owner, John has no legal way of making Steve maintain the roof or gutters.

Similarly, if a large crack formed in the ground floor flat, meaning that the first-floor flat became dangerous to live in, there would be nothing Steve could do to make John comply with his positive freehold covenants to maintain his flat.





Why are leases so complex?

Landlords want to make sure all flat owners will keep their property well maintained, and that they will not use it in a way that causes a nuisance or interference with other flat owners. So the lease will contain many pages of 'Tenant's Covenants'.

You must read these carefully and obey them. They will restrict your ability to make alterations to the property, and also what you do, and how you use it. If a neighbouring flat owner breaches their covenants, you can report them to the landlord.

Leases are not standardised, and they can vary a great deal between buildings.

Leasehold conveyancing is more complicated than freehold conveyancing, and may cost more because of this.

Lease Extensions

You can apply for a new lease with a 90 year extension of the current lease length.

Currently you have to have owned the flat for 2 years but this is to be scrapped under proposed new legislation.

The new lease rent will be a nominal or 'peppercorn' rent rather than the current rent under the lease. This can solve problems with high or escalating ground rents on existing leases.

There are many significant changes in the law in progress to make lease extension cheaper and simpler. Your conveyancer can tell you what the current legal position is, and you may also need valuation advice from a surveyor to help you decide what you should do regarding your lease.

Under the reforms of the law, new leases of flats can only have a peppercorn ground rent and new leasehold houses are now banned.

However, if the flats had been leasehold, with a common landlord owning the structure, both John and Steve could force the landlord to repair the roof and walls, though they may have to accept that they would pay the cost of this through the service charge provisions in their respective leases.

Ground Rents

Most residential flat leases require the tenant to pay a small ground rent to the landlord. Sometimes this is a nominal rent of a few pounds a year, or what is known as a 'peppercorn' rent (meaning that no actual payment is needed). However, often the rent can be £150 or more a year, and can be subject to increase. This rental income creates a valuable investment for the landlord.

If the ground rent increases periodically, you have to check that it does not eventually rise to unacceptable amounts. For example if it starts at £200 and then doubles every 10 or 15 years, and the lease for 120 years, this could make the flat unsaleable, as the rent could rise to a million pounds a year.

Some landlords also use the terms of lease as a way of getting additional fees from tenants each time the tenant wants to sell, or make improvements to the property. The lease will also require the tenant to register notices of the sale of the lease with them. Landlords will charge for providing information about service charges and insurance to your buyer when you decide to sell. The government is currently proposing major reforms of the law in this area to make things fairer for tenants. Your conveyancer can advise you further on the current legal position.

Service Charges & Insurance

Most landlords arrange insurance for the structure of the building, and most leases contain a service charge provision, that allows the landlord to divide up the cost of insuring and maintaining the building between the tenants. There are statutory controls over how a landlord must go about asking for service charges, and if they do not follow these requirements, the service charge may be irrecoverable. For further information see the Lease Advice Service mentioned below.



The Leasehold Advice Service

You can find lots of helpful advice on the subjects mentioned in this note at the Leasehold Advisory Service online portal, found online at:

www.lease-advice.org

There are many advice guides, videos, podcasts and leaflets to download, that will give you more information, or you can ask your conveyancer.

If you are thinking of extending your lease, there is an online calculator that will give you an indication of the price of a new lease, plus other helpful guides to the process.

