

Leasehold reform: announcements in the King's speech

For some time, pressure has been increasing on Parliament to reform the unpopular and cumbersome system of leasehold ownership of residential property. Significant legislation has already been passed and the King's speech on the 7th November 2023 further addressed these problems and announced more improvements in the law. The Leasehold and Freehold Reform Bill is now going through Parliament and is expected to become law in 2024.

Background

In contrast to freehold property, which is owned outright, leasehold ownership is subject to the rights of the freehold owner of the same property. The freehold owner makes an agreement - a lease – giving the leaseholder exclusive occupation provided he or she keeps to the agreed terms including for example payment of rent, keeping the property in repair, payment of a service charge to cover any additional facilities provided by the freeholder plus other detailed stipulations.

“Long” leases are in effect very similar to freehold in that a market value payment is made when an existing owner sells to a buyer and a buyer then resells to another buyer. Traditionally long leases have been 999 years, but there are also several (usually flats) which are for a shorter period such as 99 years.

Short leases (usually assured shorthold) are usually for a period a minimum period of 6 months which can be extended and do not have the degree of permanency which justifies a market value in the same way as long leases. The lease document however deals with rent, repair, service charges and other stipulations in the same way.

The rest of this article deals with long leases.

Service Charges

The Grenfell fire disaster highlighted one of the issues in long leases namely what could be reasonably charged to tenants within their service charges. Improvements to install safe cladding for high rise flats after Grenfell could, depending on the terms of the lease, be charged to the leaseholders in their service charges. The huge cost of this caused controversy, tenants feeling that they should not be made to pay for years of neglectful maintenance by freeholders. The Building Safety Act of 2022 addressed these issues. The King's speech announced that further and stricter requirements for management companies will now limit service charges even more.

Escalating Ground Rents

Normally ground rents are a fairly nominal figure in long leases. Some leases however provide that ground rents rise according to a formula such as a percentage rise at specified periods. If ground rent falls into arrears the lease could then by a legal loophole fall within the law relating to short leases. The freeholder could then recover possession as for a short lease thereby eliminating the value of the leasehold and rendering it unsaleable. Again, this has been partly addressed in recent legislation and no new leases are allowed to have rising ground rents. The King's speech states that the new standard will be zero ground rent, but the details are awaited.

Extension of Term

Leases will need to be extended if for example a leaseholder has lived in a property with a 99 year lease for some years and comes to sell when the length of term left to run is less than mortgage

lenders are prepared to lend on for any new buyer of the property. Freeholders have usually required that their costs must be paid plus a premium for the new length of term and it has been the case that leaseholders must have lived in the property for at least two years before being able to apply. Some reforms have been made in 2022.

The King's speech has announced that the new standard for lease will be 990 years and the requirement to own for 2 years before applying for an extension will be abolished.

Delays in Conveyancing

The procedure for selling a leasehold is currently very cumbersome where sometimes more than one management company is responsible for different aspects of the leasehold obligations. Sellers of leasehold property may have to pay two lots of management costs for providing information to the new buyer. There can be delays in providing essential information and the administration and bureaucracy surrounding these issues is somewhat burdensome for buyers and sellers and delays their transactions significantly longer than freehold ones.

The King's speech has announced that freeholders and their management companies will be required to provide timely information to address this issue but again details are yet to be published.

Watch this Space

It is hoped that the new legislation will go through Parliament quickly and before any general election to enable the further necessary improvements in leasehold law to be actioned in 2024.

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