

GUIDE TO BUYING A LEASEHOLD FLAT

Due to the complexities of English law it is essential that the title to a flat/apartment/maisonette is leasehold and not freehold. The reason for this is that as the property is part of a larger building it is essential that the flat owner is able to enforce obligations to maintain and insure the building as a whole against present and future owners of the remainder of the building. If the title is freehold it is not possible to enforce those obligations against future owners due to the absence of "privity of contract" between the relevant parties. However as a lease is a contract this difficulty does not arise.

A lease will be for a specified term of years and at the outset it is important that you establish exactly how long is left of the original term granted as this is relevant to the present and future marketability of the property. In short as the term of the lease shortens the value of a property and its marketability will diminish. The attitude of the lending industry to the length of residuary terms tends to set the benchmark in that respect. At the present time a lender is likely to expect a residuary term that is no less than 40 years plus the term of the loan required by a borrower. You should bear in mind that not only will this apply to your borrowing requirements but it will also probably be the requirement that your own buyer has to meet when you come to sell in years to come. So you should try and acquire a residuary term that will still be good and marketable when you come to sell. This may mean that either yourself or (preferably) the current Seller negotiates an extension to the term of the lease at this time – the Landlord (freeholder/lessor) will undoubtedly require a payment for this and the price will rise at the term shortens.

It is normal for a ground rent to be reserved when a lease is granted. This may be for a fixed amount that cannot change during the term of the lease or it may be subject to review periodically. Modern leases often contain a provision whereby the amount of the rent payable automatically escalates – for example every 25 years. It is important that the rent is paid promptly when due and that payments are up to date when you purchase, otherwise the Landlord may be entitled to claim forfeiture of the lease and claim possession of the property.

It is important to establish who is responsible for the maintenance repair and insurance of the various parts of the building.

- Sometimes the individual flat owners are responsible for their own parts – if this is the case it is important that the lease contains an "enforcement covenant" on the part of the Landlord whereby you can require that the Landlord will at your request force the other flat owners to maintain, repair and insure their parts of the building. In this instance you may wish to take out contingency insurance in case one of the other flat owners fails to insure their part of the building.
- Alternatively the Landlord may undertake these responsibilities but then seek to recover a proportion of the cost from you through a service charge.
- Another possibility is that the Landlord has passed the responsibility to a commercial management company which provides this service as a business proposition. Such firms will of course be run on a profit basis but are generally likely to honour their obligations. A service charge will be made.
- Finally the development may have been set up on the basis that all of the flat owners are collectively responsible for the whole of the building either through joint ownership of the building or by owning through shares in a tenants management company. A well run tenants company will collect a regular service charge. Unless limited by guarantee a share will be transferable to you on completion.

If a service charge is payable you should see at least the last three years accounts and should check the budget for the current year. You should consider whether there are funds available for any large anticipated or unexpected expenditure – a sinking fund may be built up over a period of time in anticipation of large long term expense arising. Checks should be made to ensure that all monies due are paid up to date and a retention may have to be negotiated to cover any future demand for service charge up to the date of completion when the final accounts for the current year are issued and adjusted and/or where accounts for previous years have not been finalised. A check should be made to see if there are any large items of expenditure envisaged in the near future.

You should ensure that you are aware of and are prepared to comply with all covenants and regulations imposed under the lease or any superior Headlease under which the Landlord holds ownership. Structural alterations or additions may be prohibited absolutely or at the very least only permitted with the Landlords prior consent. Assignment (sale) of the lease may require payment of a fee to the Landlord and there will certainly be fees to pay after completion when the Landlord and/ or Management are asked to note the change in ownership together with details of your mortgage. Beware any absolute restriction preventing a sub-letting in view of the current "buy to let" culture as this may adversely affect marketability. Regulations may also prevent you from keeping pets and can cover a wide range of subjects.

The lease must be checked to ensure that all necessary easements are in place. These include rights of way over communal areas, rights of passage of services, rights of support and of course rights of entry to maintain and repair certain of these rights.

Buying a leasehold flat is a complicated undertaking as failing to address these and other matters can lead to unexpected problems after completion. You should always instruct an experienced skilled lawyer to act for you in respect of such a transaction.

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