

LEASEHOLD REFORM – THE MAIN PROVISIONS

EXECUTIVE SUMMARY

Part 1 of the Commonhold and Leasehold Reform Act 2002 (the Act) introduces a new form of land ownership in England and Wales. The Act, together with the Commonhold Regulations 2004 made under it, provides the legal framework for commonhold and came into effect on 27 September 2004.

Commonhold is a new way of owning interdependent freehold properties, such as flats, shops and offices. It is an alternative to long leasehold ownership.

A commonhold consists of individually owned but interdependent freehold properties (known as units) and common parts. In a block of flats, for example, each flat would typically be a unit and the remainder, including the structure and exterior of the block, the stairs, hallway and grounds, would be common parts. Each unit is owned by a unit-holder. The common parts are owned and managed by a commonhold association, which is a limited company, of which only the unit-holders may be members. The members will have direct ownership of the unit they own and an interest in the ownership and management of the common parts through membership of the commonhold association.

The commonhold is managed by the commonhold association in accordance with the rules of the commonhold community statement (CCS). The CCS includes provisions prescribed by the Commonhold Regulations 2004 and local rules specific to the circumstances of each commonhold.

A commonhold can only be created out of registered land and must itself be registered at Land Registry. Applications for registration must be made in accordance with the Act and The Commonhold (Land Registration) Rules 2004.

PART II OF THE COMMONHOLD & LEASEHOLD REFORM ACT 2002

Commonhold and wide-ranging changes in leasehold law were introduced in England and Wales in the Commonhold and Leasehold Reform Act 2002. Although mainly concerned with residential properties, it also applies to commercial properties. Under a new form of tenure known as commonhold contained in Part I of the Act, individual flats and commercial properties will be owned individually with the common areas to be controlled collectively.

The far-reaching changes in leasehold law are contained in Part II of the Act. The Act has come into force in stages from July 2002 through a series of commencement orders and further regulations.

The reforms to the leasehold system in Part II of the Act provide leaseholders with new rights and enhances existing ones.

Chapter I gives leaseholders of flats the right to manage their block setting out the qualifying conditions for exercising the right and provides that eligible leaseholders must set up a qualifying company known as a RTM.

Chapter II amends provisions of the Leasehold Reform, Housing and Urban Development Act 1993 dealing with the right of leaseholders to buy collectively the freehold by simplifying the eligibility criteria. Abolishes the requirement that two thirds



of the leaseholders must participate and the low rent test. Amends the marriage valuation principles contained in the 1993 Act.

Chapter III concerns new leases for tenants of flats. Changes include the abolition of the low rent test and divides marriage value between landlord and leaseholder.

Chapter IV amends the provisions contained in the Leasehold Reform Act 1967 dealing with the rights of leaseholders of houses to buy freehold or extend lease reflecting the changes introduced in Chapters II and III.

Chapter V refers to changes in leasehold management contained in the Landlord and Tenant Act 1985. Key issues include:

Extends definition of service charge, the jurisdiction of leasehold valuation tribunals, changes in accounting of service charges, introduces the concept of 'administration charge' and the requirement that they must be reasonable and allowing leaseholders the right to challenge their liability to pay such charges and their reasonableness at a leasehold valuation tribunal. Amends Landlord and Tenant Act 1985 s20 extending the landlord's responsibility for consulting leaseholders before carrying out proposed works

Extends the right to apply to a LVT for the appointment of a new manager under the Landlord and Tenant Act 1987 Part II

Extends and clarifies the grounds on which application may be made to vary a lease under the Landlord and Tenant Act 1987 Part IV transferring jurisdiction for handling such applications from the county courts to the leasehold valuation tribunal
All demands for ground rent must be made by prescribed notice and introduces additional restrictions on the commencement of forfeiture proceedings.

These regulations, made under the Commonhold and Leasehold Reform Act 2002 Part I, make provision in England and Wales for land to be registered as a freehold estate in commonhold land. The regulations came into force on 27 September 2004.

The regulations contain provisions on the following:

- General
- Registration of freehold estate in land as a freehold estate in commonhold
- Contents of the commonhold community statement,
- Requirements for the name of the commonhold association,
- Operation of a commonhold
- Termination of a commonhold.

SECOND COMMONHOLD AND LEASEHOLD REFORM COMMENCEMENT ORDER (ENGLAND ONLY)

Second commonhold and leasehold reform commencement order
Commonhold and Leasehold Reform Act 2002 (Commencement No.2 and Savings)
(England) Order brings into force with effect from 30 September 2003 the following provisions of the Act:

- Gives leaseholders of blocks of flats in England the right to take over the management from their landlord subject to complying with certain qualifying rules (sections 71 to 113)



- The right to manage (RTM) will allow qualifying leaseholders to: have a greater deal of control over the level of service charges set (sections 150 and 155); appoint their own choice of managing agents (section 156); select their own insurers (section 157); have additional powers when working with their landlord even if they do not exercise the RTM
- Other provisions will strengthen leaseholders' rights against unreasonable charges levied under their lease (sections 158 and 159) and improve the way Leasehold Valuation Tribunals (LVTs) work to address disputes between leaseholders and landlords (sections 163 and 173 to 176)
- New consultation requirements on services charges will come into force on 31 October 2003. (section 151).

A separate commencement order introduces similar provisions in Wales.

WHO CAN HELP US?

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