



Guide to Leasehold Purchases



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Understanding FREEHOLD VS LEASEHOLD

What is a freehold property?

Purchasing a freehold property is recognised as having complete ownership over a property and the land it is on. Also known as 'fee simple', owning a freehold means that you will have complete responsibility for the property. This includes any building repairs that need to be done, insurance, and upkeep.

If you and your neighbours share a communal space, such as a garden or drive, you may also be required to contribute towards maintenance and repair costs.

Whether or not you can buy a freehold may change depending on the type of property. For example, houses are generally all freehold, but when it comes to a flat, the freehold is usually retained by the landlord, subject to the leases.

The landlord in these circumstances may sometimes be a company in which the tenants each have a share. This may be referred to as 'share of freehold' but it is more accurately described as owning a share in the company which owns the freehold. A limited company is often a more suitable vehicle for owning the freehold to a block of flats because transferring a share in the company to new owners is more straightforward than transferring the freehold title each time a flat changes hands.

Additionally, the maximum number of people who can be recorded as legally owning a property at the Land Registry (whether freehold or leasehold) is four.

What is a leasehold property?

Unlike freehold properties, purchasing a leasehold only gives you ownership of the property for a fixed amount of time, referred to as the term. The term will be contained within a written document known as a lease.

When the term runs out, ownership of the property is returned to the freeholder as they own the land. Because of this, the longer you own the property, the more its value drops as it gets closer to the expiry date. If the term remaining on the lease is too short, it may no longer be possible to get a mortgage on the property, making it very hard to sell.

If you would like to maintain ownership of a property or sell it to a new owner, you will need to extend the lease. This increases the overall property value and gives you rights over the property for a much longer period of time; however, it is quite an expensive process under current law. Most residential leases over the last century have been granted for either 99 or 125 years, but terms of 999 years are becoming more common, particularly as it is now illegal to grant a new lease subject to a ground rent. .



Leasehold PURCHASE INFORMATION

Termination of Lease

Please do note that a Lease can be terminated, prior to the end date of the Lease, for the following reasons;

- Failure to pay the ground rent
- Failure to comply with the obligations and covenants imposed on them, by the lease.

Options of the Leaseholder

Whilst the term of a lease is fixed, there are statutory rights which a leaseholder could use in certain circumstances;

- Subject to time limits, a leaseholder does have the right to extend the lease
- The leaseholder of a house has the right to buy the freehold
- The leaseholder of an individual flat, cannot by themselves, buy the freehold of the whole of the building. However, they and the other flats may jointly acquire the freehold of the building.



Ground Rent & Service Charges

The person owning a leasehold property will often be expected to comply with obligations including paying an annual ground rent, paying a service charge, and keeping the interior and / or exterior of the property in repair.

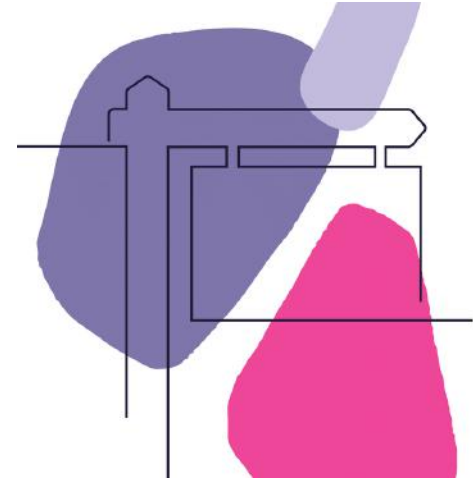
Ground rent – This is an annual sum paid to the freeholder. It can be a fixed amount or subject to review.

If the rent is fixed, then the freeholder cannot increase the amount, regardless of how long the lease term is for. In long leases, there is often a nominal rent or a 'peppercorn'. At present, there is no maximum limit to the amount that a landlord can seek to charge. If the lease provides for periodic reviews, then the rent can increase over time. Rent reviews in themselves are not necessarily an issue, but it is vital to check that rent does not double or increase, on regular occasions, as this will have an impact on affordability.

If a ground rent is unpaid or in arrears, then the freeholder has the right to enforce payment by either;

- Taking court action to recover the money
- Threatening to terminate the lease using the process known as forfeiture.

A leaseholder may apply to the court for relief against forfeiture, but success is not guaranteed and so maintaining rental payments is a necessity.



Housing ACT 1988 & GROUND RENT

Under this act, if the lease qualifies as an assured shorthold tenancy (AST) and there is unpaid ground rent, the freeholder can apply to terminate the lease and the court MUST grant the application and give possession back to the freeholder, without compensation to the tenant. This applies to even small sums of arrears.

Your lease will be considered an AST, if the following terms apply;

- The rent exceeds £250 per year, or £1000 in Greater London
- It is occupied by the leasehold as the principal home
- The leaseholder is an individual (not a company)

Service charges – A service charge is payable by a tenant as part of or in addition to rent. It is payable directly or indirectly for services, repairs, maintenance, improvements, or insurance. The landlord is obliged to ensure that costs are reasonable, however there is no legal definition for what is reasonable.

A leaseholder has the following rights;

- To receive a statement for costs incurred and to inspect landlord accounts
- To withhold service charges in certain circumstances and
- For a summary of their rights and obligations to accompany the tenant service charge demanded.

Failure to pay the service charge will be classed as a breach of covenant and the lease may contain a clause giving the landlord a right to forfeiture in the event of any breach, or to take action via the courts.

Rights of repair – Your lease may state that the right of repair falls to the leaseholder. This is often the case with leasehold houses. If the property falls into disrepair, this will be a breach of the terms of your lease and the remedies available to your landlord, will be to apply to the courts for damages or they can apply for forfeiture, as a result of the covenants being breached.

If your lease states that the landlord is bound to repair the property, which is commonly the case with blocks of flats, then you must allow access, providing notice has been given, so that the required works can be carried out. If the landlord does not comply with their obligations for repair, then you can apply to the courts to have it made a legal order for specific performance and / or you can apply for damages. Please note, the landlord is not liable to repair, until they have notice of the need for repair.

If the building consists of two or more flats, the court may appoint a manager to carry out the repairs. Alternatively, the court may be able to order the landlord to sell its interest to a person nominated by the tenants.

High RISE FLATS - HIGH RISK

Since the Grenfell Tower disaster, the law and relevant building regulations have changed. A high risk residential building is one with at least one dwelling which is at least 18 metres or more in height or, if less than 18 metres, has 7 or more storeys. However, cladding issues, rules and regulations will apply to a property that is more than 11 metres and / or more than 5 storeys high.

Please be aware that the legal documentation provided to us, MAY NOT state if the property is a high rise building and so we will rely solely on your own confirmation and that of your surveyor, in this regard.

PLEASE NOTE - If we do not hear from you with confirmation that your property is situated within a block that is over 5 storeys and / or over 11 metres in height, then we shall assume that it is not, and we will not make any further investigations in this regard. If your property is within a block, a considerable amount of further enquiries / documentation and due diligence will be required and so to not advise us, would cause you significant long-term issues, for which we will not accept any liability.



If purchasing a high-rise building, it is vital that you ask your surveyor to carry out a full survey and advise on the presence of any cladding and any composite materials used on the external walls. We would request sight of any survey report and its contents. If a survey is not carried out, we cannot advise you fully and all and any risk and associated costs and liability, will be entirely your own.

Where a high-rise building has cladding issues and / or other safety issues requiring work and repair, the initial person responsible for rectifying the problems will be the developers (in new developments). If the developer cannot be found or is unable to pay, the liability will fall to the landlord. However, the landlord will cover the costs of any work from service charges payable by the residents of the block, and large issues such as this, can amount to significant cost.

Where you are taking out a mortgage to finance your purchase, please note that both Nationwide and Barclays are unhappy to lend on high rise properties. As a result, their conditions cannot be met and it is likely that we will be unable to proceed on any high-rise matter, where these lenders are in place.



Remedial work on high rise properties

Legislation applies to remedial work, if a person's safety is at risk from fire or structural collapse. Remedial work does not include wear and tear or routine maintenance. Any remedial work can and is likely to be exceptionally costly. If a leaseholder (owner of the leasehold property) wishes to pass on the cost of any works, a leaseholder deed of certificate must be provided to the landlord to request this and seek a cap on any service charge contributions in that regard. This can be provided at any time but must be provided within 8 weeks of the landlord's request. If it is not, then any caps on service charge cannot be applied.

Within the certificate the leasehold must provide evidence that the property is their principal residence and produce office copies as evidence of the purchase price. (Your solicitor can assist you with this). A landlord must request the leaseholder certificate within 5 days of finding the relevant defect. Attached is a copy of the relevant certificate for use and reference.

A landlord must serve a certificate notifying any leaseholder of a defect once they become aware of one, notifying them of the intention to rectify the defect.

The EWS1 form & external cladding

Mortgage companies are reluctant to lend on flats in blocks which might have combustible cladding. On occasion, valuers are valuing flats at £0.00. As a result, the mortgage company will require a Form EWS1 certificate (External wall systems) to be produced, to confirm that the cladding is safe. This will last for five years.

Previously, this was only required for multi let premises of more than 18 metres in height or more than 6 storeys. However, case law in 2020 changed this rule and now it is suggested that some properties of less than 18 metres and which do not have external cladding, may require a certificate. Consequently, some lenders now require an EWS1 certificate for buildings with as few as three storeys and where brick is the building material.

EWS1 certificates can take some time to obtain and so we would advise that you enquire with the estate agent and / or seller directly and in advance, as to whether this is in place.

Energy performance certificates

New EPC rules for landlords mean that rental properties must have a minimum EPC rating of C by 2025 for new tenancies and by 2028 for all other tenancies.

Currently, landlords cannot let or continue to let properties with an EPC rating below E, unless they have a valid exemption. This applies to both residential and commercial premises. Landlords who breach the new EPC rules face civil and criminal penalties of up to £5,000 per property. EPCs are valid for ten years.

For further information in this regard, please visit [A guide to Energy Performance Certificates for the marketing, sale and let of dwellings - GOV.UK \(www.gov.uk\)](#)

Please note, we do not make any investigations into your financial situation, and so all obligations for rent and service charges are entirely your own. We will not accept any liability in the event that you fail to keep up with the costs of the property, together with any mortgage repayments.



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