

Buying or Selling Leasehold Properties

In the UK there are nearly 5 million leasehold properties, the majority of which are flats. Changes to leasehold ownership as a result of improvements in fire and building safety together with other variations in acceptable lease terms mean that various issues can arise when buying or selling leasehold property. The most common include:

Lease Term

The majority of lenders require that the unexpired lease term of the property is the mortgage term plus a number of years usually around 35/40 years. This means that if the lease term has less than 90 years left to run a requirement to extend the lease term should be considered.

Lease extensions will inevitably slow the conveyancing process as well as incur additional costs.

Ground Rent

Leases tend to either have a fixed amount for the annual ground rent or a ground rent which increases either by a set amount over a number of years or in line with the Retail Price Index (RPI).

Lenders currently are concerned about ground rents which look to double over a short amount of time (every 10 years or so) as they consider these to be high risk due to the financial obligations on the lessee or the fact that the increase cannot be readily ascertained at the point of purchase.

If the ground rent exceeds £250pa (or £1,000 in Greater London) this creates an issue under the Housing Act 1988 as it could create an Assured Shorthold Tenancy and if the ground rent payments were to fall 2 or more months into arrears, then there would be a mandatory ground for repossession by the Freeholder.

Deeds of Variation

Older leases tend not to be compliant with current mortgage lender requirements and therefore a situation can arise where a deed of variation is requested to vary the defect within the lease.

As any such deed of variation will require the consent and participation of the freeholder these can cause delays with the transaction as well as incur additional legal costs for both yourself and the freeholder.

Management Packs (LPE1)

It is a requirement of a leasehold transaction that the freeholder/managing agents provide a comprehensive pack referred to as a Leasehold Property Enquiries Form. This pack contains

all relevant information regarding the administration of the building which includes financial statements, accounts, buildings insurance as well as any other pertinent information which will assist the buyer in their purchase.

The cost of these packs range from £200-500 which is an additional fee that the seller needs to pay at the start of the transaction. For some properties a pack will be required from both the Management Company and the Freeholder which will require an additional fee.

Unfortunately, these packs tend to take some time to be collated and can therefore cause delays in the conveyancing process.

When you are purchasing a leasehold property, you must be aware that there inevitably means post completion fees which will be due to the freeholder/managing agents which can range from £200-£700. These fees are third party fees so we will only become aware of the exact fees once we have received the LPE1 from the buyer's solicitor. We will let you know these fees as soon as we can.

Building Safety Act 2022 (BSA)

Following the Grenfell Tower disaster, the Government introduced the Building Safety Act to improve safety in high rise buildings. The Act sets out who should remove defective cladding on tall buildings but also details who is responsible for repairs to historic defects with the structure of the building.

How Leaseholders qualify for protection from remediation costs under the terms of the Act?

1. Is the property a relevant building? Different protections will apply depending on the height and number of storeys of the Building.
2. Was the owner of the leasehold property a Qualifying Leaseholder on the 14th February 2022?
3. Have any relevant defects been identified (which relate to risk of fire and prevention of collapse of the building) in a building which was constructed between 28th June 1992 and 27th June 2022 or if the defect was created by works carried out during that time.

Am I a 'Qualifying Leaseholder'?

Those who owned their property on the 14th February 2022 and owned less than 3 properties.

1. If you (or the person who owned the property on the 14th February 2022) are not a qualifying leaseholder, you will not receive the same protections under the BSA. You may still be liable for significant remediation costs, if required, which may affect your ability to sell or remortgage the property.

Is my property a 'relevant building'?

For a building to be considered a relevant building it must meet all the following criteria:

1. It is at least 11m in height or 5 storeys whichever is reached first.
2. It contains at least 2 dwellings.
3. It is not a leaseholder owned building (collectively enfranchised buildings, where a management company made up of the leaseholders or other circumstances where the freehold is owned by one or more of the leaseholders).

Properties under 5 storeys

For leasehold properties under five storeys or less than 11m in height the responsibility for the repair and maintenance of the property will continue to be carried out in accordance with the terms of the lease with the leaseholders contributing their proportionate part of the costs.

Properties at least 11m or five storeys or more

The BSA provides financial protections against the cost of remediation works to buildings which fall under the relevant definitions contained within the Act.

As you will see the height of the building will have a significant impact on how the BSA applies to the property. The building height is measured from the ground level on the lowest side of the building to the floor of the top storey and does not include any floors below ground level. When considering the number of storeys of the building only the building above ground level is counted and the ground floor will be counted as a first storey.

Currently there is limited information available about the height of buildings. We are reliant on information from third parties as to this (i.e. surveyors, managing agents) however there are many buildings which have not yet been measured in accordance with criteria set out in the Act.

Properties exceeding 18m or 7 storeys in height

If buildings are over 18m or have at least 7 storeys these are considered to be high risk and are subject to more onerous regulation by the new Building Safety Regulator. High risk buildings will require an Accountable Person (who is an organisation or individual who has a legal obligation to repair any common parts of the building), this will usually be the freeholder or management company. The Accountable person will be responsible for managing the fire and structural safety of the higher risk building. They will be required to register the Building with and report any safety occurrences to the Building Safety Regulator.

During this transitional time TMT Legal Services will not be taking on any instructions for properties which are considered to be high risk properties under the terms of the BSA.

What you need to do when you decide to sell?

Firstly, you should contact your freeholder to advise you are looking to sell and request the Leaseholder Deed of Certificate. This will be sent to you directly by the freeholder for you to complete and return to them so they can assess whether you are a qualifying leaseholder under the BSA.

Once the Freeholder has considered your Certificate, they will produce the Landlords Certificate. This will confirm whether the Landlord has met the contribution condition on the 14th February 2022, whether they were the relevant landlord on this date and provide details of any remediation works already carried out or planned for the future.

We will require copies of both of these certificates which will be sent to the buyer's solicitor.

The Landlord Certificate will also detail whether the costs are to be funded via developer remediation contract, cladding safety scheme or building safety fund.

You will appreciate there is significant additional work to ascertain the impact of the BSA on the property you are selling as much of the information will not be readily available or in the process of being obtained. Freeholders and developers are still assessing the impact of the BSA on buildings subject to the Act.

We are aware that there are various developers who have signed up to the Government Pledge on this matter but during the investigation process the buildings have been found to be unsafe and they continue to assess the issues and related costs.

What happens when you buy?

Protections available under the Act:

Even if we receive confirmation that the developer has signed up to the Government Pledge and are investigating any remediation works and related costs, we cannot offer any assurance that the works will:

1. be sufficient to rectify all remediation works required both now and in the future.
2. actually be carried out. You will also have to consider that such works will inevitably cause disruption to you living in the building and could see you having to move out for a prolonged period of time whilst the works are undertaken.

Ongoing maintenance costs for routine works not covered by the terms of the Act will continue to be payable via your service charge contributions.



Protections not available under the terms of the Act

If the property does not benefit from the protections afforded by the terms of the Act i.e. because it is not a relevant building or the owner of the property was not a qualifying tenant then you will be responsible for contributing towards the costs of any remedial works to the property. These sums could be extremely high depending on the nature of the works required. We are unable to advise you as to the likely costs of remediating the building and specialist advice from a surveyor should be obtained.

Overview

As you may be aware from reading the news, Leasehold ownership is going through a significant period of change. We are unable to advise you as to how future changes may affect your ownership of the property and whether any amendments may be required to the terms of your Lease to comply with rules and regulations in place when you come to sell or remortgage the property in the future.