

ADVICE NOTE

BUYING AND SELLING YOUR FLAT

A summary of the typical events when buying and selling a leasehold flat



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NOTE

As the leading trade body for residential leasehold management, TPI is also an important resource for leaseholders. Our Advice Notes cover a range of topics on the leasehold system to help leaseholders understand their rights and responsibilities and ultimately get the most out of living in their flat.

SUMMARY

This Advice Note looks at the typical events in buying and selling a leasehold flat.

It explains the usual restrictions found in leases that can affect how flats can be sold. Being aware of these restrictions can help speed up the sales process.

We'll also explain how the landlord and managing agent will be involved, and the kinds of information they will be asked to provide.

At the end, there's a useful list of questions that buyers may wish to ask their solicitor before going ahead.

It is also worth mentioning that there are a dozen or so Leaseholder information guides published dealing with a range of subjects appertaining to Leasehold properties that will help when considering buying a leasehold property – available from the TPI website: <https://www.tpi.org.uk/industry-knowledge/leaseholder-advice-notes/>.

TPI wishes to acknowledge the assistance of the Devon and Somerset Law Society in the writing of this note.

Selling your flat

Here's what normally happens when you decide to sell your flat:

1. You put the flat up for sale with an estate agent
2. An offer is made, which you accept
3. You and the buyer each instruct your solicitors to deal with the sale and purchase
4. The buyer arranges mortgage finance and sells their home
5. Your solicitor obtains proof of your ownership of the flat, usually by obtaining a copy of your title from the Land Registry
6. Your solicitor prepares a draft contract of sale
7. When the buyer is able to proceed, your solicitor sends the draft contract, a copy of your title, a copy of the freeholder's title and a copy of your lease to their solicitor
8. The buyer's solicitor will make enquiries about the flat. Some of these will be questions about the management of the block, which your solicitor will refer to the managing agent or freeholder to answer
9. Various searches will be undertaken (local authority and water and drainage searches), usually by the buyer on the advice of their solicitor
10. Once the enquiries are answered and the contract agreed, contracts can be exchanged and a deposit paid
11. A final check on ownership is made by the buyer's solicitor, the mortgage deed is prepared and signed, and any final queries are dealt with
12. The sale is complete! Your lease may require the landlord to be notified in writing within 28 days of this taking place.

Condition of sales

When a leaseholder sells the remaining term of their lease to another person, this is called assignment.

Most leases contain assignment conditions — clauses in the lease that the seller must comply with. These conditions help ensure good on-going management of a property. They enable a managing agent to keep track of who the leaseholder is and so collect ground rent and service charges effectively.

Assignment conditions often include references to mortgages and sub-letting.

There are three main types of condition:

Deeds of covenant

This is where the seller has to ensure that the buyer enters into an agreement with the landlord, managing agent or management company. This is so the new leaseholder agrees to comply with the same lease conditions as the former owner.

No assignment without consent

A typical lease will state that the sale or mortgage of a flat cannot take place without the prior written consent of the landlord.

If a leaseholder goes ahead and assigns without prior consent, the assignment is still legally valid. But if the landlord or managing agent takes exception with this (extremely rare), they could refuse to register the assignment if the lease requires it.

Requirement to register the assignment

With this type of condition, the leaseholder is free to sell their flat but the landlord (and/or their agent) must be notified, usually within 28 days of the sale, by the buyer's solicitor.

The buyer will also pay a fee to the management company or freeholder for registering the deed of covenant or granting consent and assignment of the lease.

Lease restrictions

A restriction is an entry on the Land Register that prevents or regulates the sale of a flat. They are created at the Land Registry and can be used to control the sale of a lease.

A typical restriction may require proof of a deed of covenant, certificate of written consent, or registration of the assignment.

The effect of this restriction would be that ownership of the property couldn't be passed on until the landlord has given notice that the restriction has been complied with.

Your managing agent's role

Normally, your managing agent will be asked for information about the management of the block and the service charge and ground rent situation.

The questions will usually be asked by the buyer but they should be sent to the agent by your solicitor. An agent cannot give information directly to the buyer because it may breach data protection laws.

The number of queries that an agent is expected to answer can range from a handful to over 100.

Your managing agent will be asked for things like:

- Copies of insurance policies
- Copies of the service charge accounts for the last three years
- The latest service charge budget
- Copies of demands for ground rent and service charges
- Confirmation that service charge and ground rent payments are up-to-date
- Clarification on whether any service charge surplus or deficit may be due after the end of the current financial year
- Information on any major work that's underway or planned
- Information on any reserve funds held
- Details of any breaches of the lease
- Details of any consents for alterations or improvements
- A copy of the health and safety and fire risk assessments for the communal areas of the block - copies of the Fire Risk Assessment and/or FRAEW.
- A copy of the asbestos survey for the building.
- Building Compliance - Any issues with building compliance that could impact the buyer (e.g., planning or building regulation violations).

You should hold on to all documents relating to the management of the block so you can answer any questions. This will save you a lot of time and money later on.

Keep useful documents!

If you're thinking of selling your flat, you should hold on to all documents relating to the management of the block so you can answer any questions. This will save you a lot of time and money later on.

Make sure you keep the following:

- Annual statements of account and budgets for service charges
- Recent demands for service charges and ground rent
- Letters about proposed major works to your block (Section 20 notices)
- Share or membership certificates if ownership of your flat also requires you to be a shareholder or member of a Residents' Management Company
- Memorandum & Articles of Association for your Residents' Management Company if there is one
- Minutes of Residents' Management Company meetings
- Any regulations about the management of your block in addition to the lease.

Managing agents' fees

Managing agents will charge for the work involved with selling a flat. But this can't form part of their regular management fee and it would be wrong for an agent to do that. It's normally the seller who pays these costs.

Not all fees go to the agent. Sometimes the landlord carries out the work.

The fees typically cover things like:

- Answering enquiries
- Arranging consent for a sale if it's required
- Sorting out the deeds of covenant upon sale
- Registering the change of leaseholder after a sale
- Registering a mortgage after a sale.

Agents often refer to such fees as 'administration charges' as most of them are defined that way in Landlord and Tenant legislation.

If you think the fees you are being charged are unreasonable, or not payable according to the terms of your lease, you have the right to challenge them at a Tribunal. This is the case whether you pay them or not.

Ground rent and service charge arrears

Before the sale of your flat is completed, you will be asked to settle all outstanding debts, or your solicitor will be asked to give an undertaking to pay them on completion.

Even though you may be planning to sell you should still pay your service charges normally. Any apportionment of service charge or ground rent is worked out between the two solicitors on completion. Agents and landlords will not give consents, deeds of covenant or register a sale if debts are not paid.

If there's a service charge deficit for the financial year during which you lived in the building, this may not come to light until some months after you've moved.

The usual way to prepare for this is for your solicitor to hold back a small amount of money from the sale proceeds. This will then be passed on when the actual amount of the debt is known. This is called a retention.

If there's a service charge credit due after your sale, this can only be refunded to the current owner, unless you have evidence of an agreement with the buyer that the refund will be made to you.

Share and membership certificates

Many blocks of flats are owned and/or managed by the leaseholders that live in them. Anyone owning a flat there will normally have to become a shareholder or member of a company that's been created.

If this applies to you, on selling your flat you will need to return your shareholder's certificate or assign your membership of the company to the new owner. Your solicitor will be able to help you with this.

Questions for first time buyers

We've put together some questions to assist first time buyers of leasehold flats, when seeking advice and information from solicitors, conveyancers, sellers and estate agents or other advisors.



The first batch of questions is aimed at buyers of flats on new developments; the second is relevant to all buyers.

Questions for buyers of flats in new developments

- What services will the service charge pay for?
- Will all the communal services be available when I move in? If not when?
- Who is paying the service charge for any unsold units? Is the developer legally obliged to make these payments?
- Who is the landlord?
- What is the developer's plan for the freehold?
- If the developer has set up a Residents' Management Company for the long-term management of the block, when will management control be passed to that company?
- If the developer has initially appointed a managing agent and the residents are not happy with that agent, can they vote to change agent?
- Has a sufficient reserve fund been set up to pay for redecoration and major repairs to communal areas?
- Has the developer agreed to make payments to the reserve fund for unsold flats?
- If sales are slow can the developer change the number of units and increase the proportion that I would be expected to pay towards the service charge?
- Can the developer change the mix of units? For example, adding commercial units or selling to a housing association for rent?
- Are any utility supplies to my flat provided from a communal meter? If so, what will the charges be and how will my contribution to the gas, electricity or water and sewerage be calculated?
- What arrangements does the developer have for me to report defects to my flat after I move in?
- What arrangements does the developer have to ensure that any defects to the structure and communal areas will be resolved before management is passed to a Residents' Management Company?

Questions for anyone buying a flat

- Ask your solicitor for a copy of the lease.
- When and how is the service charge and ground rent payable? Can I pay in instalments or by credit card or direct debit?

- If the payments are annually, quarterly or half yearly can I afford the next payment due?
- Ask for a copy of the last service charge accounts.
- What are the parking arrangements?
- Are pets allowed?
- Is subletting or buy-to-let allowed? If yes what fees might be payable before subletting?
- Will I need permission for alterations and improvements?
- Are satellite dishes allowed?
- Is there a Residents' Association in place?
- Do I have to become a director and shareholder or member of a Residents' Management Company?
- Is there a plan for major works to the building? If so, what works are planned in the near future?
- Is there a reserve fund to offset the cost of future major works?
- Are service charge monies kept in a separate trust bank account?
- Is the annual statement of account for service charges checked by an independent accountant?
- Is there a problem with arrears at the block, meaning there is little money to pay for services?
- Is the managing agent a member of a recognised trade or professional body?
- Has a fire risk assessment of the communal areas been carried out?
- If the building was built prior to 2000, has an asbestos survey been carried out?

Further information

- TPI and the Leasehold Advisory Service have published an introduction to living in leasehold flats called 'Living in Leasehold'. You can download it free from the Leasehold Library on the TPI website at www.tpi.org.uk.
- TPI worked with a number of other industry organisations to produce a standardised questionnaire to speed up leasehold transaction times. This can also be downloaded for free from the Leasehold Library on the TPI website at www.tpi.org.uk.

Note:

Whilst every effort has been made to ensure the accuracy of the information contained in this TPI Advisory Note, it must be emphasised that because TPI has no control over the precise circumstances in which it will be used, TPI, its officers, employees and members can accept no liability arising out of its use, whether by members of TPI or otherwise.

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