

Number 10

Commonhold & Leasehold Reform Act 2002 – In Summary : the key issues affecting property disputes

The much trailed Act was finally passed on 1st May. It brings stronger rights for residential leaseholders which will become law in stages from July.

The Act heralds several new provisions of importance to residential property management including:

- A new form of tenure called “commonhold”
- New rights for leaseholders of flats to manage their block of flats and make it easier to enfranchise or obtain longer leases, and making it easier to appoint a new manager
- Provisions to make it easier for leaseholders to vary their leases
- Restriction on landlords insisting that a particular insurance company is used
- Amendment to the Leasehold Reform Housing and Urban Development Act 1993 enabling companies and non resident tenants to qualify for lease extensions or participate in the acquisition of freeholds. Non resident property owners will be able to own the property for two years without residing there and then apply for lease extensions.

In addition, there are significant practical changes to residential landlord & tenant law which will be of significant interest to readers of these bulletins.

Written Notice of Ground Rents

Landlords of long leases (leases over 21 years) will be required¹ to give written notice of ground rents before taking any action or imposing any penalties as a result of late payment. The Notice may be given by post to the tenant at the premises (unless he has specified another address for the service of Notices). The Notice must specify the amount due, the date it is due and any other information that may be prescribed in regulations. It must be given between 30-60 days in advance of the money being due which may mean significant changes in operating procedures for managing agents to ensure that demands are sent out within the correct period.

Restrictions on Forfeiture

There are several key restrictions on forfeiture.

The Act will prevent landlords forfeiting leases as a result of outstanding small sums. Section 167 prevents forfeiture for sums under £500.

Where a landlord is contemplating forfeiture because of a breach of covenant in respect of a long lease (over 21 years) no Section 146 Notice may be served (unless the tenant admits the breach) until the landlord has satisfied a Court, Arbitrator or LVT that the lease has been breached.²

¹ S.166 of the Act

² S.168 -170

PROPERTY DISPUTE

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The landlord must wait a further 14 days after the determination of such Court or Tribunal before then serving a Section 146 Notice and thereafter proceeding to seek to forfeit.

New Accounting Requirements for Service Charges

There are several restrictions on the administration of service charges. The Act³ will provide protection against unreasonable administration charges and charges for improvements. Any demand for such payments must expressly attach details of the tenant's rights and the tenant can apply to the LVT for a determination as to whether any such charges are reasonable.

The Act also introduces new accounting requirements⁴ which require service charge demands to specify details of the tenant's rights, including the right to apply to the LVT to determine the reasonableness of any service charge. If demands are not made in the appropriate form, or if a leaseholder fails to supply service charge information in the prescribed form, the tenant may lawfully withhold service charge until this is done or the information supplied. The amount that may be withheld is limited to the service charges payable in the accounting period to which the documentation relates. Clearly these regulations will require strict compliance by landlords and their agents if income flow is to be maintained.

Leasehold Valuation Tribunals

Provisions are made to improve the working of the Leasehold Valuation Tribunal. Schedule 12 provides specific procedural steps and enables further procedures to be brought in by future regulations. Appeals from a decision of an LVT may be made to the Lands Tribunal but only with the permission of either the LVT or the Lands Tribunal.

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The Act does not come into force immediately. The various provisions will be brought into force by a series of statutory instruments which will also need to provide the "flesh" on the regulations that will be needed to implement various parts of the Act. However, the government plans to issue the first commencement Order in July and the reform of this area of law will therefore shortly take effect.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing. For further information on property disputes or litigation please contact:

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³ S.158 and Schedule 11
⁴ Section 153

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