

Number 21

## Commonhold – A new beginning

On 27 September 2004 the provisions of the Commonhold and Leasehold Reform Act 2002 introducing Commonhold commenced.

### Introduction

Commonhold is not a new estate or interest in land, but a type of freehold created out of registered land. It is an alternative to the unpopular leasehold system.

It is suitable for houses, mixed use and commercial developments and it is likely to be used at least initially on new developments.

The owners of each unit within a development are themselves in control of the development, without a landlord or other party able to make decisions about how the development is run.

The owners of commonhold units may not be restricted from selling or mortgaging their units. Restrictions on the ability of owners of residential units to lease their units apply.

Blocks of flats may also convert to Commonhold provided the statutory procedures are followed.

### Main Provisions

Individual freehold properties or units will form part of the commonhold.

Owners of the units will be known as “unit holders”.

The common parts of a development not forming part of a unit, for example, the main structure of a building, the internal and external common parts will be owned and managed by a limited company, called the Commonhold Association (CA).

Membership of the CA is limited to the unit holders within the commonhold. The CA must be a private limited company, limited by guarantee.

Unit holders will have two interests, the freehold of a unit and an interest in the ownership and management of the common parts through membership of the CA.

The commonhold will be managed by the CA in accordance with the Commonhold Community Statement (CCS) a document which defines the extent of the property within the commonhold and contains details of the rights and duties of the CA and unit holders and dispute resolution procedures.

The form and content of the CCS and the Memorandum & Articles of Association of the CA are regulated by the Commonhold Regulations 2004.

The commonhold must be registered at the Land Registry and the CCS and the CA will be available for public inspection.

### PROPERTY

RadcliffesLeBrasseur  
5 Great College Street  
Westminster  
London SW1P 3SJ

Tel +44 (0)20 7222 7040  
Fax+44 (0)20 7222 6208  
LDE 113

6-7 Park Place  
Leeds LS1 2RU

Tel +44 (0)113 234 1220  
Fax+44 (0)113 234 1573  
DX 14086 Leeds Park Square

25 Park Place  
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035  
Fax+44 (0)29 2034 3045  
DX 33063 Cardiff 1

info@rlb-law.com  
www.rlb-law.com

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Only limited amendments to a CCS are permitted. Permitted amendments or “local rules” must be specific to that commonhold.

## Land that cannot be Commonhold

- Flying freehold land;
- Certain specified agricultural land;
- Land which is a contingent estate i.e. one which will revert by operation of law under statute, for example, the Land Clauses Acts (Compulsory Purchase).

## Advantages of Commonhold

Commonhold allows for long term ownership of interdependent properties whilst avoiding the problems associated with long leasehold ownership, in particular the diminishing value of a lease as its term reduces, management quality issues which until now depend on the landlord, and drafting defects. Most leases are drafted individually and can create problems of enforceability. With commonhold the major constituent documents are prescribed by statute, and are therefore standardised, eliminating individual drafting errors, and establishing one set of documents for each commonhold property. This may facilitate management and transactions involving commonhold property and individual units.

Also, under commonhold, there will be no restrictions on a unit holder’s ability to dispose of or mortgage a unit, such as landlord’s licence to assign, or charge.

Unit holders of residential commonhold units will not be permitted to grant leases of units exceeding seven years, to prevent the development of a residential leasehold system within commonhold.

Commercial commonhold units can be let on any terms, subject to the CCS provisions.

Joint ownership and management of the building will mean that as there will be no landlord. All decisions relating to the building and its costs will be made by the unit holders for their own benefit by the CA acting by a majority.

## Conversion to Commonhold

The lessees must first acquire the freehold reversion either by private negotiation or by collective enfranchisement. Subsequently **all** lessees and their secured lenders must give consent to conversion. If any or one of them refuses to agree, no matter whether acting unreasonably or not, the conversion cannot proceed. This is the most significant weakness in the legislation as the prospect of obtaining unanimity from all residential lessees and their lenders is remote.

## Summary

Most legal commentators anticipate that new mixed use developments are likely to be the prime candidate for commonhold ownership.

As all flat owners must consent to a conversion of an existing block of flats to commonhold, in practice it is only in the case of smaller blocks of flats that such a conversion is likely.

**Christopher Keough**  
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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 related issues please contact:

London Karen Mayne on 020 7227 7273 email: karen.mayne@rlb-law.com  
Deepak Manghnani on 020 7227 7421 email: deepak.manghnani@rlb-law.com  
Leeds Michael Thorniley-Walker on 0113 234 1220 email: michael.thorniley-walker@rlb-law.com

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