

HEWITSONS

LEASES OF RESIDENTIAL PROPERTY



If you own a leasehold residential property it is useful to have some basic understanding of what your rights and responsibilities as leaseholder are. That is the purpose of these answers to FAQ's. However they provide general guidance only and are not to be treated as legal advice relevant to particular circumstances. Please consult us for specific advice on your property, if required.

1. Who are the parties to a lease?

1.1 The landlord (or lessor)

The landlord is the person (or body) who owns the freehold of the building in which the leased property is located. This may be the person who originally granted the lease to the first tenant or a third party who has since acquired the freehold. The landlord may have little or nothing to do with the management of that building. Those duties may have been delegated to a management company or to appointed managing agents.

1.2 The leaseholder (or tenant/lessee)

The leaseholder is the person to whom the lease was originally granted (or to whom it has since been transferred). They are often described as "the Tenant" or "the Lessee" in the lease itself. If you own a leasehold residential property, you will be the leaseholder.

1.3 Management Companies

Frequently a management company carries out the services for communal areas. It will usually be a party to the lease (which means that it covenants directly with both the landlord and the leaseholders to provide those services). Generally membership of the company (or the right to own shares in it) will be restricted to owners of flats in the building (or on the estate) and its directors must be appointed from amongst those members. However, if a development of flats has only just been built, the developer will usually retain control of the company until the last flat has been sold, at which point the original directors will resign and new ones will be appointed from amongst the members. Quite often the management company will itself acquire the freehold, which means it will become the landlord.

1.4 Managing Agents

Managing agents are independent bodies whom either the landlord or the management company appoint to perform their obligations under the lease. They are not therefore a party to the lease and have no direct contractual relationship with the leaseholders. Their obligations are to the party who appoints them. It is possible for a landlord to employ one set of managing agents to collect the rent on their behalf, and for the management company on the same estate to employ different managing agents to manage the services on their behalf.

2. What are communal areas and how are they dealt with?

A lease of residential property will almost always limit the area which is leased to the "interior" of the property. It will not therefore include any part of the building's structure.



Those parts of the building will be retained by the landlord and responsibility for their repair and insurance will remain with it (or the management company). In addition, many estates of residential flats will also include communal areas which leaseholders (and their visitors) are able to use.

The following are examples of communal areas and how they would typically be dealt with in a lease:-

2.1 Gardens

If there are gardens and external areas they will generally be maintained for the quiet enjoyment of all leaseholders and their visitors. It may be that leaseholders could 'lend a hand' should gardening be one of their interests, but only if this is agreed with those responsible for managing the estate.

2.2 Car parking

Many flats will have the exclusive right to park in allocated spaces or even a garage. It is quite likely that an additional rent or service charge contribution may be charged for use of a garage or undercover parking. There may be general car parking for leaseholders or their visitors. In the absence of a car parking permit or charging system, such car parking may only be available on a daily 'first come, first served' basis, with no guarantee that a space will be available when required.

2.3 Bin stores

Most estates will now have provision for communal disposal of waste which will include the right to either place a bin in a communal store or to put refuse in communal bins.

2.4 Bicycle storage

On modern estates the use of cars is often discouraged in favour of bicycles and, accordingly, specific stores for bicycles are provided. There will generally be no charge for use of these stores although the cost of their maintenance will form part of the service charge.

3. Who insures leasehold properties?

Insurance of the structure of the building and communal areas of a leasehold estate is the responsibility of the landlord (or management company) and the cost is payable by the leaseholders as part of the service charge. The following are important points to note regarding the insurance.

3.1

Insurance covers the building's structure against fire and accidental damage, including decorations and any fittings or furnishings within any communal areas. It is common practice for the landlord or the management company to receive commission on the insurance premium.

3.2

If the estate or parts of it are being rendered uninhabitable the policy covers the cost of alternative accommodation and payment of rent and service charge (if any) during the period needed to restore the flat or building to habitable condition.

3.3

To protect leaseholders from claims which arise from accidents in communal areas (including lifts), there will also be a public liability policy and, if there are any employees of the landlord or management company involved in managing the estate, there will also be an employer's liability policy.

NOTE:

Household contents insurance is not covered by the service charge. The buildings insurance policy does not cover the contents of a flat and the leaseholder must insure their contents and personal belongings separately. Bear in mind that insurers may require certain precautionary measures to be taken if a flat is left unoccupied for a period of 30 days or more.

4. What will I have to pay as leaseholder of a residential property?

4.1 Service Charges

This is your share of the amount paid for the repair

and insurance of the building and/or any services relating to communal areas. They will also usually include:-

4.1.1 Managing agents' fees

These are typically for: opening and administering bank accounts, dealing with service charge receipts and invoices, visiting and inspecting the estate, keeping records of leases and leaseholders and dealing with contracts for cleaning and maintenance.

4.1.2 Audit Fee

Paid for an independent audit of the service charge accounts.

4.1.3 Value Added Tax

The amount of VAT paid on some of these costs.

4.2 Ground rent

An additional ground rent is often payable to the landlord in accordance with the lease. Where the management company owns the freehold, it will not generally collect ground rent

NOTE:

The lease does not govern payment for items of personal expenditure. You are therefore responsible for the payment of utility supplies and insurance of contents & other personal belongings. However, on some estates hot water and heating may be provided as estate services, in which case your share of these costs would form part of the service charge.

5. What are my responsibilities as leaseholder of a residential property?

Under most leases you will be responsible for internal decoration, maintenance and repair of your flat. However, in order to ensure the safety and comfort of other leaseholders, you will have other responsibilities as well. Most of these are obvious, such as: respecting the privacy of your fellow leaseholders and keeping noise to a reasonable level. The following are examples of particular responsibilities which may be imposed on leaseholders:

5.1 Pets

Leaseholders will generally be allowed to keep a pet dog, cat or caged bird in their flat but leases will often require that prior permission is obtained in writing. It will usually be a requirement that any pet does not cause a nuisance to neighbours or other leaseholders and, if it does, you may be asked to remove it.

5.2 Security

Security has become vital to many estates which now have rules to be observed by all leaseholders.

5.3 Alterations

If you wish to make alterations to the fabric or structure of your flat you should contact the management company or their managing agents to find out if consent is necessary. If it is, the landlord will want to see details of the proposed alterations and an administration fee for granting this will probably be payable.

We hope the answers to these FAQ's have proved useful but, if you have any more questions you would like to ask, please do not hesitate to get in touch. The Residential Property Team of Hewitsons

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