

Understanding leasehold property

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To make your home your castle, be sure who owns the drawbridge...

The Government has announced plans to tackle unfair leaseholder arrangements on new build properties, but in the meantime, as the housing market gets into full swing, it's worth understanding the difference between freehold and leasehold property.

Increasing property prices and high population densities have seen a big increase in the number of leasehold properties across the country, as houses are split into flats and new apartment blocks are built, so there are now 1.4 million leasehold houses across England.

And while leasehold arrangements are generally seen as a simple route to managing multiple occupancy buildings, over the past twenty years there has been a big increase in the number of houses being sold by developers on a leasehold basis. These sales have seen ground rents being set at much higher levels than the 'peppercorn' arrangements that were typical previously, and with scheduled increases. In the worst examples, leases include terms to allow the ground rent to double every ten years.

The new measures announced by the Government will target such practices, including a ban on leaseholds for almost all new build houses, and changes will also be made so that ground rents on new long leases – for both houses and flats – are set to zero. The Government say that it will also make it cheaper and easier for existing leaseholders to buy-out their freehold, and that there will be routes to redress for those facing the most onerous terms.

We must wait for the detail and timetable for the introduction of these changes, which are anticipated to happen during 2018, but in the meantime, whether buyer or seller, it is worth being prepared by understanding the basis on which a property is being sold. For prospective buyers, knowing the right questions to ask could save a lot of wasted time and resources. And for sellers, it can ease a sale if you pre-empt any concerns and know the answers to the questions you may be asked.

What form of ownership?

It's important to check exactly what form the ownership takes, and then ask the right questions.

Freeholds: you will own the property and the land it sits on, but there may be other responsibilities that are not so obvious, such as contributing towards maintenance of a private shared access road.

Shared freeholds: you will own your personal space in the property, and generally a share of the land and the shared spaces. Any maintenance is likely to be subject to agreement between all the freeholders, and the cost shared between everyone.

Leaseholds: you will be buying the right to live in the property for the remaining duration of the lease, with the land, the structure of the building and shared spaces owned by the freeholder, who may be an individual landlord or a property management company. They will hold the buildings insurance and will consult with leaseholders about any works that are required, collecting service charges from each leaseholder to pay for all maintenance and managing such work. The owner of a leasehold property is effectively a tenant in a very long-term rental, having to pay an annual ground rent and ask for consent to make any changes to the property.

It's a lease, so how long does it have to run?

Leases of between 99 and 999 years are commonly granted and generally the value of a property will reduce as the lease gets closer to the end, but don't expect to snap up a bargain if you're looking for a mortgage as lenders are unlikely to make a loan on a property with anything less than 25 years left to run. If a property has only a short time left on the lease, you can ask the seller to seek an extension and transfer to you the benefit (in a Contract) of a notice served on the landlord seeking a lease extension, but expect to pay a premium (to the Landlord) for the benefit following the purchase of the Property pursuant to the relevant statutory procedure.

How much is the ground rent?

Normally ground rent will apply only if it's a leasehold property. Ground rent can be a fixed charge or one that will change over time, so check out how much is being paid currently, but look through the small print as well, to be sure there are no big increases on the way. If any escalation is written in, then it should not allow for a rise that is more than the retail price index. Again, if you are seeking a mortgage, a lender will be looking to see affordability not just in the headline purchase price, but also in the ongoing costs of ground rent and the service charges.

How much are the service charges?

Service charges can strike fear in the hearts of leaseholders, even when they have very deep pockets, as all work is likely to be relative to the size and standing of the overall building. Be quick to ask for evidence of the service charge budget and the accounts for the past three years and don't be afraid to ask around about the freeholder. The agent may assure you it's a big property management company with the right infrastructure, but if research shows they have a poor reputation in getting work done, or in the amounts being charged on, you'll be glad you checked.

Are repairs and maintenance up to date?

Take a good look at how well things are maintained as you view the property and then check it out against those service charge accounts you've asked for. If everywhere is looking a bit run down, there's no evidence of regular work being done in the accounts, and there's very little being held in the pot for future works, you can expect a big bill, or an increasingly rundown environment. A survey is just as important when buying a flat as when buying a house. And importantly, be clear about the proportion you must contribute.

And finally, for the seller, it's always a good idea to get your 'house in order' by tackling paperwork before the sale board goes up. There are forms requiring detailed information about the property itself and one covering all the fixtures and fittings. If it's a leasehold property you will have to complete one covering details around the lease such as the rent, service charges, insurance and future work. By working with your lawyer in advance to prepare all the forms that will be required, you'll be well prepared to answer all the questions your potential buyer may have for you.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

