

Note: One of ARMA's key roles is to provide its members with technical support. However, from time to time, technical or other issues arise where guidance for lessees as well as their property manager is deemed appropriate. Such guidance is contained in these Lessee Advisory Notes (LANs) which ARMA members can copy and distribute to their clients and lessees as appropriate. Readers' attention is specifically drawn to the boxed note at the end of the LAN regarding its use.

SUMMARY

- This note gives an outline of the typical events in selling a leasehold flat.
- It explains the usual sorts of restrictions placed in leases about the way sales of flats can be carried out.
- Lessees can speed up the process by being aware of these restrictions and briefing their solicitors about them.
- It also explains the usual ways in which a landlord & managing agent will be asked to be involved in that process and the kinds of information that they are asked to provide by sellers' solicitors.
- The Appendix contains a list of questions that buyers of flats may wish to ask their solicitor or other advisor before they buy.

THE TYPICAL STEPS IN THE SELLING OF A FLAT

- You decide to put the flat up for sale with an estate agent.
- You successfully market the flat and accept an offer.
- You and your buyer each instruct your own solicitors to deal with the sale/purchase.
- The buyer has to arrange (mortgage) finance and sell his/her home.
- Your solicitor obtains proof of your ownership of the flat usually by obtaining a copy of your title from the Land Registry.
- Your solicitor prepares a draft contract of sale.
- When your buyer is able to proceed, your solicitor sends the draft contract, copy of your title, copy of the freeholder's title and a copy of your lease to the buyer's solicitor.
- The buyer's solicitor will make enquiries about the flat. Some of these enquiries are questions about the management of the block of flats and your solicitor will send these to the managing agent and/or freeholder to answer.

- Various searches will be undertaken, usually by the buyer, on the advice of his/her solicitor.
- Once the enquiries are completed and the contract agreed, contracts can be exchanged and a deposit paid.
- A final check is made on ownership by the buyer's solicitor, the mortgage deed has to be prepared and signed, and any final queries are dealt with.
- Completion takes place.
- Leases often require the landlord to be notified in writing of a sale within 28 days of its taking place.

LEASES

Please note that your managing agent does not normally have a copy of your lease. You or your estate agent or solicitor can obtain a copy from the Land Registry if you do not have one yourself.

CONDITIONS ON SALES IN LEASES

Assignment is the legal jargon for the sale (by the lessee) of the rest of the term of a lease to another person. Most leases contain assignment conditions, clauses in the leases which a seller of the lease must comply with. Such conditions are used to assist with the better management of schemes. They enable an agent to keep track of who is the lessee and so be able to effectively collect ground rent and service charges. Assignment conditions often also include references to mortgages and sub-letting.

There are three main types of condition:-

1. Deeds of Covenant

The seller often has to ensure that the buyer enters into a deed of covenant with the landlord/managing agent or management company. In this way the landlord or management company has a direct contract with the buyer and prior notification of the new lessee.

2. No Assignment Without Consent

A typical lease will require that the sale or mortgage of the flat cannot take place without the prior written consent of the landlord. Even if a lessee assigns a lease without prior consent the assignment is still legally valid. However, if the landlord or agent did not wish to recognise the new lessee, it could refuse to register the assignment if the lease requires it. This is extremely rare.

3. Requirement to Register the Assignment

With this type of assignment condition the leaseholder has freedom to sell but the lease requires that the landlord (and/or the agent) must be notified of the sale usually within 28 days of the sale by the buyer's solicitor.

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

LAND REGISTRY, ASSIGNMENT AND RESTRICTIONS IN LEASES

A Restriction is an entry on the Land Register that prevents or regulates making a change to the register regarding a sale (or other disposition such as a mortgage). If a restriction is to be created to control the sale of a lease at the Land Registry, it is placed jointly on the Register usually by a clause in the lease. A typical clause might be that the lessor and lessee hereby apply to the Registrar for the entry on the Register of the following restriction on the title - then would follow the actual words of the restriction.

The form of words of the restriction should mirror the assignment conditions referred to above. So a restriction may require proof of an entry into a deed of covenant, certificate of written consent, or registration of the assignment.

The effect of the restriction is that the ownership of the property cannot be passed until the landlord has given notice that the restriction has been complied with.

WHAT ARE THE ENQUIRIES THAT AN AGENT WILL HAVE TO ANSWER?

Your managing agent will usually be asked to supply the answer to a number of enquiries about the management of the block and the lessee's payments of service charge and ground rent. These queries will usually be raised by the buyer but should be sent to the agent by your solicitor.

An agent cannot give information direct to the buyer because to do so may breach data protection law.

The number of queries that an agent is expected to answer can vary from a few to over 100. ARMA is keen to see solicitors use a standardised form of enquiries.

The usual subjects include:-

- Provide copies of insurance policies
- Provide copies of last 3 years' service charge accounts
- Provide latest service charge budget
- Provide copies of latest ground rent and service charge demands
- Confirm that payments of service charge and ground rent are up-to-date
- Advise if any surplus or deficit may be due after the end of the current financial year
- Provide information on any major works underway and planned
- Provide information on any reserve funds held
- Provide details of any breaches of lease
- Provide details of any consents for alterations or improvement
- Provide a copy of the health and safety risk assessment for common parts
- Provide a copy of the fire risk assessment for common parts
- Provide a copy of the asbestos survey for the building

KEEPING USEFUL DOCUMENTS

If you are thinking of selling your flat it is in your interest to keep documents relating to the management of the block so that they are available to answer enquiries. If you do this it will save you time and money later on. The information you should keep is:-

- 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. (What agents call Section 20 notices.)
 - Share or membership certificates if your ownership of the flat also requires you to be a shareholder or member of a residents' management company.
 - Minutes of meetings if there is a residents' management company.
 - Any regulations about the management of your block additional to the lease.
 - Memorandum & Articles of Association for your residents' management company if there is one.
-

FEES CHARGED BY MANAGING AGENTS

Agents will charge fees for work arising out of flat sales. Leases do not allow for such tasks to be part of the management fee charged as part of the service charge and it would be wrong for an agent to do this. Not all fees go to the agent. Sometimes the landlord carries out the work, sometimes the agent.

Typically there will be fees for:-

- Answering enquiries
- Where consent is required before sale
- Deeds of covenant upon sale
- Registration of the assignment-the change of lessee after a sale
- Registration of a mortgage after a sale

Such fees are often referred to as 'administration charges' by agents, because most of them are defined as such in Landlord and Tenant legislation. Lessees who believe that the fees are unreasonable or not payable according to the terms of their leases have the right to challenge them at a Leasehold Valuation Tribunal whether they are paid or not. In a sale it is customary for the seller to pay for these costs.

ARREARS OF GROUND RENT AND SERVICE CHARGES

You will be asked to settle all outstanding debts before the sale is completed or your solicitor will be asked to give an undertaking to pay the debts at completion. Even though you may be planning to sell you should pay the service charge normally, in advance if required. 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 sales if debts are not paid.

You may have paid all debts due at the time of sale but there could still be a debt due afterwards. Why? Because there is a deficit for the financial year during which you lived there but the sum is not known until the accounts for the block are issued some months later.

The usual way to allow for such debts is for your solicitor to hold back a small amount of money from the sale proceeds which will be passed on when the actual amount of the debt is known. This is called "a retention".

Where there is a year end credit after your sale, this can only be refunded to the current owner unless you have evidence of agreement with your purchaser that the refund will be due to you after the sale.

SHARE AND MEMBERSHIP CERTIFICATES

Many blocks of flats are owned and/or managed by the lessees who live in them. Often anyone owning a flat has to also become a shareholder or member of a company set up in which some or all lessees are shareholders or members. If this applies to you on sale you will need to return your shareholder's certificate or assign your membership of the company. Your solicitor will also deal with this.

ACKNOWLEDGEMENT

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

- o -

Association of Residential Managing Agents Limited (ARMA)
178 Battersea Park Road, London SW11 4ND
Tel: 020 7978 2607 Fax: 020 7498 6153
Email: info@arma.org.uk Website: www.arma.org.uk

Whilst every effort has been made to ensure the accuracy of the information contained in this Lessee Advisory Note, it must be emphasised that because the Association has no control over the precise circumstances in which it will be used, the Association, its officers, employees and members can accept no liability arising out of its use, whether by members of the Association or otherwise. The Lessee Advisory Note is of a general nature only and makes no attempt to state or conform to legal requirements; compliance with these must be the individual user's own responsibility and therefore it may be appropriate to seek independent advice.

APPENDIX: QUESTIONS THAT BUYERS OF LEASEHOLD FLATS SHOULD ASK THEIR SOLICITORS or Other Advisors

Introduction

These questions are meant to assist those new to buying a leasehold flat when seeking advice and information from solicitors, conveyancers, sellers and estate agents. There is nothing wrong with owning a flat but there are things any informed buyer should look out for.

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

Questions for Buyers of Flats on New Schemes

- 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 arrangements for 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 the residents vote to change the agent?
- Has a sufficient reserve fund been set up to pay for redecoration and major repairs to common parts?
- 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 types of units, add commercial, or sell 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/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 common parts will be resolved before management is passed to a residents management company?

For All Flats

- Ask your solicitor or other advisor 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 the TV aerial ready for digital switchover?
- Is there a residents association?
- Do I have to become a director and shareholder or member of a residents management company?
- Is there a plan for major works for 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 which means that 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 common parts been carried out?
- Has an asbestos survey been carried out for buildings built prior to 2000?

Further Information

ARMA has also issued jointly with the Leasehold Advisory Service an introduction to leasehold titled 'Living in Leasehold'. You can download it free of charge at www.arma.org.uk or www.lease-advice.org.

- o -