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BUYING A LEASEHOLD FLAT

In this overcrowded country, particularly in large towns, it has become increasingly common for large buildings to be shared by being built as or converted into flats. Such flats are invariably leasehold, which means that they are held by a tenant from a landlord for a term (or fixed period), usually upon payment of a rent, but perhaps in consideration of a capital sum, or both.

These notes are intended for those who are buying a leasehold flat, but much of what is said also relates to those who simply intend to rent.

The Lease: The Lease is the document which sets out the contract entered into between the landlord and the tenant. It is a vital document which should be read carefully and fully understood. There is no such thing as a standard lease. Although there are certain clauses which are usually found in leases these will not all be identical. Indeed, there may be no written lease at all but only a rent book recording the payment of a rent. The tenant and his solicitors should take great care in agreeing the Lease and subsequent purchasers should not

assume that the document has been well drawn or is fair to a tenant. However the Lease is by no means the whole of that which governs the relationship between landlord and tenant, but must be read in conjunction with a considerable body of Law on the subject.

The Property: Exactly what is being let, what obligations there may be to the landlord and other tenants, what restrictions there may be on your use of the flat and what rights there may be in or over the rest of the building or any common parts such as hallways, car parks or gardens should be accurately described in the Lease. The description of what is included in the flat is particularly important when considering who is liable for what repairs. The Lease should also make it plain what rights there are to use various services such as drains pipes and cables, who is to be responsible for those services and who will have to pay for any repairs to them.

The Term: The flat may be rented by the week, for a period of perhaps six months, or for any other period. In these notes we largely consider the purchase of a lease for a long term of perhaps 99 years. That period may not necessarily run from the date of the Lease but can be measured from another date. You must consider when the lease is to expire and

whether the time remaining is sufficient not only for your needs but leaving a sufficient number of years remaining to make the Lease saleable when you no longer want it. If you are raising a mortgage loan your proposed mortgagee will also be very interested in that, and the other matters we raise in these notes. It may well be that you will become entitled to call for an extension to your lease, or that you and the other lessees acting together could purchase the freehold, but either course could turn out to be expensive. If you are to be the original tenant you will as a matter of contract be liable for the upkeep of the flat and for the payment of the rent and maintenance contributions throughout the term of the Lease. When you come to sell you should ensure that you sell to someone who gives you a good indemnity covering the liability for the remainder of the term. If you purchase an existing lease the landlord may be able to require you to enter into a covenant with him requiring you to take on that onerous liability.

Landlords: The landlord is likely to be the person who owns the freehold land upon which the property is built, but there could be an intervening lease to your landlord who may be a holding company, perhaps owned by the tenants of the flats in the building.

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Sometimes in small buildings where there are no more than four flats the building may be owned collectively by the owners of the flats. In other cases the owners of the flats may own a holding company which itself owns the freehold, or which perhaps acts only as manager of the building. The owners of the flats may have the bother of running the company. Sometimes they fail to do so with the effect that the freehold reverts to the Crown, which usually will sell the freehold back to the leaseholders but only for a full commercial price. If the landlord is an individual or a company not controlled by the leaseholders, take care, particularly on the question of repairs, and heed the warnings we give below. Before taking the property make inquiries of other tenants, local estate agents and the Citizens Advice Bureau to see whether the particular landlord has a good reputation. If the landlord sells the building he must give the tenants the option to purchase it, but often it is difficult to organise a purchase by what may be many people.

Rent, and other payments: Most leases require payment of rent which could be of a considerable sum which rises over the years. Any rent review clause must be carefully considered. Many long leases do not require more than a modest rent. Some do not require

rent at all. Long leases usually require payment of a capital sum, and can often be sold on for a capital sum. In addition to rent the tenant of a long lease may be required to contribute to the cost of repairs to and insurance of the remainder of the building and any common facilities, and for any services provided by the landlord. Unless you have a genuine dispute, do not withhold payment or the landlord may be able to bring the Lease to an end prematurely. You should be aware of what the landlord **must** provide, as opposed to that for which you will have to pay **if** provided by the landlord. It must be sensible for you to inquire what the cost has been in recent years, and whether any large or unusual expenditure is anticipated. You may be required to make payments in advance. They could be substantial amounts that are to be put aside to cover the cost of major repairs that may have to be done in future years. When you come to sell draw it to our attention if you have paid into a sinking fund or similar account as you will wish to recover your contribution from your buyer. Such funds should be held in a designated account for the tenants, just in case the landlord defaults or goes bankrupt.

Repairs: The tenant will usually be required to maintain the Flat, which is one reason why it is so

important to understand exactly what is included in the definition of the Flat. The landlord or a management company will usually maintain the remainder of the building, common parts and services, but will probably require the owners of the flats to pay a due proportion of the cost of maintenance. The Flat or the building may have deteriorated over the years. The landlord will want the flat and building kept in good repair, so if buying a flat do carefully consider how much it may cost you to have the property put back into pristine condition. Some landlords specialise in buying up older properties cheaply and then require their tenants to pay for the property to be put back into good condition. That may come as quite a shock if you are the tenant when the landlord decides to take action. Be careful that the landlord is only repairing the property and not improving it, for example by putting in double glazing. A landlord cannot impose improvements unless the Lease so provides. What sometimes happens is that a landlord tries to hide improvements by calling them repairs. If the landlord intends to spend more than a modest amount he is required to obtain two estimates and give prior notice.. Take care, most tenants fail to respond, so allowing the landlord to get away with it.

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Insurance: The landlord should be required to insure the building, but you may have to insure the Flat; so again it is important to consider the definition of the Flat. It may be sensible to have the Flat insured with the same insurance company as the remainder of the building so that there is no room for the insurance company to say that part is not insured. We suggest you show the lease to your insurance brokers to ensure that the brokers arrange full insurance cover. If the landlord does not insure the whole of the building the lease should at least provide that the landlord will require all other tenants to insure their flats: you do not wish to be in a building where there is a burnt out flat that will not be repaired.

Protection by Law: Unfortunately, many leases are not well drawn or are drawn heavily in favour of the landlord. Parliament has had to pass numerous Acts and Statutory Instruments for the protection of tenants. They cover more than 1000 pages and give the Courts power to intervene and even to rewrite a lease if need be. However, do not rely on that: many leases are drawn by landlords' solicitors deliberately so as to avoid tenants' legal rights, e.g. by requiring the tenant to be a company; and that could also have serious Income Tax and Capital Gains Tax implications. The

leading text book on leases is in three volumes and reports thousands of cases. You do not wish to be involved in the uncertainty and cost of litigation.

Using a Solicitor: Whether you are to be the original tenant, or are buying an existing lease you would be foolish in the extreme not to instruct an experienced solicitor. Leaseholds are fraught with difficulty. It is by no means easy to understand the full implications of the provisions contained in a lease, particularly if you have no experience or knowledge of the background law. It is evident that many solicitors do not fully understand the subject, for so many leases are badly drawn. We have heard many horror stories of solicitors not properly considering leases in detail, and failing carefully to consider the landlord's title to the property and whether the landlord may be entitled to charge what could be a substantial fee for registering an assignment of the lease. It takes time to carefully read and consider a lease which may be over many pages. We acknowledge that solicitors are expensive, but it is far more expensive and worrying for you if the job is not done properly. We hope that these short notes show you that great care must be taken and that by taking on a Lease you are taking on heavy obligations

which may continue for many years to come.

For all your leasehold requirements or further advice contact Anjam Beg on 0118 9842266 or anjam@rwp-solicitors.co.uk

rwp solicitors Meadow House, 22
Reading Road, Pangbourne, Berkshire,
RG8 7LY

Tel: 0118 9842266
Fax: 0118 9845133

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