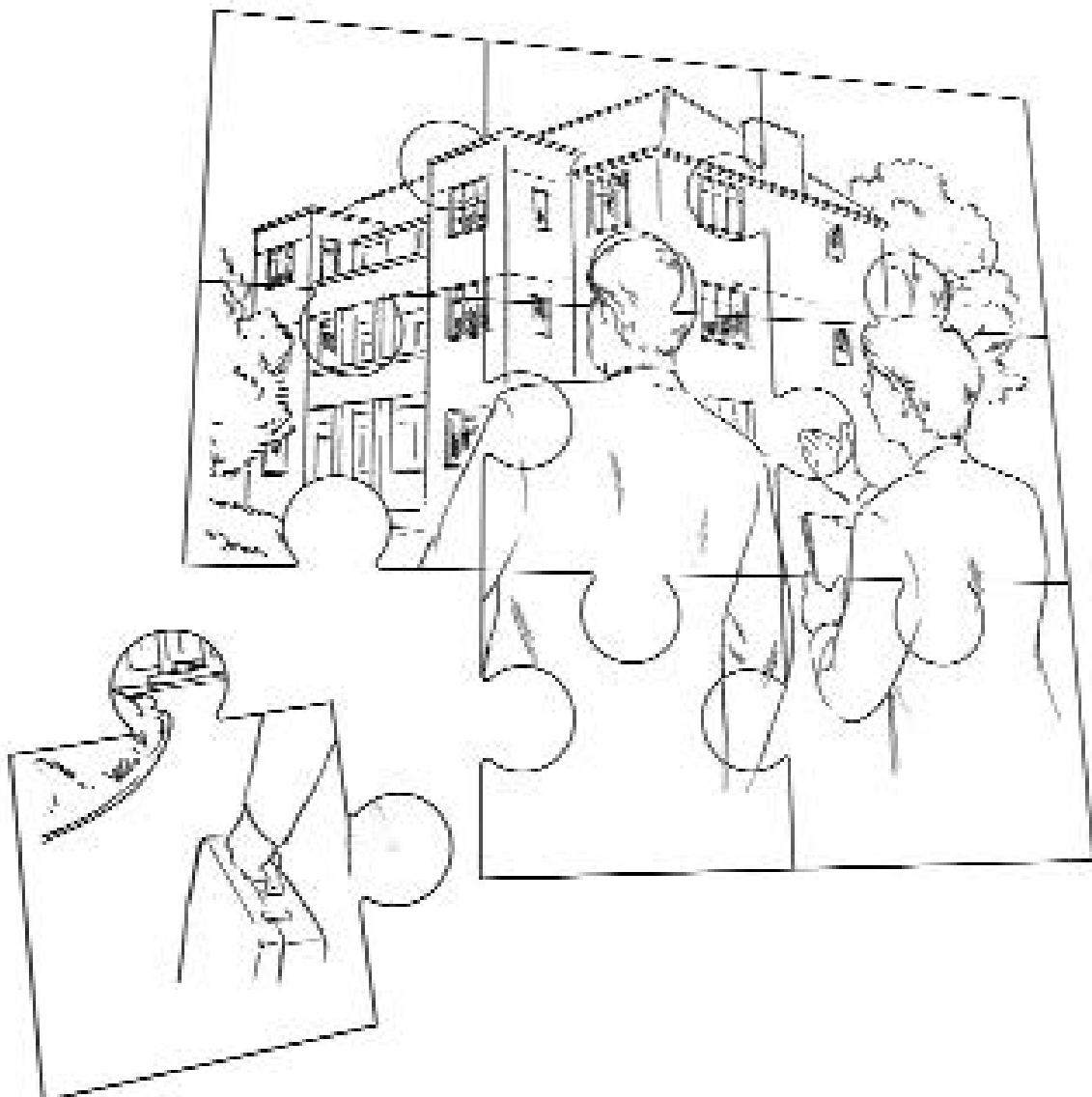


# LIVING IN LEASEHOLD

*A guide to how it works,  
your rights and responsibilities*



## *Introduction*

As the purchaser, or owner, of a leasehold flat, it is in your own interest to understand the legal nature of the ownership. What exactly do you own and what are the associated rights and liabilities?

This guide aims to help you:

- understand what residential leasehold is;
- be clear on your rights;
- appreciate what your responsibilities are.

It is intended as a general guide only and is not a substitute for legal advice. It has been produced jointly by ARMA, the Association of Residential Managing Agents, and LEASE, the Leasehold Advisory Service.

## *What is leasehold?*

Leasehold flats can be in purpose-built blocks, in converted houses or above commercial or retail premises.

Leasehold ownership of a flat is simply a long tenancy, the right to occupation and use of the flat for a long period – the ‘term’ of the lease. This will usually be for 99 or 125 years and the flat can be bought and sold during that term. The term is fixed at the beginning and so decreases in length year by year; thus, if it were not for inflation, the value of the flat would diminish over time until the eventual expiry of the lease when the flat reverts to the landlord (although an assured tenancy would then become a possibility).

The ownership of the flat usually relates to everything within the four walls of the flat including floorboards and plaster to walls and ceiling, but does not usually include the external or structural walls. The structure of the building and the land it stands on is owned by the landlord, who is responsible for the maintenance and repair of the building.

The landlord can be a person or a company. It is also becoming quite common for the leaseholders to own the freehold of the building, through a residents’ management company, effectively becoming their own landlord.

## *What is a lease?*

A lease is a private contract between the leaseholder and the landlord. When a flat changes hands, the seller assigns all the rights and responsibilities of the lease to the purchaser, including any future service charges that have not yet been identified. It is an important document and leaseholders must ensure that they have a copy and that they understand it. The wording of leases is usually in legal language and can vary from property to property. Leaseholders who cannot understand their lease should get advice.

The lease sets out the contractual obligations of the two parties, what the leaseholder has contracted to do, and what the landlord is bound to do. The leaseholder’s obligations will include payment of the ground rent and contribution to the costs of maintaining and managing the building; the lease will probably also place certain conditions on the use and occupation of the flat. The landlord will usually be obligated to manage and maintain the property, to collect contributions from all the leaseholders and keep the accounts.

Leaseholders are not necessarily entirely free to do whatever they want in or with the flat – the lease comes with conditions, to protect the rights of everyone with an interest in the building.

**[Read the lease – understand your rights and responsibilities.](#)**

## *What are your rights?*

First and foremost, the right of peaceable occupation of the flat for the term of the lease, usually referred to as ‘quiet enjoyment’. In addition, the leaseholder has the right to expect the landlord to maintain and repair the building and manage the ‘common parts’ – ie, the parts of the building or grounds not specifically granted to the leaseholder in the lease but to which there are rights of access, for example, the entrance hall and staircases.

## *What are your responsibilities?*

Principally these will be the requirements to keep the flat in good order, to pay (on time) a share of the costs of maintaining and running the building, to behave in a neighbourly manner and not to do certain things without the landlord’s consent, for example, make alterations or sub-let.

The landlord has an obligation to ensure that the leaseholder complies with such responsibilities for the good of all the other leaseholders.

These rights and responsibilities will be set out in the lease.

## What is ground rent?

Because leasehold is a tenancy, it is subject to the payment of a rent, usually nominal, to the landlord. Ground rent is a specific requirement of the lease and must be paid on the due date.

## What are service charges?

Service charges are the payment by the leaseholder to the landlord for all the services the landlord provides. These will include general maintenance and repairs, insurance of the building and, in some cases, provision of central heating, lifts, porterage, lighting and cleaning of common areas etc. Usually the charges will also include the costs of management either by the landlord or by a professional managing agent.

Service charges can vary from year to year; they can go up or down without any limit other than that they are *reasonable*

Details of what can (and cannot) be charged by the landlord and the proportion of the charge to be paid by the individual leaseholder will all be set out in the lease.

**The landlord arranges provision of the services. The leaseholder pays for them.**

All costs are down to the leaseholders; the landlord will generally make no financial contribution. Most modern leases, however, allow for the landlord to collect service charges in advance, repaying any surplus or collecting any deficits at the end of the year.

The landlord can only recover those costs which are *reasonable*. Leaseholders have powerful rights to challenge service charges they feel are unreasonable at the Leasehold Valuation Tribunal (LVT).

When considering the purchase of a leasehold flat, it is important to find out, for personal budgetary purposes, what the current and future service charges are likely to be.

## What are reserve funds?

Many leases provide for the landlord to collect sums in advance to create a reserve or 'sinking' fund to ensure that sufficient money is available for future scheduled major works, such as external decorations or lift replacement. The lease will set out the sums involved and when regular, cyclical, maintenance works are due.

Contributions to the reserve fund are not repayable when the flat is sold.

## How is the building insured?

The lease will normally require the landlord to take out adequate insurance for the building and the common parts, and will give him or her the right to recover the cost of the premium through the service charges. This policy will not normally cover the possessions of individual leaseholders.

## What happens if the leaseholder doesn't pay?

It is the leaseholder's obligation to pay the charges promptly under the terms of the lease. As long as the landlord is able to show that the charges are reasonable, then he will be able to take forfeiture proceedings. If approved by a court, this can lead to the landlord repossessing the flat.

## What is a managing agent?

A managing agent is appointed by the landlord and manages and maintains the building on behalf of the landlord, in accordance with the conditions of the lease and current relevant legislation and Codes of Practice. The agent takes instruction from the landlord, not the leaseholders, but should constantly be aware of the leaseholders' wishes and requirements.

The agent will receive a fee which will usually be paid by leaseholders as part of the service charges. This may be based on a specified percentage of the day-to-day service charges, but good and common practice is for it to be a fixed fee per annum. Where major works are involved, the agent may charge an additional fee, which would normally be a percentage of the total cost of such works.

## *What other rights does the leaseholder have?*

Probably more than you think. There is wide range of rights set out in legislation and advice is readily available; however, where a dispute arises, the first step should be to ask the managing agent for full details and/or an explanation.

- **Information** – the landlord must provide his name and a contact address within the UK which must be stated on every demand for service charges. Leaseholders can demand summaries of the service charges, details of the insurance cover and have the right to inspect accounts and other documents.
- **Consultation on major works** – the landlord cannot carry out major works to the building without first consulting the leaseholders in the proper fashion; if he fails to do this, he may not be able to recover all the costs.
- **Challenging service charges** – leaseholders can apply to the LVT to seek a determination of the reasonableness of the charges.
- **Appointing a manager** – if the landlord's management is deficient, then leaseholders can apply to the LVT for the appointment of a new manager.
- **Extending a lease** – an individual leaseholder who satisfies certain conditions can demand a new lease from the landlord, with the price to be agreed between the parties or, if this is not possible, set by the LVT.
- **Buying the freehold** – groups of leaseholders who satisfy certain conditions can get together and enforce the purchase of the freehold, again with the price being agreed between the parties or, if this is not possible, set by the LVT.
- **Right of first refusal** – where the landlord proposes to sell his interest in the building, he must offer it to the leaseholders first or he can be prosecuted.

All these rights are covered in government leaflets available from local councils, Citizens' Advice Bureaux or from LEASE.

## *Where can I get advice?*

### **LEASE – The Leasehold Advisory Service**

70-74 City Road, London, EC1Y 2BJ. Tel: 020 7490 9580 Fax: 020 7253 2043 E-mail: [info@lease-advice.org](mailto:info@lease-advice.org) Website: [www.lease-advice.org](http://www.lease-advice.org)

LEASE provides free advice and guidance to leaseholders and landlords on all aspects of leasehold law, including problems with service charges, possession proceedings and rights to lease extension and freehold acquisition. LEASE is funded by the Department of Transport, Local Government and the Regions, and the National Assembly for Wales.

### **ARMA – The Association of Residential Managing Agents**

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ARMA is the only body in England and Wales that focuses exclusively on matters relating to the block management of residential property, whether for landlords or resident management companies. Members agree to adopt and comply with the principal objectives of the Association and undertake to follow the Codes of Practice issued by ARMA and the Royal Institution of Chartered Surveyors.

## *A final question*

### *Should I buy a leasehold flat?*

If you want to buy a flat, rather than a house, then you have little choice. Present property law in England and Wales effectively requires that flats be leasehold. However, this should not be a concern as long as you know and appreciate your rights and obligations. With a well-written lease and a properly managed building, a leasehold flat should provide a perfectly good home and a secure investment.

