

PROPERTY ISSUES: PROBLEMS WITH ABSENT FREEHOLDERS

An absent freeholder can cause a number of problems for tenants in the building. The most common ones are:

- (1) Management of the building;
- (2) Selling of the leasehold property; and
- (3) The need for a new lease or lease extension.

Fortunately there is legislation designed to assist leaseholders in this situation.

Provided that the requisite conditions set out in the legislation are satisfied in each case, tenants of flats can apply: (1) to appoint a manager to act in relation to the management of the building (s.24 of Landlord and Tenant Act 1987) , (2) to collectively acquire the freehold (s.26 of Leasehold Reform Housing and Urban Development Act 1993 (“LRHUDA 1993”), or (3) to acquire a new lease (s.50 of LRHUDA 1993)

In each case, thorough investigation should be made to find the last known contact details for the Freeholder such as checking the service address registered on the Freehold title register at the Land Registry. If the Freeholder is a company, any contact details of its officers or accountants named on any recent documents filed at Companies House should be checked. A general search on a search engines should be made and it is also advisable to contact any managing agents involved in the management of the building in the past, to see whether they still have any contact with the freeholders.

Seeking legal advice at this early stage would be helpful as your solicitor will be able to advise you on the appropriate steps to take and the records you should keep of the efforts made to trace the Freeholder. They can also provide advice on the qualifying conditions to be satisfied before an application can be made to the Court or Tribunal.

It may also be prudent to rally the support of other tenants in the same predicament in advance. This will mean that the qualifying conditions for the commencement of proceedings are more likely to be met and the cost of the exercise can be shared.

Other points to be aware of:

(i) Building Insurance: most leases will provide that the landlord is responsible for insuring the building. If it cannot be established whether building insurance is in place, you should arrange for adequate cover to be in place (this can be done collectively with the other tenants), firstly to protect your own interest in the property and secondly, to ensure you are not in breach of your mortgage conditions (if the property is mortgaged).

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(ii) Absent Landlord indemnity insurance: many title indemnity providers can provide cover for potential claims such as forfeiture of the lease due to inability to obtain clear ground rent/service charge receipts, consent to assignment and/or previous alterations.

Often the best solution is to exercise the right to appoint a manager of the building (known as the Right To Manage). This process will normally lead to management being assumed by a RTM company incorporated by the tenants who can then effectively assume the role that should have been carried out by the absent freeholder. Where necessary the RTM company can appoint managing agents to deal with management issues on a day to day basis.

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