

**Absent Freeholders/Landlords**

The absent landlord problem often arises where older residential leases are involved, where the current ground landlord has died or perhaps simply moved on without leaving any forwarding address. Where a landlord has died, one might deal with their Executor. However, if your landlord has died without making a will and there is no one to apply to the Probate Registry for Letters of Administration, what then?

Contact with a landlord is often lost when the value of a fixed yearly ground rent is of such a nominal amount, that it is simply not worth collecting i.e. in many cases, where ground rents have been set over 100 years ago, the cost of the letter envelope and stamps can be greater than the rent received! This obviously defeats the main purpose of the ground rent, which is to give landlords and tenants the reason to keep in contact with each other. When an absent landlord situation arises, the buyer's solicitors must quickly assess the situation and notify any mortgage lender and advise the client on its practical implications.

**Assessing the position**

One of the main consequences of an absent landlord is that there is no longer anyone directly or contractually responsible for overseeing the repair, insurance and management of the building and in particular, communal areas such as lifts, corridors, shared entranceways, gardens and car parks etc. A standard residential lease is basically a contract between landlord and leaseholders, by which all individual leaseholders agree to keep their own property/apartments in repair and pay to the landlord a fair proportion of the total cost of the maintenance repair and renewal of the main structural part of the building and communal areas. In return, the landlord accepts the contractual responsibility to carry out such maintenance, repair and renewal,

subject to any additional management/administration costs. Whilst clearly these are important functions to be carried out by the landlord, there are also other equally important matters to be dealt with, such as the enforcement of leasehold obligations against individual leaseholders for the mutual benefit of all the occupants of the building. For example, if leaseholder X continually parks her vehicle in the parking space which is specifically set aside for leaseholder Y, the provisions of the lease will only allow the landlord to take action against leaseholder X, having received a complaint from leaseholder Y. Leaseholder Y cannot take any formal legal action against leaseholder X direct. The landlord is the only one who can threaten forfeiture of the lease and thus the only one who can deal with disputes, disturbances or annoyances, as may arise between leaseholders.

Despite more modern residential leases making some leasehold obligations mutually enforceable, it is usually only the landlord who can ensure that every individual leaseholder pays their fair share towards service charge items. In all cases, it is only the landlord who can protect the communal areas, such as car parks, communal gardens and amenity areas from trespass or any encroachment by unauthorised third parties. So what happens when it is discovered that a landlord has gone missing?

### **Residents Associations**

Where this occurs, often leaseholders have formed their own informal Residents Associations and have made arrangements for essential building repairs, insurance and maintenance. However, such arrangements can only be considered as a short term fix and are likely to quickly break down if a permanent solution is not put in place. i.e. different leaseholders will have different perceptions as to what they see as urgent works to be carried out. Some leaseholders may want a secure door entry system, whilst others may prefer to save their money. Some may wish to spend more money than others etc. As the arrangement is informal, no one can be forced to pay their share.

As solicitors acting for buyers, where it is apparent that the landlord is absent, we must first ask the question of how much money has been put aside by the leaseholders jointly to meet the arrears of ground rent, arrears of service charge and other costs to cover repair, maintenance and insurance and other financial liabilities as will be due.

### **Carrying out searches**

If the landlord is shown as a registered company, a search of the Companies House website will show whether or not that company still exists. If it has been wound up, or a private individual has been made bankrupt, all landlords rights and responsibilities will then be with the Liquidator, Official Receiver or Trustee of Bankruptcy. Unfortunately, the problem is more difficult if the landlord is an individual who has moved abroad.

Any mortgage lender will also need to be notified of the situation and then need to decide whether or not they still wish to proceed with the loan to the borrower/buyer. Certainly, if the purchase is still to proceed and the mortgage lender is prepared to lend, Title Indemnity Insurance would be a must. Whilst this protects the mortgage security, unfortunately it will not resolve the underlying problem of how the buildings should be repaired, insured, maintained and managed. A more permanent solution should therefore be sought.

### **Dealing with the problem**

A simple agreement between leaseholders (and their respective mortgage lenders) may well suffice where there are only two or three flats within the building. The leaseholders will enter into a binding agreement between themselves to either carry out or contribute to the cost of carrying out essential maintenance repair and insurance. The agreement can also be worded so as to give the leaseholders mutual rights to enforce other leasehold obligations against each other. This would certainly give the leaseholders some comfort and give leaseholder Y the right to prevent

leaseholder X from using the wrong parking space – as aforementioned. Unfortunately, what such an agreement cannot do is to exert the powers of the freeholder, where there is an infringement of the Leaseholders rights by third parties eg. trespass.

### **Action**

Setting up and running a Leaseholders Management Company requires time and commitment. If the leaseholders are not able to deal with this themselves they should buy in the services of solicitors, accountants and managing agents to advise. If you need further advice on leasehold property, get in touch with me at **ian.osborne@busbyslaw.co.uk**.

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