



## **Comments on problems in residential leasehold law for the Law Commission from National Association of Estate Agents**

**October 2016**

### **Background**

1. National Association of Estate Agents (NAEA) is the UK's leading professional body for estate agency personnel, being part of a group representing more than 16,000 members who practice across all aspects of property services both in the UK and overseas. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land. The NAEA is a sister organisation to the Association of Residential Letting Agents (ARLA).
2. NAEA is dedicated to the goal of professionalism within all aspects of property, estate agency and land. Its aim is to reassure the general public that by appointing an NAEA member to represent them they will receive in return the highest level of integrity and service for all property matters. Both NAEA and ARLA members are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the Associations.

### **Problems in residential leasehold law**

#### Existing regulation of service charges

3. NAEA thinks that the existing regulation of service charges payable by tenants of long residential leases should be examined by the Law Commission. This is because estate agents selling property can often quickly identify developments which are poorly managed. These properties are usually characterised by poor maintenance of the building, its grounds and common parts. However, in some cases the level of service charges can indicate poor management but it is just as likely to be because service charges are unexpectedly low, as unusually high.
4. Furthermore, relationships between managing agents can be difficult. Any group of tenants will have varying expectations about the standard of work, what they determine as value for money and what works come under the responsibility of the managing agent as defined by the lease. For instance, members have come across circumstances when a managing agent has been deeply unpopular with the tenants because of having to



discharge their responsibilities under the terms of the lease and charge the tenants accordingly.

5. We also know that self-managed schemes are not exempt from problems. These schemes can be influenced by strong and loud internal voices amongst the occupiers in a development having undue influence. In addition, where a self-managed option may cut costs it may not always be beneficial because issues such as lease breaches can pass without being challenged until a buyer's solicitor uncovers deficiencies in the leasehold pack. A sensible solution would be to require mandatory redress schemes with an accompanying code of practice for managing agents.
6. In relation to retendering for property management services, we think this has some problems. A regular tendering process will add to costs in relation to the production of the tender framework and potentially limit the contracts which managing agents can award to their sub-contractors. Furthermore, a significant proportion of complaints about managing agents are about competence and quality rather than cost. Whereas a tendering process usually focuses on cost and therefore contracts awarded on cost may be more likely to suffer from competence and quality issues.

#### Lease extensions

7. It is the view of some of our members that people are becoming more aware of the significance of the number of unexpired years on a leasehold title, with many now considering the statutory process for extension before selling. We know that where there is a willing and reasonable landlord who makes a sensible offer for a statutory extension from the outset (or a realistic alternative extension) good progress towards a sale can be made. Consequently, estate agents can be certain about what buyers are being offered. However, in some situations landlords have made unreasonably large financial demands for lease extensions. This could be because the leaseholder is under pressure to sell and doesn't have time to for a lengthy negotiation or the time and money to prepare for a tribunal. Therefore quicker and cheaper alternatives to the tribunal system should be considered to settle disputed cases, as some individuals will give up on getting a reasonable settlement.

#### Ground rent increase provisions

8. Ground rent increase provisions in residential leaseholds can be problematic because too large an increase can make properties unsaleable. For instance, we know of examples where the ground rent provisions were for an increase every 25 years based on a compound calculation of the House Price Index. This seems reasonable on face value but the year in which the increase applied was at the end of a boom period and the ground rent increased from £50 per annum to over £1,000 per annum. Another example is where the ground rent was set to double every 10 years at a time when RPI was around 8% per annum and prices would double every nine years using a compound calculation. In a particular twenty one year period a £200 per annum ground rent could increase to £1,600 per annum. It is not possible to know whether the intentions of the lease were to gain an advantage for the landlord or simply to set out a clear and uncomplicated method for calculating what the increase should be. However, it is vital that the purchasers are advised by their solicitors as early as possible about the potential costs that could arise in the future and under different economic conditions.
9. Furthermore, the ground rent increase provisions are usually set out unambiguously in leases and it is the responsibility of the buyer's solicitors to advise them about the ground rent increase provisions, along with other matters pertaining to the lease. We know of a case where a group of leaseholders took collective action against their respective solicitors who advised them about their purchases but failed to advise them properly on this point. The leaseholders' settlement included the cost of transferring the freehold to a residents' management company and compensating the landlord accordingly as this was the most effective way of bringing an end to the escalating financial disadvantages to the leaseholders of the rent provision.
10. Therefore, if ground rent increases were regulated outside the provisions in a lease this would mean compensating landlords for changes in their entitlements set out in the lease. This currently happens with enfranchisement and term extension, so the Law Commission should look at whether similar proposals could be put forward for changes to ground rent provisions. Within statutory lease extensions the provision is for a peppercorn ground rent and any changes to these leases would largely remove the financial incentive to own the freehold and is therefore not a good option to look at.

#### Event fees

11. Leasehold retirement properties (those restricted to sale and occupancy by age) typically have an event fee triggered by the sale of the property. Members have told us that this is



typically between one and two per cent of the selling price and is separate from the assignment fee. It is often unclear what service or benefit the client receives for payment of this fee. In practice, this drives many clients who are selling to use the management company to find a buyer, rather than instructing a traditional estate agents who will be able to reach a wider market. As a result their choice is restricted.

12. However, not all retirement properties are leasehold. For instance, retirement bungalows often have a freehold title with occupancy restrictions and maintenance arrangements by means of covenants contained in the freehold title. We know that the event fee triggered by the sale often appears in these documents too. A similar situation also applies for the sale of Park Homes, where the site owner can charge up to 10% of the sale price as 'commission'. However, members have informed us that the commission is rarely less than 10%. Value Added Tax (VAT) will be included and many people selling mobile homes additionally instruct an estate agent to get good market coverage, adding a further cost to a typical transaction.
  
13. NAEA welcomes the Law Commission's consultation and proposals on a draft code of practice on event fees. We believe that any information given to consumers about the property should be accurate and allow them to make informed decisions. It should always be made clear to consumers when there is a clause in the lease agreement. If this relates to services it should be explained what any deferred payments will be for. Administration charges must be made clear in separate clauses within the purchaser's contract and where event fees cover maintenance, repair or improvement of the development this should be evidenced and accounted for on an annual basis. It's also important that estate agents know to ask whether event fees exist on the lease and involve both the solicitor and conveyancer in determining information.