



THE LAW COMMISSION

RESIDENTIAL LEASES: FEES ON TRANSFER OF TITLE, CHANGE OF OCCUPANCY AND OTHER EVENTS

This optional response form is provided for consultees' convenience in responding to our Consultation Paper.

The response form includes the text of the questions in Chapter 14 of the Consultation Paper, with boxes for yes/no answers (please delete as appropriate) and space for comments. You do not have to respond to every question. Comments are not limited in length (the box will expand, if necessary, as you type).

Each question gives a reference in brackets to the paragraph of the Consultation Paper at which the question is asked. Please consider the surrounding discussion before responding.

We invite responses from 29 October 2015 until 29 January 2016.

Please return this form:

By email to: event_fees@lawcommission.gsi.gov.uk

By post to: Max Marenbon, Law Commission, 1st Floor,
Tower, Post Point 1.53, 52 Queen Anne's
Gate, London SW1H 9AG

We are happy to accept responses in any form. However, we would prefer, if possible, to receive emails attaching this pre-prepared response form.

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Any information you give to us will be subject to the Freedom of Information Act 2000, which means that we must normally disclose it to those who ask for it.

If you wish your information to be confidential, please tell us why you regard the information as confidential. On a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the Law Commission.

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YOUR DETAILS

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CONFIDENTIALITY

Do you wish to keep this response confidential?

Yes:	No: X
If yes, please give reasons:	

QUESTION 1: THE NEED FOR REFORM

(Consultation Paper, paragraph 10.15)

Do consultees agree that:

- (1) developers, operators and managing agents should do more to bring event fees to the attention of prospective purchasers at an early stage?

Yes: X	No:	Other:
This issue is also important for estate agents because they must comply with Consumer Protection Regulations. NAEA believes that consumers should be told about event fees when they see the property advertised, visit an estate agent's office or view the property. The issue should also be highlighted when the prospective purchaser puts in an offer and has it accepted.		

- (2) there is a need to reform the law to achieve this objective?

Yes: X	No:	Other:
According to the UK Parliament website the general population is expected to grow		

by 3% by 2020 with the number of people aged over sixty five expected to increase by 12% (1.1 million) and the numbers aged over eight five by 18% (300,000). Therefore the ability for people to continue to access specialist retirement housing will become more significant, so it is essential that there is a clearer legal framework around event fees.

QUESTION 2: BRINGING EVENT FEES WITHIN UNFAIR TERMS LEGISLATION

(Consultation Paper, paras 11.19 to 11.20)

Do consultees agree that:

- (1) statutory reform should ensure that event fees are fully assessable for fairness under unfair terms legislation (as set out in the Consumer Rights act 2015)?

Yes: X	No:	Other:

- (2) for the purposes of unfair terms legislation, an event fee term should be treated:

- (a) as if it were a contract term?

Yes: X	No:	Other:
NAEA believes that any information given to consumers about the property should be accurate and allow them to make informed decisions.		

- (b) as if it were a term of a contract made between the landlord and tenant when the current tenant first became bound by the term?

Yes: X	No:	Other:

- (3) this should apply to event fee terms on the next sale of the lease after the reform comes into effect, irrespective of when the lease was first granted?

Yes: X	No:	Other:

We welcome views on whether similar principles should apply more generally to all covenants in residential leases.

Yes: X	No:	Other:
Similar principles should apply more generally to all covenants in residential leases to ensure that consumers are fully aware of all the details and can make informed decisions.		

QUESTION 3: THE GREY LIST

(Consultation Paper, para 11.37)

Schedule 2 to the Consumer Rights Act 2015 sets out an “indicative and non-exhaustive” list of terms which may be regarded as unfair (the “grey list”). Do consultees agree that:

- (1) the Secretary of State should exercise the power in section 63(3) of the Consumer Rights Act 2015 to add a term covering event fees to the grey list?

Yes: X	No:	Other:
The term event fees should be added to the list to prevent developers from use of an unfair term which can be open to abuse.		

- (2) the addition to the grey list should be confined to event fees where the person claiming the fee fails to comply with the relevant provisions of an approved code of practice?

Yes: X	No:	Other:

QUESTION 4: A STATUTORY TRUST FOR SINKING FUND EVENT FEES

(Consultation Paper, para 11.52)

Do consultees agree that where the lease requires event fees to be used exclusively for the maintenance, repair or improvement of the development, the fees should be subject to a statutory trust?

Yes: X	No:	Other:
It should always be made clear to consumers if there is a clause in the lease agreement and if this relates to services what any deferred payments will be for. A statutory trust would help to protect consumers’ funds.		

QUESTION 5: DEFINITION OF EVENT FEES

(Consultation Paper, para 11.59)

Do consultees agree that:

- (1) an event fee term should be defined as a term in a residential lease which imposes an obligation for the tenant to pay a fee on, or in connection with the happening of a defined event where:
 - (a) the event is that title to the lease changes hands, a change in the occupancy of the property; or some other event which creates a third party interest in the lease; and
 - (b) the fee is fixed or calculated in accordance with a formula.

Yes:	No:	Other: X
We agree with both points but 'third party interest' is too vague and creates ambiguity. Unless it can be explained we think the main focus should be on change of ownership or occupation.		

- (2) the definition should not include fees which:
 - (a) fall within the definition of administration charges in schedule 11 to the Commonhold and Leasehold Reform Act 2002?
 - (b) must be used exclusively for the maintenance, repair or improvement of the development and which are subject to the proposed statutory trust?

Yes: X	No:	Other:
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.		

QUESTION 6: PROPOSALS RELATING TO CODES OF PRACTICE

(Consultation Paper, para 12.13)

Do consultees agree that the codes of practice applying to developers, operators, managing agents and estate agents should be strengthened to ensure that event fees are brought to the attention of prospective purchasers at an early stage?

Yes: X	No:	Other:
NAEA requires all Principal, Partner or Director member firms to follow the Property Ombudsman's Codes of Practice including the Code of Practice for Residential Estate Agents. In that Code at point 18j it defines event fees as 'Fees connected with the sale of sheltered housing and other events such as subletting'. NAEA thinks this definition should		

be expanded to include reference to fees when there is change of occupation or ownership as well as for service charges.

Point 7k in the Code outlines broadly what published material and information about a property estate agents should provide in relation to leasehold properties. We think that the Code of Practice could be strengthened to advise agents to ask whether event fees exist on the lease and involve both the solicitor and conveyancer in determining information.

QUESTION 7: SPONSORSHIP OF THE EVENT FEE PROVISIONS

(Consultation Paper, para 12.14)

We welcome views on which organisations should take responsibility for implementing new code provisions dealing with event fees.

NAEA members are regulated by a body called NFoPP (National Federation of Property Professionals) Regulation. The body regulates individual members of NAEA and companies which fall within the jurisdiction of NAEA. All individual members are required to adhere to professional standards and follow relevant guidance. All companies are required to meet certain company obligations.

QUESTION 8: USE OF EVENT FEES OUTSIDE OF SPECIALIST HOUSING

(Consultation Paper, para 12.15)

We welcome evidence on the use of event fees in residential leases outside specialist housing for older people. If possible, please provide specific examples of the term used, together with a description of the property.

NAEA does not have any evidence about the use of event fees in residential leases outside specialist housing for older people.

QUESTION 9: GOVERNMENT APPROVAL OF THE EVENT FEE PROVISIONS

(Consultation Paper, para 12.16)

Do consultees agree that the event fee provisions applying to all those with a right to receive event fees should be approved by the Department for Communities and Local Government under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993?

Yes: X	No:	Other:

QUESTION 10: EVENT FEES ON SUB-LETTING

(Consultation Paper, paras 12.19 to 12.21)

Do consultees agree that on sub-letting event fees should not be charged on a percentage of the open market value?

Yes: X	No:	Other:

We welcome consultees' suggestions on fair and proportionate ways to calculate sub-let fees (such as flat fees or a percentage of the rent).

NAEA thinks that the calculation of sub-let fees should be done independently and not by the landlord.
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Should the codes of practice prescribe a maximum amount that may be charged on sub-letting?

Yes: X	No:	Other:

QUESTION 11: EVENT FEES IN UNEXPECTED CIRCUMSTANCES

(Consultation Paper, para 12.24)

Do consultees agree that event fees should only be charged on sale or sub-letting?

Yes: X	No:	Other:

QUESTION 12: A CHOICE TO PAY FEES UP FRONT

(Consultation Paper, paras 12.30 and 12.31)

Where the event fee is calculated as a percentage of the sale price, it can be difficult for prospective purchasers to estimate their future liability upon resale. Should prospective purchasers be given an alternative payment option, so that they can know the amount of the fee at the time of purchase?

Yes: X	No:	Other:
Where the event fee is calculated as a percentage of the sale price, NAEA believes that prospective purchasers should be given an alternative payment option. However, this should be clearly written in the lease and easy to understand.		

We welcome consultees' suggestions on which alternative payment options might be attractive, and how they should be presented.

NAEA believes that a flat fixed fee option would provide greater security to consumers because they would know the maximum amount they would need to pay before agreeing to any lease.
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QUESTION 13: DISCLOSURE REQUIREMENTS WHEN THE LANDLORD SELLS THE PROPERTY DIRECTLY

(Consultation Paper, para 12.52)

Do consultees agree that where the landlord sells the property directly:

- (1) an advertisement which mentions the price of the property should also mention the event fee?

Yes: X	No:	Other:

- (2) when prospective purchasers first visit the property they should receive a disclosure document?

Yes: X	No:	Other:

- (3) where the property is sold off-plan, the disclosure document should be supplied on a visit to the site or sales presentation, or at the first significant interaction with sales staff?

Yes: X	No:	Other:
The disclosure document should also be accessible online.		

- (4) the disclosure document should:
- (a) set out in the same place all the event fees applying to the property (including sinking fund fees subject to a statutory trust); and
 - (b) illustrate their effect, explain alternative options and give contact details for advice organisations?

Yes: X	No:	Other:
Additionally, the NAEA thinks that the disclosure document should include contact details for local trading standards services, Money Advice Service and Citizens Advice. The disclosure document should also provide examples of potential scenarios relating to the lease if the property was sold or rented. It should also advise prospective purchasers seek independent legal counsel before signing any agreement.		

- (5) the code should specify how illustrative examples are calculated. In particular it should:
- (a) require that the example is based on a price which is fairly representative for that development; and
 - (b) standardise the intervals and the range of likely house price increases, so that they extend to an adequate number of years (for example, 15 years)?

Yes: X	No:	Other:

- (6) the event fee should be mentioned in face-to-face discussions?

Yes: X	No:	Other:
In addition to mentioning the event fee in face-to-face discussions, it is NAEA's opinion that information about the event fee should also be passed on to the prospective purchaser's solicitor. Estate agents should record the date and time they did this.		

QUESTION 14: INVOLVEMENT OF MANAGING AGENTS IN THE SALE

(Consultation Paper, paras 12.60 and 12.61)

Do consultees agree that where a property with an event fee is sold through managing agents, the managing agent should:

- (1) comply with requirements on advertising,
- (2) supply copies of the disclosure document at an early stage; and
- (3) hold face-to-face discussions with prospective purchasers?

Yes: X	No:	Other:

We think that, under the current law, breaches of the rules on event fees by the managing agents would be treated as breaches by the landlord.

Do consultees agree that:

- (4) this interpretation is correct?

Yes:	No: X	Other:
We have answered no because the managing agent may not have passed on		

information to the landlord. However, it is NAEA's belief that ultimately it would be down to the Ombudsman services for the property sector to decide whether this is a breach and impacted on the consumer's ability to make an informed decision.

(5) this should continue to be the law?

Yes:	No: X	Other:

QUESTION 15: WHERE THE PROPERTY IS SOLD BY THE LEASEHOLDER'S ESTATE AGENT

(Consultation Paper, paras 12.72 to 12.74)

Do consultees agree that landlords should establish an online database to provide information to estate agents about the event fees?

Yes: X	No:	Other:
This would also allow for dates to be recorded of when information about event fees were provided to potential purchasers. Information about event fees could also be downloaded directly from the database.		

Alternatively, would it be sufficient for estate agents to contact managing agents for this information?

Yes:	No: X	Other:
NAEA believes that estate agents should not advertise the property until they have all the information about event fees. This will ensure that a prospective purchaser upon resale will receive all the information they require to make an informed decision.		

We welcome other suggestions as to how estate agents can be provided with information about event fees for a property swiftly and in an accessible format.

A national database should provide an appropriate solution to this issue.

QUESTION 16: CODES APPLYING TO ESTATE AGENTS

(Consultation Paper, paras 12.81 and 12.82)

Do consultees agree that codes which apply to estate agents should reflect similar principles with regard to event fees?

Yes: X	No:	Other:
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In particular:

- (1) should every advertisement which mentions the price of a property subject to event fees also mention the event fee?

Yes: X	No:	Other:

- (2) should the estate agent supply a copy of the disclosure document when a prospective purchaser views a property which is subject to an event fee?

Yes: X	No:	Other:
The estate agent should supply the disclosure document before the prospective purchaser views a property.		

- (3) when selling specialist housing, should estate agents encourage prospective purchasers to talk directly to the agent or manager responsible for the property?

Yes: X	No:	Other:
If the property is advertised in an estate agent then the agency should have a detailed information pack available to help the seller and their solicitor through the process. Estate agents will also be able to inform sellers if anyone has expressed an interest in the property.		
Prospective purchasers who express an interest in specialist retirement housing should be invited by the estate agent to meet the manager responsible for the property before putting in an offer to find out more about the services available and living in a leasehold retirement property.		

QUESTION 17: CONVEYANCING PROTOCOLS

(Consultation Paper, para 12.86)

Do consultees agree that it should be standard procedure for conveyancers to talk through event fees with their clients?

Yes: X	No:	Other:

QUESTION 18: UNDERTAKINGS TO EXISTING TENANTS

(Consultation Paper, paras 12.93 and 12.94)

Do consultees agree that landlords should expressly agree with existing tenants that:

- (1) event fees will only be applied on sale or subletting;

Yes: X	No:	Other:

- (2) on subletting, event fees will not be calculated as a percentage of the open market value of the property;

Yes: X	No:	Other:

- (3) except where purchasers are given illustrations on the effect of the fee calculated as a percentage of the sale price, the fee should only be levied as a percentage of the lower of the purchase price or the sale price?

Yes: X	No:	Other:

Should landlords write to current tenants who are subject to event fees, to explain the effect of the undertakings they have given?

Yes: X	No:	Other:
It's important that current tenants understand the clauses in their lease agreement. However, to avoid confusion it may be better for landlords to delay informing tenants until a database or code of practice has been introduced.		

QUESTION 19: REJECTING AN OUTRIGHT BAN

(Consultation Paper, para 10.37)

Do consultees agree that event fees should not be banned completely?

Yes: X	No:	Other:
NAEA does not think that event fees should be banned completely because this could reduce the development of more specialist housing for older people or make this type of housing less affordable.		

In addition to our answers to questions 1, 2 and 4, on the issue of charges for maintenance, repair or improvement, prospective purchasers have to be sure their pension or retirement income will cover these costs and this needs to be highlighted to them.

Information should also be provided to prospective purchasers about who runs the development. For instance, if it is ran by a residents' management company rather than managed by the freeholders, there may be more scope for residents to have control over costs.

QUESTION 20: NO ASSESSMENT AGAINST COSTS REASONABLY INCURRED UNDER SECTION 19 OF THE LANDLORD AND TENANT ACT 1985

(Consultation Paper, para 10.44)

Do consultees agree that there should not be reform to bring event fees within the ambit of section 19 of the Landlord and Tenant Act 1985?

Yes: X	No:	Other:

QUESTION 21: NOT EXTENDING CONTROLS ON ADMINISTRATION CHARGES

(Consultation Paper, para 10.48)

Do consultees agree that the controls on administration charges set out in the Commonhold and Leasehold Reform Act 2002, schedule 11 should not be extended to include selling services?

Yes: X	No:	Other:

QUESTION 22: NOT EXTENDING CONTROLS ON CHARGES FOR GRANTING CONSENT

(Consultation Paper, para 10.51)

Do consultees agree that section 19 of the Landlord and Tenant Act 1927 should not be amended to cover event fees?

Yes: X	No:	Other:

QUESTION 23: EFFECT ON CONSUMER CONFIDENCE

(Consultation Paper, paras 13.7 and 13.8)

Do consultees agree that our proposals will increase consumer confidence in the specialist housing market?

Yes: X	No:	Other:

If so, what effect might this have on the market?

Yes: X	No:	Other:
We think that it would have a positive effect on the market, bringing greater transparency and allowing consumers to understand the cost implications when they decide to see or rent out their homes.		

QUESTION 24: EFFECT ON LENDER CONFIDENCE

(Consultation Paper, paras 13.13 and 13.14)

Do consultees think that following our proposals, event fees which comply with the code of practice will have sufficient legal certainty to meet the standards required for secured lending?

Yes:	No:	Other: X
NAEA does not know whether there will be enough legal certainty to meet the standards required for secure lending.		

We welcome evidence on the effect which removing the current legal uncertainty over event fees may have on the volume of lending available.

NAEA does not have information to comment on this point.
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QUESTION 25: SAVING THE COST OF SETTING UP EXPRESS TRUSTS TO HOLD CONTINGENCY FEES

(Consultation Paper, para 13.16)

We welcome evidence about the legal arrangements by which contingency funds are currently held. Do agents and developers incur legal and other costs in establishing express trusts?

Yes:	No:	Other: X
We do not have information to respond to this question.		

QUESTION 26: FAMILIARISATION COSTS

(Consultation Paper, paras 13.23 and 13.24)

We welcome evidence on the training currently given to estate agents about the Consumer Protection from Unfair Trading Regulations 2008 and consumer codes of practice. How far would the current proposals add to this cost?

NAEA runs courses on the Consumer Protection Regulations for members and non-

members. The topics the course covers include the Consumer Rights Act, fees and display, unfair trading and permitted activity, property descriptions and how to get them right. The course takes 3.5 hours and costs £85 plus VAT for NAEA members and £125 plus VAT for non-members.

We welcome evidence about the number of managing agents, operators and developers who would need to familiarise themselves with the proposed changes. How is this likely to be conducted?

NAEA's membership comprises 9,500 offices and we will be informing them about any changes.

QUESTION 27: ONLINE DATABASE

(Consultation Paper, paras 13.26 and 13.27)

We welcome evidence on the costs of setting up a new online database to provide information to estate agents about the event fees.

NAEA does not know how much it would cost to set up a new online database, although with the consent of members we could help provide relevant information.

We would also be interested in the costs of alternative ways of providing this information swiftly and in an accessible format.

We do not have any information to respond to this point.

QUESTION 28: PREVENTING EVENT FEES IN CIRCUMSTANCES UNRELATED TO SALE OR SUB-LETTING

(Consultation Paper, para 13.31)

Do developers collect event fees on death, mortgaging or change of occupancy, in circumstances which do not involve a sale or sub-letting? If so, how much is collected in this way?

Yes:	No:	Other: X
NAEA does not know whether developers collect event fees on death, mortgaging or change of occupancy in circumstances which do not involve a sale or sub-letting.		

QUESTION 29: FACE-TO-FACE DISCUSSIONS

(Consultation Paper, paras 13.34-35)

When a retirement lease is sold through the vendor's estate agent, how far do agents and managers hold face-to-face discussions with prospective purchasers?

Many specialist retirement houses are marketed by the developers or advertised by local estate agents. Prospective purchasers can contact sales teams directly to receive further information and/or set up a meeting with the manager of the

development. Depending on the type of development there may be a waiting list or further details required in order to submit an application.

Would the provisional proposal that estate agents should encourage and facilitate such meetings add to costs?

Yes:	No: X	Other:
Essentially because the process is the same as it would be for buying any property.		

QUESTION 30: OTHER COSTS

(Consultation Paper, para 13.36)

We welcome evidence about other costs which may result from our provisional proposals.

We have no further information about costs.
