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Understanding Leasehold

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In September 2018, NAEA Propertymark conducted research with more than 1000 individual leaseholders. The results published in *Leasehold; A Life Sentence?* sent shockwaves across the industry and through Government and were widely reported by the media.

This guide provides NAEA Propertymark estate agents with best practice on helping people buy and sell leasehold property.

This guide summarises complex legal issues but in plain English. For further clarification agents should obtain specialist legal advice.

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LEASEHOLD VS FREEHOLD

In England and Wales, property is owned on either a freehold, leasehold or commonhold basis. Here, we explain what each tenure means.

FREEHOLD

Freehold is ownership that lasts forever, and generally gives extensive control of the property.

COMMONHOLD

Commonhold allows freehold ownership of individual flats, houses and non-residential units within a building or an estate. Ownership is not limited by time like a lease. A commonhold association made up of the flat or unit-holders own and manage the rest of the building or estate through the commonhold.

LEASEHOLD

Leasehold provides time-limited ownership and control of the property is shared with, and limited by, the freehold owner.

Flats are typically bought and sold on a leasehold, as opposed to freehold, basis. This is because historically, obligations that require financial action (such as to repair a wall or a roof) cannot legally be passed to future owners of freehold property. These obligations are especially important for the effective management of blocks of flats.

Leasehold ownership is not limited to flats however, and in recent years has become popular among new build housing developments. The reasons for selling houses on a leasehold basis are less clear than those for leasehold flats. It could be that obligations need to be placed on house owners for the upkeep or management of the estate. But this does not apply in all cases.

LEASEHOLD: A LIFE SENTENCE? REPORT FROM PROPERTYMARK

PropertyMark's report *Leasehold: A Life Sentence?* unearthed some very troubling statistics about the way leaseholders have been treated when purchasing their property:

- 62% of leaseholders felt that they were mis-sold when they bought their leasehold home.
- 57% said that they didn't understand what being a leaseholder meant until they had already purchased their property.
- 48% were unaware of escalating ground rents attached to their lease when they purchased the property.
- 70% of leaseholders are worried that they will not be able to sell their homes because they are leasehold.
- 60% of those leaseholders currently trying to sell their home report that they are struggling to sell the property because it is leasehold.

Leasehold: A Life Sentence

Read the report online: propertymark.co.uk/advice-and-guides/leasehold or pick up a hard-copy at NAEA PropertyMark events.

NAEA PropertyMark is leading the Transaction Reform Group in its quest to speed up the house buying and selling process. The group brings together agents, conveyancers, Land Registry and other interest partners. A key objective is to merge the TA6 form with the Property Information Questionnaire to ensure that consumers are both sale and market ready.

WHAT IS LEASEHOLD?

Leasehold is a form of property ownership that is simply a long tenancy, providing the right to occupation and use for a long period, known as the 'term' of the lease.

The lease can be a period of over 21 years and be bought and sold during this time. The term is fixed at the beginning and decreases year by year, until the property returns to the landlord (the freeholder).

WHY IS LEASEHOLD IMPORTANT?

Leasehold is a significant and increasing tenure for new homeowners.

- The Ministry of Housing, Communities and Local Government statistics estimate there were 4.3 million residential leasehold dwellings in England in the private sector in 2016-2017 and of these, 1.4 million were leasehold houses.
- In 2017, around 25% of residential property transactions in England and Wales were leasehold.

WHY DO ESTATE AGENTS NEED TO KNOW ABOUT LEASEHOLD?

1. Leasehold legislation is complex and spread across several Acts of Parliament.
2. Many potential leaseholders are not fully aware that this form of tenure involves a landlord and tenant relationship, or of the significant financial and other interests they sign up to.
3. Consumers are also unaware of the rights and responsibilities for each party as set out in the formal contract between them.
4. Leasehold is primarily used to manage properties that share a single space and have shared facilities. Examples of this would be collective responsibility for the upkeep of roofs, lifts and entrance halls in blocks of flats and where houses have been converted into flats.
5. Leasehold is the way most flats are owned, although some houses are sold on a leasehold basis too, including those in a shared ownership scheme.
6. It is not the only way that houses with communal space can be owned though, with some freeholders also having responsibility for shared grounds, for example car parks, through restrictive covenants.

It's imperative that estate agents accurately represent property to consumers and empower them to make informed decisions.

RELEVANT LEGISLATION

Estate agents must comply with the Consumer Protection from Unfair Trading Regulations 2008.

These regulations require agents to disclose any information of which they are aware or should be aware of in relation to the property in a clear, intelligible and timely fashion.

Agents must take all reasonable steps to ensure that information, whether oral, pictorial or written, is accurate and not misleading.

Regarding leasehold properties, agents should include basic key information such as service charges; ground rent; the length of years remaining on the lease; and any known special conditions. Agents must advise sellers and prospective purchasers that there may be additional fees that could be incurred for items such as leasehold packs.

With retirement housing, agents should include in the written details of a property (sales particulars) the existence and level (if known) of event fees.

COMMONHOLD AND
LEASEHOLD REFORM
ACT 2002

ESTATE AGENTS
ACT 1979
LANDLORD
AND TENANT
ACT 1985
LANDLORD
AND TENANT
ACT 1987

LEASEHOLD
REFORM ACT 1967

CONSUMER
PROTECTION FROM
UNFAIR TRADING
REGULATIONS

2008

WHO IS INVOLVED?

FREEHOLD

LANDLORD

LEASE

Owners of leasehold properties do not always appreciate that, although they are owner-occupiers, they are in a landlord-tenant relationship with the freeholder. This means:

- the rights and obligations of the respective parties are governed by the terms of the lease agreement; and
- the freeholder (landlord) retains ownership of the land on which the property is built.

FREEHOLD

In practice a residential freehold interest applies to the outright ownership of land or property for an unlimited period and applies to most houses. However, there may be legal and planning related restrictions on what a freeholder can do to modify their property and land.

There is a distinction between a freehold interest in a real estate asset and freehold ownership of an asset. The former implies that there is a lease over the property and there being two interests in that land. The latter implies a single interest.

LANDLORD

The landlord is the person or organisation who owns the freehold and may also be called the lessor or freeholder. This means that they retain ownership of the land on which the property is built. The landlord has a defined legal relationship with the leaseholder governed by the lease and relevant legislation.

The landlord can be an individual person or a company, including a local authority or a housing association. The landlord could also be a Residents' Management Company, named in a lease or a Right to Manage Company that has acquired the statutory right to take over the landlord's management functions.

LEASE

A lease is a legally binding document, or contract, giving the leaseholder the exclusive possession of a property for a fixed period.

The terms of the lease determine the rights and responsibilities of the landlord and leaseholder in respect of the property and cannot usually be changed without the agreement of all parties or an application to a tribunal or court for a variation.



LEASEHOLD HOUSES

Where a developer owns the freehold, they can currently choose to market and sell a new house either on a leasehold or freehold basis, or both.

GARDEN VILLAGES

New build leasehold houses may be sold in Garden Villages. Once the development of the Garden Village is complete, a development company might then transfer its assets. This could be by way of an endowment to a community land trust. This trust would then be responsible for long term stewardship, through the formation of a Board of Management and governed by local people, who would make decisions on behalf of the community.

RETIREMENT HOUSING

Retirement properties are often owned by the retired person on a leasehold rather than freehold basis. Developers and providers of extra care and support services often include 'Event Fees' provisions in a lease to allow residents to defer service charges or other costs to be recouped upon resale. These leasehold properties may be more expensive to build due to adaptations, and Event Fees can help to cover the cost of the more inefficient use of space which adaptations may require.

EVENT FEES

- Many leases for specialist retirement properties require the leaseholder to pay a fee on certain events, such as sale, sub-letting or change of occupancy (we call these fees 'Event Fees').
- Event Fees go by a variety of other names including 'Exit Fees', 'Transfer Fees', 'Deferred Management Fees', 'Contingency Fees' and 'Selling Service Fees'.
- Such fees may be payable to the freeholder, the developer, the operator or the managing agent.
- The amount of event fee payable may be expressed as a percentage of the purchase price or of the open market value of the property. This may be a flat rate percentage or a rate that increases for each year of occupation.
- Alternatively, the leaseholder may be required to sell the property back to the freeholder at the original purchase price, losing any increase in the value of the property.

GET IN THE KNOW

Estate agents have a level of responsibility, and the Consumer Protection Regulations require agents to pass on all material information in respect of a lease. This would include but is not limited to:

- The length of the lease remaining
- Details of any restrictions or covenants
- If the seller has any arrears
- Any other charges contained within the lease
- Rent payable through shared ownership
- Service charge costs
- How much the ground rent is
- If there is a sinking fund
- Details of any event-related fees



LENGTH OF THE LEASE

The Leasehold Title will say how long a lease is left on the property. Agents can download a copy of the Leasehold Title from the Land Registry website: landregistry.gov.uk

SERVICE CHARGES

They are charges payable by the leaseholder to the landlord for the services the landlord is obliged to provide under the terms of the lease. They will be a variable amount from year to year depending on the costs the landlord incurs.

They can include maintenance and repair, and sometimes improvements to the property. The lease will outline the full details of service charges payable.

The lease will state when the service charge is due and is often payable annually, or in some cases, every six months.

GROUND RENT

Because a leasehold is a tenancy, it is subject to the payment of a rent to the freeholder or landlord for renting the land that the leasehold property is on.

The amount of ground rent payable is set out in the lease and is normally paid annually. A lease will also include ground rent review clauses setting out how often and the rate or amount by which ground rent can increase.

SINKING FUND

Sinking Funds exist to build up a fund to pay for future larger scale works, such as repainting/ redecorating the whole building or replacing window frames. This means leaseholders will not face such a large one-off bill when the work becomes necessary.

Some leases allow the landlord to demand a contribution towards this via the service charge.

PRIVATE ESTATES

Some private estates include both freehold houses and leasehold flats where households are expected to pay for the maintenance of communal areas and facilities. This can include payments for servicing of private roads, play areas for children and electric gates.

A freeholder's contribution to the maintenance of communal areas and facilities is usually defined in the deed of transfer when the property was first sold by the developer.


The developer will have set up a Residents' Management Company that owns the communal areas and facilities or the developer can retain the ownership of the communal areas and facilities, and the responsibility for their maintenance.

COVENANT

A lease covenant describes an obligation owed by one party to another. Examples: an obligation by a landlord to insure a building or for a leaseholder to obtain the landlord's consent before subletting.

ARREARS

Money that is owing by one party to another. This will usually be an amount owing by a leaseholder to a landlord which is payable under the lease, such as ground rent or a service charge.



WHAT SHOULD AGENTS BE TELLING BUYERS?

The Consumer Protection Regulations require agents to pass on all material information in respect of a lease.

Agents are responsible for any information that they pass on to others, for example sub agents or internet property portals

All material information must be disclosed and there must be no material omissions which may impact on the average consumer's transactional decision. Where information is given to potential buyers or their representatives, it must be accurate and not misleading.

This information should be provided as early in the marketing process as possible and not left until a potential buyer expresses a keen interest in a property.

There is a level of responsibility throughout, whether you are an agent, mortgage lender or conveyancer, but as one of the first in a chain of people to interact with a customer, agents should be providing at least a basic overview of the tenure and what this means for them as a buyer.

Important material information should always be documented to provide an audit trail of the agent's actions.

If information which could be considered material under the Consumer Protection Regulations is divulged verbally, it is in all parties' interests to ensure that a record is made and shared with the other party concerned.

Before marketing a property, the sales particulars must be agreed with the seller to confirm that the details are accurate.

Agents are liable if they include anything in the sales particulars which they have reason to doubt is correct.

ADVERTISING

There are several points agents should be advising buyers of before they commit to a sale. This includes, but is not limited to:

- the number of years remaining on the lease
- ground rent costs and when it is payable, together with details of if or how this will increase over time
- the annual service charge costs and when it is payable
- details of any event-related fees and charges payable under the lease
- rent payable in the case of a shared ownership arrangement
- details of any other fees or charges contained within the lease
- if there is a sinking fund and how much money is held in it
- if the seller has any arrears which are likely to be chargeable to the buyer
- details of any unusual restrictions or covenants affecting the use and enjoyment of the property



LEASEHOLDER RESPONSIBILITIES

Leaseholders are liable to pay an annual ground rent and service charge for the management of their property, and generally must ask permission before making substantial alterations.

The rights and responsibilities of leaseholders will be set out in the lease. These will include requirements to keep the inside of 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 sublet.

CONTENTS AND BUILDING INSURANCE

The lease on a flat will normally require the landlord to take out adequate insurance for the building and the common parts. This policy will not normally cover the possessions of individual leaseholders, for which contents insurance should be taken out.

Leaseholders with a house are usually responsible for arranging the buildings insurance and should refer to the terms of the lease.

MANAGING AGENT

Some landlords have a managing agent acting for them. They are likely to be involved in running the site and the leaseholder may need to make payments to them.

Consumer advice

For more information on what consumers should be looking out for visit [propertymark.co.uk](https://www.propertymark.co.uk), our website is full of handy advice and top tips for leaseholders.

FORFEITURE AND POSSESSION

A leaseholder who fails to pay service charges, ground rent or administration charges which are due, could face sanctions from the landlord. These could include the landlord seeking a county court judgement, approaching the leaseholder's mortgage company and ultimately the landlord could seek to forfeit the lease and repossess the house or flat.



WHAT ELSE SHOULD AGENTS KNOW?

WHEN A LEASE IS OFFICIALLY SHORT

When a lease drops below 80 years the premium to extend the lease increases because marriage value becomes payable.

Marriage value is the increase in the value of the flat arising from the grant of the new lease.

Lease extension can be a difficult process. It is advisable for consumers to get professional help from a specialist solicitor and surveyor.

It is worth noting that most mortgage lenders are happy to add the cost of extending a lease to the existing mortgage.

LEASEHOLD SOLUTIONS

Leasehold Solutions is the market leader in project managing lease extensions and freehold acquisitions. Go to leaseholdsolutions.com for more information.

EXTENDING, CHANGING OR ENDING A LEASE

Leaseholders can ask to extend their lease at any time. In most cases the lease can be extended on a flat by 90 years and 50 years on a house. After speaking to the landlord, leaseholders can negotiate certain changes to the lease, sometimes known as 'varying the lease'.

Our Leasehold Extension Calculator can be used as a guide for the costs of extending a lease: naea.co.uk/members/leasehold-extension-calculator.

ENFRANCHISEMENT

This is the purchase of a freehold interest in a house, where the leaseholder may buy the freehold.

Enfranchisement can also take place in a building containing flats, where leaseholders act together to exercise a right to collectively buy the freehold.

RIGHT TO MANAGE

The Right to Manage is a statutory power which enables qualifying leaseholders of a building to take on its management without having to prove their existing manager is at fault.

Right to Manage is only available to leasehold flats and maisonettes; it is not available to individual leasehold houses or estates.

Leaseholders can set up a Right to Manage company, which can then acquire the landlord's management functions. Once the transfer occurs, the leaseholders become responsible for things such as collecting and managing the service charge and the upkeep of communal areas.

TOOLS TO HELP AGENTS KNOW MORE

GET MORE INSIGHT AT NAEA PROPERTYMARK WORKSHOPS

NAEA Propertymark host free interactive workshops around the country to keep members up-to-date with changes in legislation. Find your next workshop: naea.co.uk/events.

UNDERSTANDING LEASEHOLD PROPERTIES TRAINING COURSE

Get the latest comprehensive knowledge you need to successfully market and sell leasehold properties with our 3.5 hour training course. Check dates and book online: naea.co.uk/training-qualifications/sales.

LEASEHOLD EXTENSION CALCULATOR

Propertymark has partnered with Leasehold Valuers in the creation of a Leasehold Extension Calculator. It provides estate agents with an online 'go to' facility to help estimate the potential premium of a lease extension on behalf of their clients with 'short' lease flats. Go to naea.co.uk/members/leasehold-extension-calculator.

LEGAL HELPLINE

Our dedicated members' legal helpline is available five days a week and offers specialist, practical compliance advice on a range of issues that affect agents on a day to day basis. So, if you have a leasehold question, give them a call, and don't forget to have your membership number to hand.

England and Wales: 01926 338 882

LEASEHOLD: A LIFE SENTENCE? REPORT FROM PROPERTYMARK

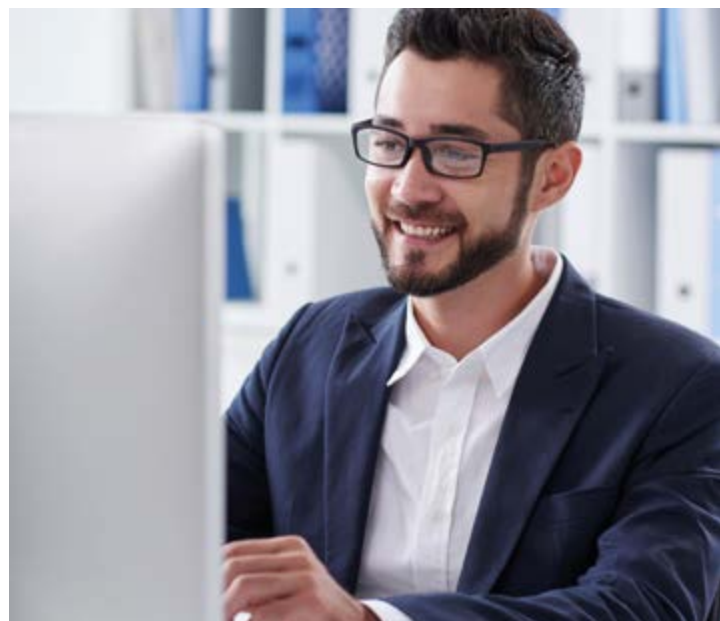
Read our ground-breaking research report into leasehold practices, available at NAEA Propertymark events or online: naea.co.uk/lobbying/leasehold-properties.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

Don't forget events and courses count towards your annual 12 hour CPD requirement. To log your attendance as CPD go to naea.co.uk/members/cpd.

PROPERTY INFORMATION QUESTIONNAIRES (PIQS)

We have produced Property Information Questionnaires (PIQs) to help agents comply with their legal obligations under the CPRs: naea.co.uk/lobbying/consumer-protection-regulations.



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