THE
Leaseholder
C.A.R.L
Campaign for the abolition of residential leasehold

www.carl.org.uk AUTUMN 2004 ISSUE 13

Leasehold the most rapidly growing property tenure

Despite the introduction of commonhold tenure – after many years of hesitation, repetition and deviation – leasehold will remain the most rapidly growing form of property tenure for new flats. The percentage of developments that are flats rather than houses has progressively increased, and now accounts for around 30 per cent of the total.

Commonhold ownership will remain out of reach for the vast majority of us. Existing leaseholders will only be able to transfer if all parties with an interest in a block agree – including not just all the leaseholders but the landlord and all mortgage lenders as well. And, since there is no compulsion for developers to build flats on a commonhold basis, developers will choose leasehold. This enables them to sell all the flats and retain the freehold, stoking up leasehold problems for the future. Research by surveyors Knight Frank suggests that developers will not be able to sell commonhold units for more than their long-leasehold equivalents, as the government claims.

Instead of abolishing the discredited leasehold system, the government's strategy is to continue with the failed policy of trying to regulate it, using more and more expensive forms of regulation as earlier attempts down this road fail. The cost of this increased regulation will fall entirely on the leaseholders.

Why should we pick up the tab for ineffectual attempts to curb rogue landlords?

Using leasehold valuation tribunals as a means of curbing rogue landlords has proved financially crippling to many leaseholders, because of the high legal costs incurred. Contrast this with the position of consumers of financial services who can raise complaints at no expense to themselves with the Financial Ombudsman's Service. "We do it all without the aid of lawyers" is the boast of Walter Merricks, the Chief Ombudsman.

The deadline for the consultation over accounting for leaseholders' money has just passed. There have already been a dozen or so consultations over the regulations under the Commonhold and Leasehold Reform Act. Yet, no analysis of the responses to these consultations has even been published, in breach of criterion 6 of the Code of Practice on Written Consultation published by the Cabinet Office in November 2000.

Write to your MPs and visit them at their surgeries. Make sure they are kept informed of your problems and the growing concerns of leaseholders up and down the country. Some of our members have successfully used this route to persuade their MPs to take a much deeper interest in leasehold issues than they otherwise would have done.

ANNUAL GENERAL MEETING

Saturday 6 November at 2:00pm in the lecture theatre in Kensington Library (located between the Town Hall and Kensington High Street)

Those of you who were at last year's AGM will recall the entertaining talk given by Kevin Cahill, author of ***Who Owns Britain,*** as well the moving contributions from three of our leasehold members.

Again this year we have invited a number of interesting speakers. The subjects we hope to cover include:-

* ***the housing ombudsman scheme***
* ***landlord abuse of elderly tenants***
* ***unfair contract terms in leases.***

We will also have a couple of presentations from members who have had difficult battles with their landlords.

The formal AGM will consist of the usual election of officers and reports. When our meeting is over we will move on to **The Britannia, which is in Allen Street, on the south side of Kensington High Street.**

Soft on crime and soft on the causes of crime

We feel that the views of little-known Labour housing minister Keith Hill deserve wider publicity than they would normally merit. He has rejected CARL's proposals that local authorities should no longer act as prosecuting authorities under landlord and tenant legislation. As you are aware local authorities show little more than indifference when exercising their responsibilities in this area of the law. Mr Hill has informed us that "where a local authority decides not to exercise its power a person is not prevented from taking out a private prosecution, although I appreciate this can be costly, and proper advice would need to be sought before considering any such action." I wonder if he says that to all victims of crime.

Data Protection Act is no excuse

Following a recent request by a leaseholder to view documents supporting his block's service charge accounts, the landlord's accountant claimed that key documents could not be made available to him because of the "non-disclosure" provisions of the Data Protection Act. However, section 34 of the Act states: "Personal data are exempt from ... the non-disclosure provisions if the data consist of information which the data controller is obliged by any enactment to make available to the public, whether by publishing it, or by making it available for inspection ..." The information requirements contained in section 22 of the Landlord and Tenant Act 1985 clearly fall within this latter category of data.

Are you liable?

We are frequently asked by new leaseholders whether they can be held liable for service charge demands that the landlord claims were not paid by the previous leaseholder. Not so, according to a recent decision ('Lisa Stoker v Urbanpoint') by a leasehold valuation tribunal chaired by Professor J T Ferrand, and issued on 9 March 2004. Prior to the hearing, the landlord had written to the leaseholder in the following terms: "When you purchased the flat you take over all liabilities relating to the flat." However, the tribunal's view was that the landlord's assertion was "wrong in law", and went on to say that "a new tenant does not become directly liable for a predecessor's breach of covenant ..." In this case the tribunal also took the view that the previous leaseholder's failure to pay the service charge did not constitute a breach of covenant.

Commonhold and Leasehold Reform – the Great Policy Robbery

What Labour promised	Conservative policy	What Labour delivered
Commonhold to replace the leasehold system	Leasehold tenure to remain predominant over commonhold	Leasehold tenure to remain predominant over commonhold
Transfer of existing leasehold blocks to commonhold on a simple "majority" basis	Transfer to commonhold only with unanimous agreement by all parties	Transfer to commonhold only with unanimous agreement by all parties
No landlord "veto" over transfer to commonhold	Transfer to commonhold to require agreement of the landlord	Transfer to commonhold to require agreement of the landlord.
Commonhold to apply to new developments	Developers to choose whether to build on a commonhold or leasehold basis	Developers to choose whether to build on a commonhold or leasehold basis
Ending the payment of "marriage value" on enfranchisement	Retention of "marriage value" on enfranchisement	Retention of "marriage value" on enfranchisement
To cut the red tape and anomalies in landlord and tenant legislation	An increase in the red tape and anomalies faced by leaseholders	An increase in the red tape and anomalies faced by leaseholders

FORFEITURE ACTIONS INCREASE

Peter Haler, chief executive of LEASE, speaking on Radio 4's *You and Yours*, confirmed that there has been a sharp increase in the number of forfeiture actions against leaseholders Many of the recent actions are not related to monetary claims, but other alleged breaches of covenant. A lease is the only contract in English law that allows one party (the landlord) to obtain from another party (the leaseholder) far more in compensation than the debt alleged to be due or the damage alleged to be done.

Not all forfeiture actions succeed. The court of appeal recently heard the case of 'Courtney Lodge Managements Ltd v Blake and others'. A leaseholder had sublet his flat, but had failed to insert a "nuisance" clause into the sub-lease, similar to the one in his own lease. The leaseholder's tenants caused a continuing nuisance to their neighbours. However, the landlord's forfeiture action against the leaseholder failed, not because of his failure to insert the "nuisance" clause, but because the landlord had given him insufficient time in which to remedy the breach of covenant.

In addition to landlords using forfeiture actions to make a quick killing, there are others who use this procedure in order to avoid creditors. There are a growing number of examples where the landlord owns a flat in the building through another entity that has built up substantial debts. That flat is then forfeited on spurious grounds. The result is that the landlord keeps the flat, while the creditors of the entity that previously owned the flat are left high and dry.

Section 42 trust accounts

Section 42 of the Landlord and Tenant Act 1987 creates a statutory trust in respect of service charge contributions, a provision that most landlords ignore with impunity.
A recent decision of the leasehold valuation tribunal sought to clarify what this means in practice ('Mr and Mrs Hynes v Orchidbase').
Orchidbase was represented by Paul Maton of Simmonds and Partners.
The tribunal's view was that paragraph 42(4) actually requires the landlord to maintain separate accounts for each of the lessees.
It concluded that "in failing to maintain separate accounts, the respondent [Orchidbase] had breached the statutory trust imposed by section 42."

Audit Commission criticizes housing association

The Audit Commission has published a highly critical report on the performance of the Brunel and Family Housing Association, which is based in Bradford. The Commission was critical of the delivery of repairs and the lettings service, and found evidence of weak management controls. Forced access to customers' homes occurs on a regular basis. The Association has over 2,000 homes, many of which are for vulnerable people. Some of its homes are leasehold.

Council in the dock

Harringey Council has just lost a key battle with its leaseholders before the leasehold valuation tribunal, and in spite of that setback is now taking action against them through the High Court. Last March, a leasehold valuation tribunal determined that the Council had failed to follow the appropriate consultation procedures (under section 20) for major works on twenty bocks of flats in the borough. Undeterred, the Council is currently seeking, through eight test cases in the High Court, to recover service charge demands in respect of work undertaken several years ago.

MEMBERSHIP

CARL is leading the campaign to end the corruption, exploitation and misery of the leasehold system. We very much appreciate the support of our membership, which is continuing to grow steadily. Only a large and effective lobby will have any chance of taking on the powerful landlord interests in the private and public sectors, which support the continuation of the leasehold system.

There are many people on our mailing list who have not yet joined us or sent us a donation. A great deal of effort goes into the preparation and distribution of the newsletter, and we receive much positive feedback about how useful it is.

If you do not subscribe to the campaign before our next newsletter is distributed, this is the last newsletter that will be sent to you. We hope that you will want to play an active role in speeding the demise of the leasehold system by joining us.

Please join CARL or renew your existing subscription, using the enclosed form.

Existing members should already have received their membership cards. Help us to extend our campaign even further by giving your neighbours copies of ***The Leaseholder.*** Let us know how many extra copies you need, and these will be sent to you right away.

INTERNATIONAL NEWS

From Our Correspondent in Honolulu

Hawaii, one of the last outposts of the residential leasehold system, offers an interesting contrast to the experience of you folks in Britain. Back in 1967 a state law allowed all leaseholders to buy the leased land beneath their homes from landowners. That law was upheld by the US Supreme Court in 1984. Then in 1991 Honolulu city council passed a law (known at chapter 38), patterned on the state law, and which allowed the city to force landlords to sell their freehold interest to qualified condominium leasehold owners at fair-market value (that is, without extra marriage value). Although this law has proved very popular among condominium owners, it remains staunchly opposed by landlord interests. The law has weathered many court challenges, and finally, in 1998 the US Supreme Court upheld chapter 38 in a definitive ruling. However, the arguments over leasehold law have been rekindled in the current mayoral election campaign in Honolulu.

How do our members describe leasehold?

Abysmal, antiquated, archaic, captive, deceitful, exploitative, farcical, fraudulent, frustrating, hostage, inefficient, irritating, laughable, renting, rip-off, shady, unfair, underhand – ***and these are just the ones that can be printed!***

Knickers in a twist

The leasehold valuation tribunals are becoming legendary for the inconsistency of their decisions, especially when it comes to insurance. LEASE has pointed to another apparent inconsistency in a decision issued last July in respect of '73 Ladbroke Grove'. The tribunal took the view that a term could not be read into the lease over a reserve fund that the management company was seeking to collect. The reserve fund could not therefore be collected. However, in contradiction, the tribunal implied a term into the lease in respect of the accountancy fees of the management company as well as the legal fees of the management company. These fees could therefore be collected through the service charges. So much for the lease determining the obligations of the leaseholders.

Management fees

Many landlords thought it would be a good idea to set up their own management companies as a means of boosting their earnings from leaseholders (as if they do not cream off enough already). However, the leasehold valuation tribunal in the recent case 'Arora v Boultbee-Brooks' took the view that the management fees were not recoverable because the management company was simply the *alter ego* of the landlord. The tribunal cited the court of appeal case 'Finchbourne Ltd v Rodrigues' (1976). This contrasts with the position in the tribunal case 'Sillwood Gate' in Brighton (2003), where the tribunal relied on the 'Skilleter v Charles' (1991) judgment.

Letters to the Editor

Dear Sir: I have written to my local MP as I have become totally desperate due to living in a flat that is managed by an agent who is only interested in taking money and doing absolutely nothing in return. I have a small income, live on my own, and feel that 'owning' a leasehold property is equivalent to a life in hell. It seems strange to me that if I wanted to rent my flat out my tenant could get away without paying me and I have no power as a landlord. But as the owner living in the flat, MY landlord can bully me and get away with it. What is wrong with the British legal system? It seems to me that money brings power and we are the ones that make our managing agents rich.
Martin Brooks, Dorset

Dear Sir: I complained to Nick Raynsford's office about how helpless I felt about landlords having the power to arrange high insurance premiums. I got the same old reply that it's best to go via the leasehold valuation tribunals (which can be very expensive and time-consuming if you have a pressurised job). I've contacted BBC Watchdog, Trading Standards, and have now been advised to contact an insurance trade body. It makes me very angry and frustrated that we cannot get some fairness. I will not be voting for the Labour Party, because they have taken the soft option and seem to be siding with the rich landlords. Never thought I'd feel so betrayed by a party I have voted for all my life.
Alan Kemp, Harrow

Dear CARL: Many thanks for the all the very useful info you provided while we were leaseholders. We've now moved – to a freehold! Never, ever again will we buy leasehold, even if it means living in a hovel!
Wendy Pritchard,Dulwich