CAMPAIGN FOR THE ABOLITION OF RESIDENTIAL LEASEHOLD

KEY OBJECTIVES

When CARL was originally established in 1999, we issued a manifesto with five key objectives : -

1. The introduction of commonhold

2. Abolition of the residential leasehold system

3. The automatic right to transfer from leasehold to commonhold

4. Transfer to commohold to be at a fair price

5. Special measures for those unable to enjoy the benefit of commonhold

Since then of course, we have seen the implementation of the Commonhold and Leasehold Reform Act 2002, which has introduced commonhold – though largely as a theoretical concept. Our NEW objectives are as follows : -

1. Make commonhold, or cooperative tenure, compulsory for all new developments of blocks of flats in England and Wales. Since commonhold – a much fairer system of tenure than leasehold – is now available, there is no reason for any new residential leases.

2. England and Wales should follow the lead of our immediate neighbours, Scotland and Ireland, in having legislation in place specifically designed to abolish leasehold tenure.

3. Enable leaseholders who buy their freeholds to transfer directly to commonhold or cooperative tenure on the basis of a simple majority vote. A route could also be found to allow individual leaseholders to switch direct to commonhold tenure.

4. Establish a simple formula to determine the transfer price from leasehold to commonhold, set at a level that is fair to all parties. This should recognise that the leasehold interest has paid in full for the land, the construction of the property, its repair and maintenance, and have also contributed substantially to the profits of the landlord/developer. Leaseholders have also paid for all the scams and frauds pulled on them by landlords and managing agents over the years. The Irish land registry has a simple formula in place to value the freehold. If the lease has more than fifteen years to run, the freehold is valued at a multiple of the annual ground rent. If the lease has less than fifteen years to run, the valuation is also linked to the market value of the property. But at no point are leaseholders required to pay more than one-eighth of the market value of their homes.

5. End forfeiture, since this enables landlords to recover a huge multiple of any service charges/ground rent considered due, and thereby breaches article 1 protocol 1 of the European Convention on Human Rights. Require all landlords to subscribe to the independent housing ombudsman scheme so that all parties have direct access to a straightforward and inexpensive method of resolving disputes, rather than the costly and intimidating LVTs. Step up enforcement procedures against criminal landlords by centralising the prosecution service away from ineffectual local authorities, which are themselves landlords. Reduce costs by taking away the responsibility of LEASE towards advising well-funded landlords and solicitors, thereby limiting its responsibilities solely to advising leaseholders.

Leaseholder

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

www.carl.org.uk

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CHURCH LEADS FIGHT AGAINST LEASEHOLDERS

Exclusive

We can reveal that the Church of England – not satisfied with the vast profits it already makes from leaseholders through its substantial property portfolio – is in the vanguard when it comes to undermining the rights of leaseholders in the courts. This comes as the Archbishop of Canterbury is calling for a "grand coalition" between the Church and the country's housing associations.

A large chunk of the £5 billion fund managed by the Church Commissioners is invested in property – both commercial and residential. Like other landlords it profits handsomely from the inequitable and exploitative leasehold system. And it is now setting legal precedents designed to take away the statutory rights of leaseholders.

In a recent case the Church Commissioners managed to persuade the appeal court that a default judgment against a leaseholder over service charges was a final determination, and that the lease could now be forfeited without further action ('Church Commissioners for England v Koyale Enterprises and another').

The lower court in this case had originally upheld the long-standing view that a default judgment was not in itself sufficient to enable the landlord to forfeit the lease. The Church Commissioners have now changed all that, denying leaseholders the opportunity to contest unfair and/or fraudulent service charge demands.

This latest legal decision makes it much simpler for landlords to forfeit the homes of leaseholders, and can easily be used by unscrupulous landlords seeking to use the threat of homelessness in order to force leaseholders to pay excessive and fraudulent service charge demands.

The use of forfeiture is far more draconian than repossession by a mortgage lender, since it involves not just the loss of the leaseholder's home, but also the entire value of his or her investment in the property.

The Church Commissioners' lawyer Jane Senior said that this decision "means that landlords retain the right of the relatively quick and user friendly system" when claims are not defended in the courts. Fleecing leaseholders made easy – thanks to the Church of England.

You will of course recall that the Archbishop of Canterbury's attack earlier in the year on payday lenders was similarly undermined by the discovery that the Church Commissioners had invested £100 million in Wonga, the country's leading payday lender.

ANNUAL CONFERENCE

Saturday 9 November at 2:15 pm

Lecture Theatre, Kensington Library, Hornton Street, London W8

Speakers arranged so far:

- Cllr Ron Woodley of Southend Borough Council
- Emma Burnell of the Scarlet Standard
- Nigel Wilkins – chair of CARL

After the meeting we will move on to a nearby pub for an informal social. This is the ideal opportunity to meet and discuss common issues with the speakers and other leaseholders.

THE DISCREDITED LEASEHOLD SYSTEM

Despite the widely reported horrors faced by those living in leasehold homes, more than 40 per cent of all new homes are now sold on a leasehold basis. This leaves an increasing number of home buyers not only vulnerable to exploitative landlords and property managers, who take full advantage of the situation. It also means that their homes progressively decline in value as the term of the lease diminishes.

CARL believes that the only way to solve this problem is not by tinkering with the leasehold system, but to replace it with systems of tenure that give full control of to those who actually pay for the construction and repair of their homes – and not to parasitic landlords and grubby managing agents.

There is no reason why this situation should persist. Leasehold tenure is virtually unknown in most other countries in the world. The government could easily end the misery faced by leaseholders by introducing a number of simple measures within the framework of existing legislation. There should be a ban on any new leasehold homes being sold.

Existing leaseholders should be able to transfer to commonhold tenure at a fair price, reflecting the fact that it is the leaseholders who pay for the construction and maintenance of their homes - while the landlord pays nothing at all. Forfeiture of residential leases by the landlord should be brought to an end, since it amounts to the confiscation of peoples' homes.

The intimidating and costly leasehold valuation tribunals should be replaced by the independent housing ombudsman, as a means of solving service charge disputes. This would be funded by the industry rather than by their leasehold victims.

Landlords have won back far more than the gains won through the 'Martin v Maryland' case, which tightened up the rules on major works consultation. In the recent 'Daejan v Benson' case, the Supreme Court granted the landlord a dispensation from consultation over major works. The Court's majority decision (with three judges) means that leaseholders who are not consulted will only be able to recover any money if they were 'prejudiced' by that failure to consult, ie, to the extent that they were disadvantaged. However the minority verdict from two of the judges correctly interpreted the law: if the landlord fails to consult, it is only entitled to collect £250 per leaseholder. That is what Parliament intended; that is what Parliament must remind the judges of.

There are many tragic stories about the appalling way in which leaseholders are treated by their landlords. One particularly outrageous story reached the front page of the Express on Sunday (2 June 2013). A 93 year old woman, Florence Bourne, felt she had died in shame, after leaving her family a £50,000 roof repair bill she was unable to pay. However after her death the leasehold valuation tribunal ruled that the massive bill – from Newham Council – was unnecessary, since the roof would not need replacing for 60 years.

LEASEHOLD TENURE

Grabbit and grab some more

THANKS to the Leasehold Valuation Tribunal, the spirit of *Bleak House* lives as lawyers pocket fees worth many times the sum at stake in a case. In one shocking example, an elderly leaseholder who went to the tribunal with a legitimate grievance about service charges is having to sell his home to pay his legal bills.

Dennis Jackson, a 73-year-old retired photographer (pictured), held a lease on an £800,000 property in Plantation Wharf, Battersea, where the freehold was owned by Cube Real Estate.

Mr Jackson's Jarndyce v. Jarndyce-style legal nightmare began in 2009, when he and a neighbour, Rosemary Irving, also in her seventies, refused to pay their landlord's service charge bills, of £9,000 and £6,000 respectively, for their share of items such as new hall carpets and CCTV cameras which the residents did not receive. Cube Estates duly sued and they ended up at the tribunal where the bill was reduced and Cube was criticised for a "failure to communicate and allocate monies".

At this stage the pensioners were not too worried. The tribunal is meant to be an informal process where, the Ministry of Justice still wrongly declares, legal costs are capped at £500. However, the barrister for Cube Estates, Alex Bastin, and solicitor Janice Northover successfully argued through a series of labyrinthine proceedings that the whopping £100,000 legal costs allegedly spent defending the claims could be charged to the two OAPs as an "administrative charge" under the lease.

Before this question was finally resolved, Rosemary Irving died, just days before a hearing. Mr Jackson soldiered on. He was denied an adjournment but was allowed an afternoon off to attend Rosemary's funeral.

The court accepted that the "administrative charges" could override the £500 maximum, even though the solicitors had not produced an itemised bill for their £100,000 fees. It would cost another £10,000, they said, to do so. The share of the whopping legal costs payable by Mr Jackson were in the end reduced as unreasonable (from £58,912 to £21,150 for solicitor's fees); but he still faced a total bill of £39,951 for a hearing in court that the justice ministry says should be capped at, er, £500.

By this time Cube Estates had passed control of the management company, along with responsibility for collecting the lawyers' fees, to residents; and Mr Jackson's neighbours, led by a struck-off solicitor Bryan Lewis, decided to go for forfeiture of Mr Jackson's lease to collect the money. It took all the efforts of the Leasehold Knowledge Partnership, which represents fleeced leaseholders, as well as Sir Peter Bottomley, the Tory MP for Worthing West who campaigns against leasehold injustice, and the most senior executives at Mr Jackson's mortgage company, the Prudential, to get the forfeiture lifted. With 24 hours to go and the mortgage company about to lose its security, Prudential agreed to pay the outstanding legal fees, including the forfeiture case, now a shocking £76,000.

Mr Jackson must now sell his flat to repay the Pru. "I went through hell, lost my home and have had to pay £76,000 because I challenged very unclear service charges in what is supposed to be an informal tribunal," he says. "This should not have happened to me, and it contributed to Rosemary's death."

Sir Peter Bottomley added: "Who in this case showed restraint or basic decency? It was injustice to apply the letter of the law to take everything from a pensioner who rightly challenged charges. English leasehold law is revealed in its ancient cruelty, expense and ghastliness."

RENEW YOUR MEMBERSHIP

It is vital that you join us now whilst our campaign is gaining the attention of more and more politicians, journalists and others who influence public opinion. Please send the enclosed membership form, together with your cheque, to the address shown on the form. Existing members will already have received their membership cards.

Write to your MP about the issues you are experiencing. Attach a copy of the back page of this newsletter, which sets out what CARL is trying to achieve, and send that to them as well. If your MP is interested, let us know and a meeting with the chair of CARL can be arranged.

LABOUR POLICY ON LEASEHOLD

The Labour Party's Housing Group held a policy day last June in Manchester Town Hall. The meeting set out a 50 point housing agenda for the party in the run up to the next general election. The chair of CARL, Nigel Wilkins, was in attendance at the meeting, and ensured that a clear commitment was made to help leaseholders.

The session's closing policy document said: "Labour should adopt a plan to ensure that the commonhold form of tenure, introduced by the last Labour government, becomes the norm instead of leasehold. The development of co-operatives and new mutual housing tenures should be enabled by the creation of an appropriate legal, financial and administrative framework that will encourage their development."

We will work hard to ensure that Labour includes this commitment in its manifesto for the 2015 general election. We will also be pressing for similar commitments from the other political parties.

LEASE AND FORFEITURE

The following letter was sent to the chief executive of LEASE by the chair of CARL:

"Since forfeiture is such a serious and frightening issue for leaseholders, and has been ever since I have been involved in the leasehold issue, I really think it is well beyond the time that LEASE provided a legal opinion for leaseholders on how to tackle it. You provide full information to landlords about how to forfeit leaseholders' homes, so it is incumbent on you to provide full information to leaseholders about how to combat it. In fact it is highly questionable whether the legislation that permits forfeiture complies with the Human Rights Act or common law.

The relevant case I mentioned to you earlier ('Regina v Waya') was heard before the Supreme Court, and is usefully summarised in The Times Law Report of 10 December 2012. There is also the 'Newbury v HM Customs' case that I have mentioned before.

In the 'Regina v Waya' case, the perpetrator of a mortgage fraud only had to forfeit that portion of the capital gain from the property directly attributable to the mortgage fraudulently obtained – and not that part of the capital gain relating to the part of the purchase price that was legitimately funded.

The legislative purpose of a confiscation order was to deprive a criminal of the proceeds of his crime and not to act as a deterrent by imposing a further punishment. Therefore a confiscation order should not be disporportionate to the benefit that a criminal derived from his criminal activity.

So leaseholders are being treated far worse than criminals when it comes to forfeiture. Moreover any debts due are purely civil debts, and not a result of theft. As we all know a large proportion of the "debts" owed by leaseholders arise because of theft and incompetence by landlords, managing agents and others – the so-called "professionals".

Owning the freehold interest in a block of flats is the only "investment" in which the investor is actually given the money to invest – because property is rationed through the planning process and by the behaviour of developers and builders.