

Homebuilders and the leasehold 'scandal': From foe to friend?

What do you own?

Brits have long been regarded as having an obsession with home ownership. The most common forms of ownership in Britain are freehold and leasehold. Freehold is considered the superior form of tenure whereas owning a leasehold interest is more restrictive and more often than not involves additional costs such as service charges, maintenance fees and ground rent.

A leaseholder's obligation to pay such costs will be set out in their lease. However, the sums payable may not be obvious at first glance as they often vary over time. For example, an obligation to pay ground rent will often continue throughout the length of the lease with periodic increases in the sums due. Significant increases in ground rent can therefore reduce the value of the leasehold interest in the property.

What is the leasehold scandal?

The requirement to pay ground rent which increases over time may be commonplace in leasehold home ownership. However, clauses in leases that regularly double the ground rent due have caused a considerable stir in the residential leasehold sector – especially as the lease in question may last as long as 999 years. Such clauses can result in ground rents that start at a couple of hundred pounds a year increasing to millions of pounds in the final years of the term. The stir is therefore understandable. If you are a leaseholder and have not checked the terms of your lease, you are encouraged to do so.

Stories of unsuspecting leasehold homebuyers caught out by escalating ground rents received widespread coverage. [Paul Greatholder advised a homeowner in the Sunday Times](#) on whether they could challenge an increase in their ground rent. [Alan Edwards discussed the 'scandal' further in PrimeResi](#), flagging the key issues and pitfalls buyers should be aware of.

For purchasers of new-build leasehold houses and leaseholders of flats who have voluntarily extended their leases outside of the Leasehold Reform Housing and Urban Development Act 1993, the reality of their 'investments' being unsalable remains critically pertinent; particularly as the law will not protect a purchaser from a bad bargain.

Homebuyers who have been informed that the value of their interest in their home has been reduced to zero would undoubtedly consider reference to their circumstances as a 'bad bargain' as a considerable understatement. However, the extent of the consequences of doing a bad deal will not assist a leaseholder in law, regardless of the injustice they may feel. If the Supreme Court would not save a lessee from an obligation to pay millions of pounds of service charge in *Arnold v Brittan* (2015) UKSC 36, the chances of the court deviating from the principle of freedom of contract on behalf of the victims of the 'leasehold scandal' are low.

Major homebuilders at the centre of the scandal were quick to remind purchasers of the leasehold houses that they had built to take action against the solicitor, or conveyancer, who acted for them on the purchase for any failure to advise on the effect of the terms of their lease. Unsurprisingly, the fact that these solicitors were often recommended by the developers, who offered discounts for prompt completions, was not highlighted as clearly.

Is a solution in sight?

Construction giant Taylor Wimpey was criticised after some of its new-build leasehold properties were left near-worthless owing to spiraling ground rents. Taylor Wimpey has now apologised to the disadvantaged homebuyers and announced that it has set aside £130 million to help them.

This suggests a shift from the 'blame the lawyer' approach to the homebuilder offering a helping hand to the leaseholders affected.

Has the foe therefore become a friend?

As ever, it is not as simple as the headline suggests. Leaseholders report that the homebuilder's offer is to cover the cost of varying leases to 'incorporate materially less expensive rent review terms'. It is understood that leases will be varied to provide for increases in ground rent in line with inflation. This would represent a significant improvement to the rent review provisions for leaseholders. However, this is not the only concern of leaseholders who, as a result of freeholds being sold to companies which have found other ways to maximize the return on their investments, remain unable to afford to purchase the freehold and subject to excessive charges elsewhere i.e. for alterations.

Leaseholders wishing to acquire the freehold should consider whether they could do so under the enfranchisement legislation (Leasehold Reform Act 1967 in the case of houses and Leasehold Reform Housing and Urban Development Act 1993 in relation to flats). In the case of a flat, a statutory lease extension at a peppercorn rent may also be an option under the 1993 Act. The freeholder's loss of ground rent however constitutes an element of compensation under these statutory regimes.

Leaseholders who purchased their homes from developers who are not offering to vary their rent review clauses, or did not buy directly from Taylor Wimpey and are therefore excluded from their offer of assistance, also face the risk of rent rising above the low rent limit for assured shorthold tenancies. Leaseholders could therefore inadvertently find themselves subject to a statutory regime which, depending on the terms of their lease, could provide the freeholder with additional grounds for possession.

The leasehold 'scandal' is therefore still very much alive. With the [government white paper on housing](#) noting ground rents as an area for reform, Nationwide Building Society announcing a requirement for new-build mortgage applications to have ground rents that are 'reasonable at all times during the lease term' and a 4,000 member Facebook campaign seeking to put an end to residential leaseholds all together, the fight to put the 'scandal' to bed is well underway.

If a homebuyer is unclear of the effect of the terms of their lease, considering a lease extension or acquiring the freehold of their premises a [specialist property solicitor](#) may be able to help.

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