



Buying a Freehold the Right Way

Russell-Cooke Solicitors take us through the dos and don'ts of owning a freehold

What you need to know when buying a freehold

Leaseholders are increasingly recognising the value of owning the freehold of their buildings. But this comes with significant responsibilities.

Whether you have purchased the freehold of your building through a lessee owned company, or as individuals, obligations in respect of the management of the freehold begin at completion. If you choose to self-manage the building rather than appointing a managing agent you must be aware of your obligations under the terms of the leases and your statutory obligations.

The company

As members of the company which owns the freehold you must ensure that proper accounts are prepared and returns submitted to Companies House. Failure to do so may result in the company being struck off and the freehold of the building falling out of company ownership and into the ownership of the Crown Estate.

The lease

The most common misconception of a 'share of freehold' property is that you no longer need a lease. That is not the case. The lease remains the leaseholder's investment and without the lease the freehold owning company would lose the covenants in it which will allow it to collect service charges and repair and insure the building. Ownership of the freehold does not affect the validity of the leases and they remain as important as they did prior to ownership of the freehold.

Lease extensions

On completion of the freehold purchase, it is advisable for the company to grant long leases to each of the leaseholder members of the company. The terms of leases should be extended as mortgage lenders require a minimum lease term even if the freehold is owned by a company made up of the leaseholders. Increasingly mortgage lenders require a term of 50 years plus the mortgage term. The leases should be extended immediately following completion of the freehold purchase to avoid any potential tax liability on the part of the freehold owning company.

Freehold management

Your freehold company will be responsible for carrying out 'landlord' obligations contained in the leases. With regard to maintenance, you must consider any works which may be required and organise funding for these works through the service charge provisions within the individual leases. It is a good idea, if the lease allows, to set aside a reserve fund to which the leaseholders contribute so that funds are available when works are required. Smaller blocks may deal with works on an ad-hoc basis but you must ensure that you comply with your obligation as landlord to consult with leaseholders before works are carried out.

Insurance

In most residential leases the landlord will be responsible for the insurance of the building. This will become the responsibility of the

freehold company. The building must be adequately insured in compliance with the terms of the leases. It is sensible to nominate one person to be responsible for the renewal of the insurance each year.

Alterations

Most residential leases require leaseholders to obtain landlord consent for any alterations to their properties. This requirement will continue and it will be for the new freehold company to provide such consent if works are to be authorised.

Statutory obligations

As well as the landlord obligations contained in the lease you must be sure to comply with your statutory obligations in relation to consultation on maintenance works, Fire Risk Assessments and the Control of Asbestos Regulations.

Managing a block of flats can be time consuming. If there is no-one in the building with the time (or inclination) to take on these responsibilities, the freehold company can instruct a managing agent to deal with the management on its behalf. A good managing agent will help in negotiating insurance and maintenance contracts and will ensure that the freehold owning company complies with its obligations.

For advice on leasehold enfranchisement issues, please contact Russell-Cooke's experienced enfranchisement team.
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