BRITAIN'S BEST BLOCK MANAGEMENT MAGAZINE

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Nationwide's £54m ground rent portfolio

Britain's biggest building society reveals its lease investment despite attacking builders who sell freeholds

NATIONWIDE Building Society has a portfolio of ground rents worth more than £54m – despite it publicly attacking builders who sell freeholds, it has been claimed.

There has been a groundswell of opinion against developers over the past couple of years for selling freeholds to investors.

The issue has been discussed in Parliament over the past six months and following media reports earlier this year, the building society attacked investors for charging exorbitant ground rents.

However, its own staff-pension fund invests in leases itself and has a portfolio of ground rents worth £54m, the Daily Mail has reported.

Nationwide became the first major lender to refuse to offer mortgages on properties with 'onerous' leasehold terms.

It has imposed strict caps on the amount developers can charge, and will stipulate a minimum lease term of 125 years for flats and 250 years for houses.

Nationwide said that none of the property investments made in its pension fund was the type of punitive deals it is clamping down on.

Chief product officer Chris Rhodes said he hoped its decision would shame others into doing the same.

He said: "We don't believe customers truly understood what they were buying. Builders were taking large amounts of value that was hidden from the customers when they were buying.

"We would hope that the rest of the industry follows us, because it's in the interests of the home buyers."

Tragic fire at Grenfell Tower

DOZENS of people were killed in their flats in the Grenfell Tower disaster – and many may never be identified, emergency services have said.

As News on the Block went to press, officials reported that 17 people had died during the inferno at the 24-storey tower block, which contained 120 apartments.

The fire in the west London building started in the early hours on June 14. London ambulance service said they were called at 1.29am and 20 crews raced to the scene.

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Leasehold reform hopes with Barwell's new role

THE former Housing Minister who had promised to drive through major leasehold reforms but lost his seat in the General Election has been appointed Theresa May's Chief of Staff.

In his Westminster role, Gavin Barwell had grasped his leasehold brief extremely well and was taking active steps to improve the sector and tackle some of its inherent injustices.

He also committed to fully funding the Leasehold Advisory Service, so that it would no longer pursue commercial activities and instead focus on its original remit of providing leasehold advice to the public.

But in June's snap election, Barwell lost his Croydon Central seat – leaving a big question mark over the reforms he had promised.

Having a senior civil servant with such a grasp on residential leasehold property positioned at the heart of Downing Street, could mean there is scope for more ambitious changes to the industry. However, national problems such as Brexit may dominate his time.

Barwell has replaced May's aides Fiona Hill and Nick Timothy, who have been largely blamed for the Tory party's lost majority in the Commons.

Following the disastrous election for the party, May said: "I am sorry for those candidates and hard-working party workers who weren't successful, but also particularly sorry for those colleagues who were MPs or ministers who had contributed so much to our country and who lost their seats and didn't deserve to lose their seats."

Sky unveils simple system for flats

A NEW adapter that makes it easier for residents to get Sky Q in their flat has been introduced by the media company.

The special plug-in adapter makes it quicker and easier for managing agents because there is no need to reconfigure the existing communal system for the TV platform.

Chris Bull, Director of Marketing Projects at Sky, said: "This new approach puts residents in the driving seat and means the managing agent only needs to grant access to the communal system.

"The introduction of the new plug-in adapter is part of Sky's commitment to make access to Sky Q as simple and seamless as possible for both the Managing Agent and the resident and reflects the importance of the multi-dwelling unit (MDU) market to Sky."

NEWS IN BRIEF

Two die after luxury block lift caves in

TWO teenagers died when the bottom of a glass state-of-the-art lift at a block of luxury flats caved in.

The couple, both aged 17, had just stepped into the elevator on the ninth floor of the Madrid block when the lift mysteriously gave way.

Initial reports suggest the sides and floor of the lift were constructed of glass and one of the panels shattered or dropped out last month.

As a result, the teenagers plummeted down the shaft and died as a result of multiple injuries.

Authorities say the lift had been properly maintained according to safety regulations.

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Managers are urged to build trust

PROPERTY managers must start to build trust with their customers and stop hiding behind the complexities of contracts, legalities and liabilities when dealing with tenants, a briefing paper has demanded.

The paper by property management group FirstPort Property Services was released last month for an audience of leading residential property management professionals.

Co-hosted with The Institute of Customer Service and Four Seasons Hotels, the meeting was told that property managers should shift the service experience and define a new trust relationship with its customers.

In the briefing paper, FirstPort Property Services managing director Nygel Scourfield, says: "The Home Builders Federation and other industry bodies are now asking the broad question, 'Are you good enough to manage the homes we build?'

"There is only one way the industry can respond and that's by rising to a changed environment and a changed customer-led, resident prerogative."

Council loses appeal court battle to charge flat owner for improvements

A CITY council that charged the leaseholder of a flat for improvement works to their block despite it being funded by a community energy grant has lost a court battle.

Sheffield City Council challenged an earlier tribunal decision in the Court of Appeal which ruled it could not bill the leaseholder for the cost of the work that had been covered by the grant, as it amounted to "double recovery".

The court heard that the council had overhauled blocks on two social housing estates, and had struck an £2.9m agreement with NPower to fund some of the improvements under the Community Energy Savings Programme (CESP).

The upper tribunal in Sheffield Cc v Oliver 2017 EWCA Civ 225 ruled that CESP funding should be passed on to leaseholders as a set off against their service charge contributions.

Sheffield City Council appealed against the decision, however it was upheld by the Court of Appeal.

NEWS IN BRIEF

Anna scoops Women in Law Award

ANNA Favre has been named the Real Estate Lawyer of the Year for the second year running in the Women in Law Awards.

A partner in the residential estate team at PG Law, which is based in Chelsea, Anna has scooped a host of accolades since qualifying in 2004, including News on the Block's Hot100 list in 2014 and 2015.

Glamorous flats revealed in book

SMALL but perfectly formed! It's a saying that is regularly used and is true of some of the world's most petite yet glamorous apartments.

A series of images taken inside some of the smallest, but stylish flats have been pulled together for a new book.

Small Homes, Grand Living showcases architecturally inspired apartments from across the world, illustrating how do use less than a square metre more effectively.

The book not only shows what is possible to do with small spaces, but also touches on why one might live in such a minimalist home, with reasons including the environment and reduced stress.

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Landlord loses tribunal appeal

A LANDLORD who argued that a 12-month contract with managing agents could be terminated within the 12-month period has lost an appeal against an earlier tribunal decision.

The upper tribunal in Corvan (Properties) Ltd v Abdel-Mahmoud [2017] UKUT 0228 (LC), backed a first tier tribunal's (FTT) ruling that the wording in the contract meant it was a qualifying long term agreement (QLTA).

The landlord entered into the contract with the managing agents and the term was stated in Clause 5 of the agreement which said: "The contract period will be for a period of one year from the date of signature hereof and will continue thereafter until terminated upon three months' notice by either party."

An earlier FTT decision had ruled that the wording meant the agreement could not be terminated before the end of 15 months and was, therefore, a QLTA.

However, the landlord challenged this decision and appealed to the Upper Tribunal.

Deputy President, Martin Rodger QC, said he did not find the construction of Clause 5 easy but in the end concluded that the term was indeed for more than 12 months.

He said it was reasonably clear that the agreement was intended to continue until after the end of the initial year and that it "will continue thereafter".

The Upper Tribunal decided that the management agreement, continuing "until terminated" rather than "unless terminated", could not be terminated any earlier than after a period of at least a year and a day. It was, therefore, a QLTA, and the appeal was dismissed.

Firm celebrates 15 years of helping owners of leasehold properties

A COMPANY that manages group lease extensions and freehold purchases is celebrating its 15th year in business.

Leasehold Solutions helps owners of leasehold properties to extend their leases or acquire their share of the building's freehold.

The family-run business currently employs more than 20 staff, mostly at the company's headquarters in Croydon.

Leasehold Solutions
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Anna Bailey, co-founder and CEO of Leasehold Solutions, said: "My brother Alex and I formed Leasehold Solutions after Alex's successful acquisition of his own freehold, which was largely achieved by his determination to equip himself with the facts and mobilise the efforts of his neighbours.

"The process of leasehold enfranchisement is extremely complex and we identified a potential area for opportunity as there were no other companies at that time offering practical, hands-on project management of leasehold extensions or freehold acquisitions."

Developer offers free Uber rides

A DEVELOPER is to offer flat owners free Uber rides in their rent if they are willing to give up their parking spaces.

Moda Living will give tenants up to £100 in credit each month to spend on rides with the app-based taxi firm.

The company wants few or no parking spaces so it can free up space for other facilities such as gyms, cinemas and swimming pools

Moda Living's managing director Johnny Caddick said: "The plans for a partnership with Uber will not only give our customers an affordable ride at the touch of a button – it will also enable us to design better buildings with more space for social interaction."

continued from page 1 >>

Tragic fire at Grenfell Tower

The London Fire Brigade (LFB) confirmed there had been "a number of fatalities" and more than 70 people were taken to hospital, according to the London Ambulance Service.

One resident said he only discovered the fire when he heard people screaming from outside his window. He claimed the fire alarm was barely audible, comparing it to 'the noise a lift door makes'. Another resident reported that no fire alarm had gone off on the 16th floor.

Grenfell Tower, which was built in 1974, had recently undergone a major refurbishment. As the horrific images were being broadcast, the finger of blame was being pointed at the building's recent refurbishment – where cladding that had been fitted appeared to fuel the flames.

Prime Minister, Theresa May, has ordered a full public inquiry into the fire to answer this question and many others.

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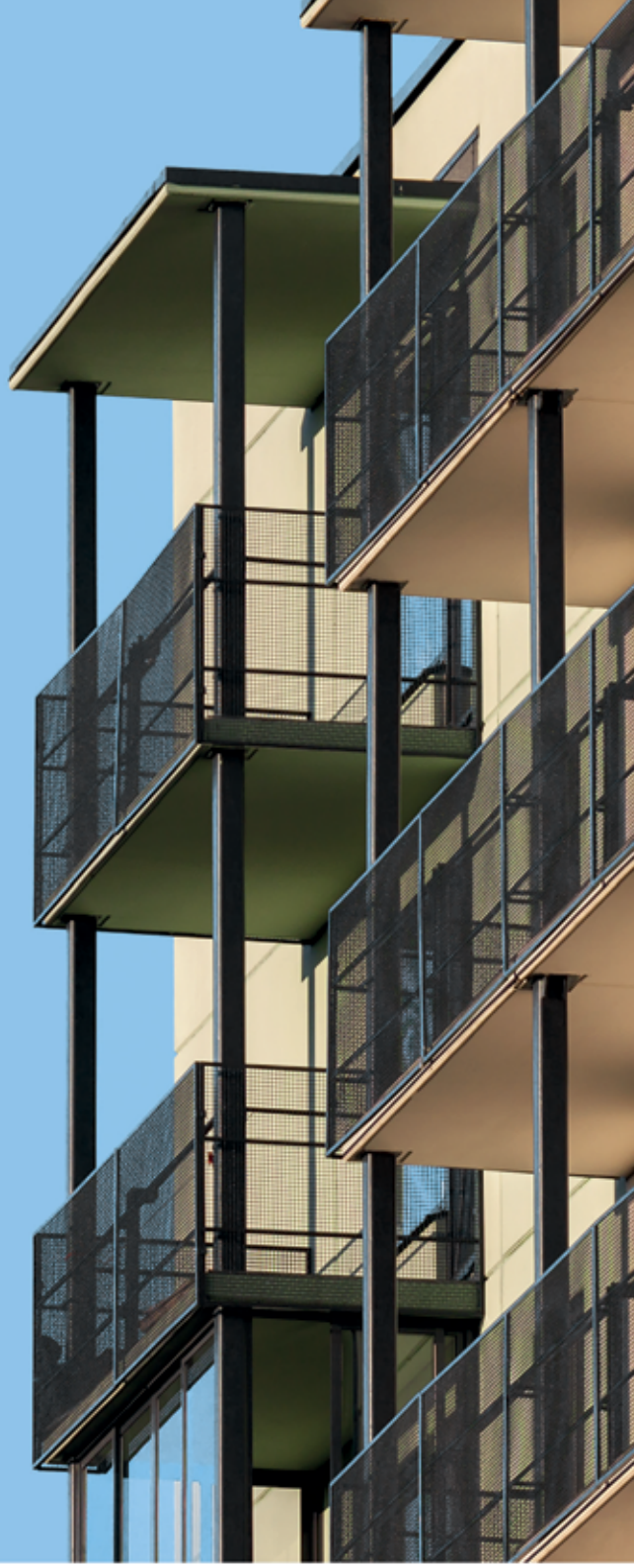

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Criminal landlords named and shamed

CRIMINAL landlords and letting agents in London who exploit tenants are to be 'named and shamed' on a new online database in a bid to give protection to the capital's private renters.

Mayor of London, Sadiq Khan, has announced that London Boroughs will work in partnership to build the database, which will be published on the Mayor's website when it is launched in the autumn.

He believes that allowing renters to check a prospective landlord or lettings agent will give people more confidence in renting and act as a deterrent to the minority of landlords and agents who behave dishonestly.

The database will allow London's local authorities to share information on a landlords' criminal history and provide details of enforcement activity and investigations.

It will be developed in the coming months with information from six councils – Newham, Brent, Camden, Southwark, Kingston and Sutton – with other boroughs across London.

The Mayor made the announcement as he joined a criminal landlord enforcement raid in Newham, carried out under the council's borough-wide licensing scheme for private rented properties.

In 2013, Newham Council was the first local authority to be granted borough-wide licensing and has been very successful in tackling criminal landlords, prosecuting 1,100 criminal landlords and banning 28 of the very worst from operating.

Mr Khan, said: "I refuse to stand by as thousands of Londoners suffer sky-high rents and horrendous living conditions in a city they call home.

"Today I have seen first-hand the abysmal conditions that some of London's private renters are forced to endure as a result of rogue landlords.

"To help renters, I will be working in partnership with London Boroughs to launch my new 'name and shame' database of criminal landlords and letting agents to help Londoners before they rent a property."

Management firm can add legal costs to service charge, court rules

THE MANAGEMENT company of a block of flats has been told it can add legal costs to its service charge which it incurred after a tenant made empty threats to take it to court.

Bretby Hall Management Company (BHMC), which manages 30 apartments within a former country house in Burton upon Trent, racked up £11,000 in costs when it was threatened by tenant Christopher Pratt.

Mr Pratt had made threats to begin several court proceedings for several years, but none were ever carried out.

A first tier tribunal had ruled that the BMHC could not recover the costs under the lease.

But an upper tribunal hearing overturned the decision and said that the management company was entitled to include reasonable costs of intended legal proceedings.

The Judge in Bretby Hall Management Company Ltd v Pratt [2017] UKUT 70 (LC) also ruled against Mr Pratt's application that the costs should be excluded under Section 20C of the Landlord and Tenant Act, because this related only to the legal costs of actual proceedings.

The tribunal also ordered Mr Pratt to pay the cost of BHMC's appeal in full.

NEWS IN BRIEF

A PARTNER has been appointed to manage a premium development of 18 apartments in central London.

Bruton of Sloane Street will be responsible for the estate management strategy of the flats at the former five-star boutique Hempel Hotel in Hempel Gardens, Bayswater, which is close to Hyde Park.

The company was awarded the contract from British Land and Amazon Property, who are joint venture partners of the development.

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MORE THAN HALF OF FIRST-TIME BUYERS HAVE A DEPOSIT SAVED BEFORE TRYING TO BUY **Source: Nottingham Building Society**

Property management team grows

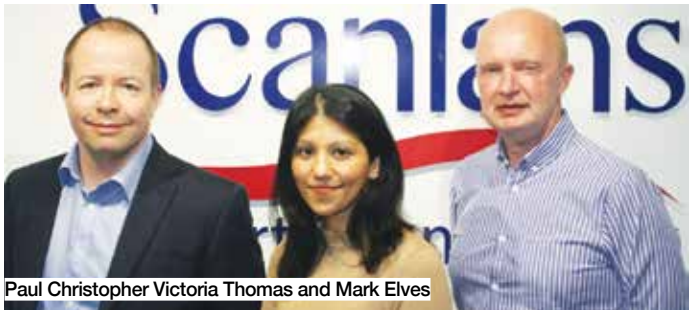
RESIDENTIAL block management specialists Scanlans has expanded after taking on three property managers to meet growing demand for its services.

Paul Christopher, Mark Elves and Victoria Thomas will join the company's Manchester office, where there has been an increase in units being managed.

Paul previously worked at Scanlans for more than a decade and has rejoined from Zenith Management (NW).

He will spearhead the introduction of a new online client portal and electronic maintenance management system in his new role.

Mark was previously at Realty Management in Stockport, while Victoria has worked at firms including Vets4Pets, where she was estate manager, and Cushman & Wakefield.



Paul Christopher Victoria Thomas and Mark Elves

Partner Ian Magenis, who heads the property management team in Manchester, said: "The trio join Scanlans at an exciting time, with several schemes coming on stream in Manchester and the Midlands, bringing more than 750 new units under management by the summer.

"Mark and Victoria bring a wealth of experience to the practice and have taken on the management of a number of residential schemes in Manchester.

"We are delighted to welcome back Paul. The new leaseholder portal and software system provide him with the perfect opportunity to continue developing his career at Scanlans."


Alison McCormack

Restructure leads to promotion

LEGAL firm Brethertons has appointed Alison McCormack to its executive committee following a major reorganisation of the practice.

Alison, who was previously head of client services, has been promoted to director of legal services and is one of four partners responsible for the day to day running of the business.

In her new position, Alison is responsible for spearheading the company's property strategy across all property teams, determining the firm's policy and ensuring operational functions are represented at board level.

Over the last 12 months Brethertons has undergone a full reorganisation of the company resulting in three distinct sectors: property, commercial and private client.

Ingleton Wood creates new role

PROPERTY and construction consultancy Ingleton Wood has created a new role to help strengthen its position in the private sector.

Daniel Legg has joined the practice's London office as director of building surveying. He will be responsible for developing new areas of growth, expanding Ingleton Wood's current offering and specialising in multi occupancy residential buildings.

Daniel, a Fellow of the Royal Institute of Chartered Surveyors, joins the practice after 10 years at Keegans, where he performed a similar role. He said: "It's a very exciting time to join Ingleton Wood. Private residential is a largely untapped sector for the practice and I'm looking forward to using my expertise to help identify new opportunities, grow the business and support existing clients."

Stuart Norgett, partner at Ingleton Wood's London office, said: "We're delighted to have Daniel on board. His appointment signals our commitment to a crucial area of the business.


Daniel Legg

"Daniel's wealth of experience will be instrumental in driving future growth in London – allowing us to explore new sectors, while also ensuring our current clients receive the very best service."

Property manager makes the switch to maintenance

A RESIDENTIAL property manager has made the move to maintenance management after joining contractor Masterfix.

Jonathan Channing, an IRPM Fellow, said he felt the move was a natural progression after 20 years in property management.


Jonathan Channing

He added: "It's great to be outside the managing agent industry, looking in. I've been there, done it, as far as property management is concerned, so Masterfix is in a unique position to serve that industry in a way property managers crave".

Masterfix provides a multi-trade service, including core trades such as plumbing and electrical, as well as compliance services (EICRs, CP12s, PAT) and major works projects.

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ADVERTORIAL

Raising the roof will help you raise cash

RIGHTS OF EXTENSION TURN TO PAGE 22

If you're struggling to find the funds to upgrade your block, did you know that your roof could provide the answer?

Before

After

JOVAN MIHAILOVIC and his wife bought their flat in Abbey Road, West Hampstead, 25 years ago – and by their own admission, an upgrade to both exterior and interior was well overdue.

Like many communal freeholders, the Mihailovics and their seven neighbours balked at the £400,000 cost of the required work... until the answer came in the form of rooftop development.

Jovan and the other freeholders appointed Apex Airspace, the market leading developer of "airspace", who bought the roofspace above his block, hired architects and achieved planning permission. In June, Apex will oversee the building of a penthouse, involving off-site, accelerated construction techniques, which will be for sale in the summer. They will also undertake the renovation of the rest of the building.

The uplift in value is shared by the freeholders and Apex, which more than covers the cost of renovations, and provides a tidy profit for each.

Rooftop, or airspace, development is an innovative solution to the problems faced by apartment or mansion block residents who share the freehold, but are unable to undertake much needed renovations and benefit from the resultant uplift in value, because of the high costs or the inconvenience involved. Estate management companies which manage freehold blocks often face the same challenge.

> "It really is a stress- and disturbance-free way of adding significant value to existing blocks."

Apex, market leaders in rooftop development, provide a solution. They have brought a completely new approach to developing the space above existing rooftops from low-rise apartments to multi-storey residential towers, and to commercial and residential real estate portfolios.

Apex developed a unique capability that brings together a detailed knowledge of the airspace market, with an experienced team of professionals covering design, planning, legal, engineering and project management, and a carefully structured a business model that de-risks and de-hassles the process for the freeholder.

The company will manage the process of rooftop development from achieving initial planning permission to delivering the finished apartment. The uplift in value is shared by the freeholders and Apex.

Apex has commissioned research in London which found that as many as 180,000 London rooftops can be developed in this way.

Some freeholders and estate management companies may be concerned that rooftop development will be inconvenient for existing residents. Val Bagnall, Apex's Business Development Director, says that this is not the case. "We use modular construction techniques, which means that the apartments are manufactured off site and then craned into place, minimising disturbance to local residents and traffic.

"Freeholders can use the proceeds from the sale of the rooftop / airspace to carry out renovations to the rest of the building or cover upcoming maintenance liabilities – or just pocket the cash if they prefer.

"We project manage the whole process from start to finish – there are no extra administration costs. It really is a stress- and disturbance-free way of adding significant value to existing blocks."

Jovan Mihailovic agrees: "The neighbourhood will get a much more attractive building; we'll have a better life in a more energy-efficient building with double glazing and solar panels — and the lift will work."

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in depth

Pull Out & Keep this Section
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This pull out and keep guide to the key concepts is written by independent industry practitioners

Iris-Ann Stapleton looks at the procedure for lease extensions

THE LEASEHOLD Reform, Housing and Urban Development Act 1993 enables eligible leaseholders to acquire a 90-year extension to their existing lease, subject to a pepercorn ground rent. The other main terms of the lease, such as service charge and obligations to repair, are to remain substantially the same, although limited changes are allowed in order to update the document or correct any defects which may exist in a poorly drafted lease. The key qualification criteria for a lease extension are that the original lease must have been granted for a term in excess of 21 years and that the flat must have been owned at the Land Registry by the qualifying lessee for at least two years.

If a flat is being sold which requires a lease extension, the seller can serve the required notice on behalf of the buyer so that the buyer does not have to wait two years to qualify. This is important to note because as the owner of the existing lease, the seller may wish to sell its interest prior to the lease extension completing. The purchaser's solicitor needs to ensure that any transfer of a claim for an extended lease of the flat must take place at the same time as the assignment of the lease to which the claim relates. This is because the enfranchisement claim cannot be owned independently from the lease. This may sound simple, but in practice many buyers have failed to satisfy this test when trying to take an assignment of rights.

If assigning the benefit of a tenant's lease extension claim, the Deed of Assignment should be expressed to take effect on the registration of the purchaser as proprietor of the existing lease at the Land Registry. This ensures that the assignments of the legal and beneficial interests in both the claim and the lease take effect simultaneously. It is important that instructed solicitors are familiar with this procedure.

Iris-Ann Stapleton is a solicitor at Streathers Solicitors LLP

Beware of the practical problems that can arise when exercising RTM, warn Stan Gallagher and Will Beetson

The practical points of RTM

SOME practical problems can arise when exercising the right to manage ("the RTM") because the landlord continues to own elements of the building.

The RTM provisions of the Commonhold & Leasehold Reform Act 2002 ("the 2002 Act") gives leaseholders of flats a statutory, no-fault, right to take over the management of their building without the expense of buying out the freehold and any superior leasehold interests.

Unlike a collective enfranchisement, where the participating leaseholders' nominee acquires the landlord's reversionary interests, the RTM is based on the transfer, to a leaseholder owned company, of management obligations rather than ownership.

Leaseholders wishing to exercise the RTM must establish a special purpose management company ("the RTM Co."). When the RTM is acquired, the landlord's management functions under the leases are assumed by the RTM Co. and cease to be exercisable by the landlord – see the 2002 Act, s. 96, which defines "management functions" as "functions with respect to services, repairs, maintenance, improvements, insurance and management".

Accordingly, the RTM leaves the RTM Co. responsible for repairing and maintaining the building, as well as providing such services as the leases oblige the landlord to provide i.e. a transfer of the rights and duties contained in the leases, but without modifying them, nor creating any additional rights and duties: see Wilson v Lesley Place RTM Company [2010] UKUT 342. Essentially, the RTM can only be as comprehensive, or as basic, as the scheme of the leases.

The Practicalities

So far, so straight-forward. We now turn to some practical considerations.

The fact of a RTM does not displace the landlord's ownership of its retained property (typically the internal common parts, the roof, structure and exterior of the building), nor does the 2002 Act give the RTM Co. any express statutory rights of control of, or even access over, these areas. The RTM Co. must fall back on having sufficient rights arising by necessary implication, e.g. where the RTM Co has an obligation to repair the roof, clearly, it must have implied correlative rights of access etc. However, identifying and asserting implied rights is often an uncertain business and a recipe for litigation.

Such tensions and uncertainties are well illustrated in the recent County Court decision of Francia Properties Ltd v Aristou [2017] L & T.R. 5, in which the RTM Co. had management functions, including repairing obligations over the roof. Where did that leave the landlord's prime facie right to develop its retained property, i.e. the roof, the roofspace and the airspace above to create an additional flat? Broadly, the Court concluded that the landlord's rights to develop its retained property are not trumped by the advent of a RTM. Therefore, unlike a collective enfranchisement, an RTM is unlikely to prevent further viable development of the property. This can come as an unwelcome surprise to leaseholders who often assume the contrary.

Conclusion

Generally, the RTM is a cheaper, though second best alternative to collective enfranchisement: an example of not getting what you have not paid for. With limited exceptions, a building qualifying for a RTM will also qualify for a collective enfranchisement. If it can be afforded, leaseholders are likely to be better served by enfranchising and buying the landlord out than relying on a RTM.

To read the full version of this article please visit - www.newsontheblock.com

Stan Gallagher and Will Beetson are Barristers at Tanfield Chambers

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Elim Court - How wrong is right?

A recent Right to Manage case illustrates how wrong you can get it, but still get it right, explains Mark Chick of Bishop & Sewell.

SERVING notices has always been a tricky business. The emphasis in legal terms on getting it right is a balancing act between what 'black letter' compliance might demand and that which the reasonable layperson might expect common sense commerciality to dictate.

The case of Elim Court (Elim Court RTM Company Limited v Avon Freeholds Limited [2017] EWCA Civ 89) is very interesting, as it really does seem to push the envelope of how wrong you can get it, yet still get it right.

Elim Court concerns RTM, and so you might argue that different policy considerations apply – this is a 'no fault' right to take over the management after all – and any failure in the process can be corrected by serving another notice and there are no economic consequences for the landlord, as unlike in enfranchisement cases, no property interests are changing hands.

However, I think that this case may well be seized upon as a 'get out of jail free' card by those next affected by issues of validity in their notices.

The Issues

During the RTM process a notice must be given to the tenants as to where a copy of the articles of association of the company may be inspected. Three days for inspection must be nominated of which at least one must be a Saturday or Sunday. In Elim Court three days were specified, but none was a Saturday or Sunday.

The court held that the non-compliance with the requirements of the legislation was a trivial failure and would not of itself invalidate the RTM process.

Similarly, for RTM, the notice must be signed on behalf of the company. An issue arose as to whether it had been signed by an authorised member or officer. The notice was in fact signed by an individual (a member) but whose status was unclear as he had signed under a stamp that said 'RTMF Secretarial'.

The court held, nonetheless, despite the confusion the notice had been validly signed.

Lastly, the notice had not been served on an intermediate landlord – a strict requirement of the RTM legislation. The intermediate landlord in question owned a single 'reversionary' headlease over one flat only. This secured an equity release scheme. Accordingly, because the intermediate landlord had no direct management responsibilities, the court decided that service could be dispensed with.

The Law

The previous case law (Mannai) has focused on the 'reasonable recipient' test and an emphasis on whether the notice complied or not with a mandatory obligation under statute.

However, this moved on in the 2014 Court of Appeal case of Natt v Osman. The test now is whether parliament would have intended that failure to comply would have invalidated the exercise of the right in question.

Comment

Elim may well be confined to its facts - as an RTM case and it is certainly true that RTM has 'just got easier.' Will it make a difference in enfranchisement? - We will have to wait and see.

To read the full version of this article please visit - www.newsontheblock.com

Mark Chick is specialist leasehold property solicitor at Bishop & Sewell LLP

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Rights of extension and purchase for leasehold houses

There is legislation out there that specifically for houses with leases, explains **Liz Rowen**

THE PRESS for leasehold houses has been less than positive of late, particularly concerning ground rents, but leasehold houses are not a modern phenomenon and existing legislation is favourable to lessees.

Sheffield is a leasehold house hotspot in the United Kingdom and being a Sheffield-based law firm, PM Legal Services has expert knowledge of the complexities and the various legal issues that arise from them.

A leasehold house is a diminishing asset that could, in certain circumstances, become unmortgageable. This in turn will affect its sale value.

Under the Leasehold Reform Act 1967 ('the 1967 Act'), the leaseholder of a house has a right to extend their lease or purchase the freehold interest. Our advice is never to opt for a lease extension, because it can only be granted once and only for a period of 50 years.

Furthermore, if the lease is extended and then a freehold purchase is subsequently pursued, the valuation of the house will be carried out on a 'special valuation' basis - meaning that it is the premium of the house including a share of the marriage value. As a rule, this will mean a higher premium will be paid.

As such, it is always best to go down the freehold purchase route. This is an option available to every lessee, provided particular criteria are met for them to qualify. To be eligible, the property concerned must be a house and the lessee must have owned it for more than two years (although they do not have to have lived in the house for this period).

Finally, the original lease must have been longer than 21 years. If these three criteria are satisfied, the leaseholder is likely to have the right to purchase the freehold.

THE PROCESS

In brief, the process for both a lease extension and freehold purchase follow a very similar format. A Notice is served on the competent landlord in both processes and they have the opportunity to respond – admitting the claim or disputing it. This is a statutory process so it is important for the Notice to be correct as failure to do so could render it invalid.

For a freehold purchase, there is likely to be some negotiation with the landlord about the premium but it will be based on a formula within the legislation. Once this is agreed, however, this triggers the date for completion, which should be four weeks after the agreement. If the premium is not agreed, an application to the First Tier Tribunal ('FTT') can be made to determine it and any other terms that have not been agreed between the parties.

DISPUTES REGARDING THE PREMIUM

If a dispute arises about the premium to be paid, the FTT has jurisdiction to determine the same. In order to make the best case to the FTT, it is important that parties instruct an experienced valuer to forward arguments relating to the basis of the premium to be paid. While leasehold houses are getting bad publicity at the moment, leaseholders should be reassured that there is legislation out there that specifically relates to them that can assist.

Liz Rowen is associate solicitor at PM Legal Services

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The 3% Stamp Duty Surcharge and Lease Extensions

Will I have to pay the 3% Stamp Duty Land Tax Surcharge to extend the lease of my main residence?

Amy Chance unpacks the surcharge and explains whether you will need to pay it

WILL I have to pay the 3% Stamp Duty Land Tax Surcharge to extend the lease of my main residence?

The answer is more than likely yes if the following criteria are satisfied:

Your new lease has a term of more than 7 years.

The premium you are paying for your new lease is more than £40,000.

You own another residential property, in the UK or otherwise, which has a market value of more than £40,000.

The legislation introducing the 3% surcharge came into force in March 2016 and applies to both voluntary and statutory lease extensions. In relation to statutory claims, the legislation applies where the notice of claim was served after 25 November 2015.

A Google search indicates that some leading practitioners suggest that the surcharge will not apply, whether the above criteria are satisfied or not, provided that the leaseholder is extending the lease of their main residence.

Logically, that analysis makes sense given that the surcharge was intended to apply to purchases of additional residential properties. Indeed, there is an express exception to the surcharge in circumstances where the purchaser is replacing their only or main residence. However, a guidance note issued by HMRC on 29 November 2016 indicates that the nature of a lease extension transaction (a surrender of the existing lease and the payment of a premium in return for the grant of a new lease) does not amount to a 'replacement' of a leaseholder's main residence. The reasoning being that the flat itself has not actually been replaced, only the lease. As such, based on the guidance issued by HMRC, the legislation must be interpreted strictly and the surcharge will apply if the above conditions are satisfied.

A common example that illustrates the treatment of lease extensions in contrast to other purchases is when an individual purchases a short lease of a flat, which is to be their main residence, and subsequently extends their lease. The purchase price will not attract the surcharge if the purchased property is a replacement of the purchaser's main residence. However, when the lease of that main residence is subsequently extended, the premium paid will be subject to the surcharge.

The above assumes that the leaseholder is an individual. If the leaseholder is a company, only the conditions numbered 1 and 2 above need be satisfied in order for the surcharge to apply, there is no requirement for the company to own more than one residential property.

The guidance should serve as a caution to all those practitioners who are not adopting a strict interpretation of the legislation and paying the additional 3% in stamp duty land tax where their client owns more than one property, even if the lease extension relates to their main residence. Unless HMRC issues further guidance to the contrary, leaseholders should be advised to pay the surcharge where they own another property and the lease extension premium is in excess of £40,000.

Amy Chance and George Calvert, are Solicitors at Pemberton Greenish LLP

Make sure to protect your position when buying your freeholds, warns Yashmin Mistry

The complexities of Tax clearance unravelled

A COMMON misconception when people purchase their freeholds is they believe it to be the end of the story. This is often not the case and steps should be taken to protect the position.

Why do you need new leases if you have bought your freehold?

Although you may own the freehold of your building, the original leases remain in place. They cannot be "cancelled" as they regulate the legal relationship between the flat owners and the freehold company.

TAXATION ISSUES

The usual position when purchasing the freehold collectively is that new 999-year leases at a nominal ground rent are granted following completion of a freehold purchase. When new leases are put in place shortly after completion, no tax consideration is due.

Where a significant time has elapsed since completion of the freehold purchase in this case, it is likely there has been a substantial increase in the value between what was paid for the notional "share of the freehold" and the actual value of a new lease extension. If, therefore, the lease extension process is not carried out sufficiently close in time to the purchase of the freehold, HMRC can view the benefit the leaseholders receive as of a higher value than their original contribution of purchasing the "share" in the freehold. The company can then be viewed as granting a benefit to the flat owner which, for tax purposes, may be treated as making a "disposal" of value out of the freehold.

This could have adverse consequences in terms of capital gains tax for the freehold company. There could also be a separate tax charge for the leaseholder as a result of their lease being extended; when this happens the company may face a corporation tax charge.

WHY IS THIS AN ISSUE?

If the company grants a lease extension which is worth significantly more than the amount paid for the freehold purchase, the difference can result in a tax liability for the freehold company. As it is unlikely the company has any liquid assets or cash to meet such liability, HMRC could demand payment from the leaseholder before granting the lease extension.

WHAT IS THE SOLUTION?

Where lease extensions are to be granted to participating lessees many years after completion of the purchase of a freehold, it is possible to make an application to HMRC to obtain a ruling that tax does not arise for the company or lessees.

To obtain tax clearance, clear evidence would need to be shown from the date of the freehold purchase denoting it was always the intention of the participating lessees to extend their leases to 999 years.

Without clearance, the Revenue may claim shareholders are receiving a benefit from the company by buying a lease extension for less than the market value and make a tax charge.

MOVING FORWARD

The costs for dealing with the application for HMRC clearance could total thousands. There are many benefits to extending your lease straight after completion of the freehold purchase, including the marketability of your property and preventing issues arising with lenders later down the line. Delays in addressing this issue can be costly and time consuming and really should be addressed at the time of the freehold purchase to avoid further difficulties.

Yashmin Mistry is Partner and Head of JPC Law's Property Practice Group

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Ground rents are not all bad!

David Stockley explains leasehold tenure and outlines the advantages of its existence

GROUND rents for leasehold properties are making the news. Greedy landlords and developers are reserving very large grounds rents, which escalate over the lease term to what can be pretty gigantic sums for innocent homebuyers. Campaigns are being waged and politicians are starting to pay attention to the issue.

It is worthwhile considering why leasehold tenure of property exists as a matter of law. One advantage of leasehold property is to overcome the difficulties with making positive obligations (i.e. maintenance and repair) binding on future owners of properties in a block. It also serves freeholders' desire to retain control over the land and units created. It is this desire that seems to be the cause of problems. The landlord wants to obtain capital for the property now but would like to retain value also in the ground rent.

A landlord can charge a rent but does not need to. It stands to reason that a capital value lease with a ground rent will have a different value from one that does not. The greater the rent – or even the ambiguity about rent - the less the capital value. There is nothing inherently wrong in having rents. If people are unable to pay the full value of a freehold or a virtual freehold now, then a rent is a way of maximising the value the buyer can have up to the level they are willing to pay. The ground rent reserves to the landlord the element of value that the buyer cannot pay.

This is useful where asset prices rise and is common in social housing/shared ownership properties. All prices are relative.

Where does the professional sit within this? The solicitor's role is to understand what the rules are, and whether they make legal and practical sense: can you enter your flat; will someone repair the roof; who pays for what etc? What a solicitor cannot do is value the property, and this extends to ground rents. We can advise you that they exist, and we can advise you how they are calculated.

We will always warn you when something looks unusual, or has a surprising effect, and when the application of assured tenancy rules might inadvertently affect long leaseholds. It is, however, for an expert valuer to assess the value of the flat, taking into account the lease terms and ground rents.

Escalating ground rents need to be identified, understood and valued. A professional adviser's job is to ensure their client comes to an informed decision. A valuer will tell you how much it should concern you, and you may decide to walk away, reduce your offer or deal with matters in some other way.

Doubtless there will be some greedy landlords who have "got away with it", but the assumption should not be made that escalating ground rents are necessarily bad. The key is to take the best advice available, and judge each situation on its facts.

David Stockley is a partner at TWM Solicitors

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Buying a flat with a short lease

There are various options to consider before making an offer on a flat with a short lease, says Lesley Brentnall

IF you've found a property that you like but the lease has anything fewer than 85 years left to run, alarm bells should be ringing. This is because once a lease gets to less than 80 years, something called 'marriage value' comes into play, which makes extending it much more expensive. It gets even more difficult if the lease has fewer than 70 years to run, as lenders will generally not grant a mortgage.

Care needs to be taken if this applies to the property you wish to purchase.

There are various options to consider before making an offer on a flat with a short lease:

- Ask the seller to make an application for a lease extension by serving the required Notice on the freeholder. The seller then assigns the benefit of the lease extension to you and you conclude the extension directly with the freeholder following completion. This speeds up the process, but you would need to obtain legal advice on the value of the extension and the other associated costs so that you could ensure this was taken into account in negotiations over the purchase price.
- Ask the seller to extend the lease before they sell to you This keeps all of the risk and the cost with them (although they will probably increase the price of the property to recover this). Whilst this could be regarded as the safe option, a lease extension can be a time-consuming process, which can delay the purchase.
- Purchase the property with the lease as it is, then negotiate a reduction in the asking price to reflect the short lease. You would then need to wait two years to make the application to extend the lease under the Leasehold Reform Housing and Urban Development Act 1993. It is possible, however, to make an informal approach to the freeholder for an extension, which means you don't have to adhere to the two-year period of ownership required by the statutory route. There is, of course, no guarantee that this would be agreed but, with good advice in your corner, it is often worth a try.
- A short lease need not necessarily put you off buying a property but it is essential to take good advice, to know your options and to negotiate the terms of the transaction very carefully. As the seller of a property with a diminishing lease, you should get your lease reviewed by a professional before putting it on the market, and ensure you are prepared for any negotiations.

Lesley Brentnall is director and head of lease enfranchisement at Brady Solicitors

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Ground Rent: What, How And Why?

Katie Cohen offers a simple guide looking at all you need to know about ground rent

WHAT IS GROUND RENT?

If you own a long lease on a property in England and Wales you will normally have to pay rent to the freeholder or landlord of the property.

Commonly a nominal amount (e.g. £50, £100 p.a.).

The ground rent will either be fixed meaning that a certain amount is paid every year for the duration of the term, or escalating whereby the amount increases by a certain amount throughout the term (e.g. doubling, increasing by a specified amount at a specific point in the term of the lease such as every 10 or 25 years).

Ground rent may also be a peppercorn (i.e. nil) if it has been extended under the statutory regime or if the leaseholders in the block or building have collectively enfranchised, acquired their freehold and extended their leases to 999 years.

Similar flats can pay different ground rents depending on the length of the lease remaining, size of the flat and the starting ground rent as specified in the lease.

Ground rent can be varied by voluntary agreement but leaseholders should always ensure that the proposed terms of the variation are not adverse by taking independent valuation advice.

THE CML HANDBOOK

The Council of Mortgage Lenders (CML) Handbook sets out the specific requirements for each lender in England & Wales. Conveyancing solicitors will always refer to this handbook during the purchase process to check any specific conditions relating to ground rent in a lease.

Paragraph 5.14.9 states:

"We have no objection to a lease which contains provision for a periodic increase of the ground rent provided that the amount of the increased ground rent is fixed or can be readily established and is reasonable. If you consider any increase in the ground rent may materially affect the value of the property, you must report this to us."

For a lease to satisfy the requirements, the amount of any increased ground rent set out in the lease must be both:

Fixed or readily established

Reasonable

Fixed Or Readily Established Ground Rent

Rent increases are usually fixed which creates certainty for the leaseholder – fixed amount and dates throughout the term.

Some leases use a formula or refer to an index (e.g. Retail Price Index (RPI)) – can be simple or complex but must allow the amount of the increased ground rent to be readily established and calculable.

Absolute discretion for increasing ground rent is not permitted.

Reasonable Increased Rent

Whether or not an increase is "reasonable" is a question of judgment.

If there is any doubt, a leaseholder's conveyancer should check with the specific lender and seek specific instructions.

HOW IS GROUND RENT DEMANDED?

S.166(1) CLRA 2002 (Commonhold and Leasehold Reform Act) provides that a tenant/leaseholder is not liable to pay any rent due unless they receive a formal demand from their landlord.

Limited to 6 years if not collected but must be properly demanded.

The demand must include the following to be valid:

- The name of the leaseholder;
- The period that the demand covers;
- How much the leaseholder has to pay;
- The name and address of the freeholder and/or Managing Agent; and
- The date on which ground rent is due or fell due.

WHY IS GROUND RENT IMPORTANT?

Ground rent has an investment value – investors may focus upon ground rent reversion acquisitions as part of their strategy and look to specifically acquire freeholds with high ground rents and short leases and these can be financially very lucrative.

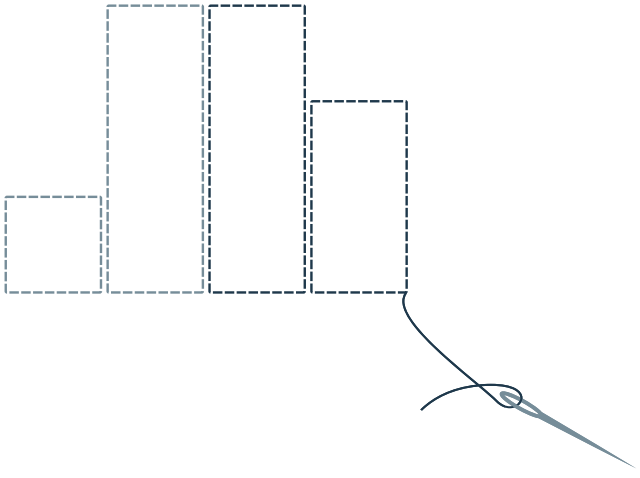
Provides an investor/landlord with a modest and secure income stream but does the leaseholder understand their liability under the lease?

Can be onerous provisions for the leaseholder – read the lease and if in doubt seek professional legal advice.

Leaseholders do have the ability to negotiate increasing ground rents through voluntary lease extensions. Remember that leases are diminishing assets and the value of the flat is directly linked to the unexpired term of the lease. Be aware that ground rent can be nullified via a statutory lease extension or post completion of a collective enfranchisement but rarely via a voluntary lease extension.

Katie Cohen is a consultant solicitor at Keystone Law

Tailored alterations



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Right to Manage with Lease Extensions

When an enfranchisement hits problems leaseholders of larger blocks need not give up if they fall at the first hurdle, explains Brett Swabey

WHAT if half of the long leaseholders wish to participate, but the other half do not? In the case of a block of 90 flats having 45 or even 50 flats ready to participate may not be sufficient, because those participating need to fund the cost of buying the reversions of the non-participating flats, and any development value in the building.

The sums involved may be substantial and this can prove a stumbling block. In the meantime the lease terms get shorter and dissatisfaction with the management continues. This short article provides a couple of case studies showing possible solutions.

MAGNIFICENT SEVEN

The first building, let us call it 70–72 Paddington Terrace, comprises 19 flats with 17 of these on long leases and two retained by the landlord in a converted terrace. There was growing dissatisfaction by the leaseholders as to the management and the lease terms were down to 70 years.

An enfranchisement had been considered but there was insufficient support for this financially, with only half of the flats ready to proceed. So, after further discussions, as a first step it was decided to apply for the right to manage (RTM). This resulted in a bit of a battle with the landlord, reluctant to give up the management and the fees that come with this.

However, the application was eventually successful, much to the relief of the long suffering leaseholders.

Later, as a second step, seven of the leaseholders got together and simultaneously applied for lease extensions. In this way they received longer leases securing the long term investment in their flats; together with the right to manage this makes the flats better to live in and more saleable. In turn the building now has enhanced prospects of success in any future enfranchisement.

WHITE KNIGHT IN SHINING ARMOUR

The second case study concerns another building in West London, let us call it the Brecons. This art-deco block comprises 189 flats and commercial premises below these. Again there was insufficient support for an enfranchisement with just over 50% of the flats ready to participate. However, one of the flat owners had connections with a property company, step in the White Knight.

White Knight Co. (WKC) put up the finance for the non-participating (NP) leaseholders and agreed to take a 999-year headlease, wrapping up the non-participating leases.In this way the enfranchisement was able to proceed with WKC providing approximately half of the purchase price in return for the headlease of the NP flats. The company is now recovering its investment from the premiums paid to it as those leases are extended. In this way the enfranchisement proceeded and the leaseholders have again secured the long term investment in their flats.

Whilst these case studies necessarily omit detail, and as with all such projects there will be difficulties to negotiate, they show us that the leaseholders of larger blocks need not give up at the first hurdle and that successful enfranchisements can be achieved even in the face of difficult circumstances.

Brett Swabey is sole principal of Swabey & Co solicitors

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FIND US ON

Court's clear message on approaching RTM claims

THE Court of Appeal has come to the rescue of an RTM company in respect of "trivial defects" in the process of exercising the right to manage it in Elim Court RTM Co Limited –v- Avon Freeholds Limited [2017] EWCA Civ 89

WHAT IS THE RIGHT TO MANAGE?

The Commonhold and Leasehold Reform Act 2002 ("the Act") gives long leaseholders of dwellings a statutory right to acquire management responsibilities in place of their Landlord via an RTM company. The main aim of the legislation was to allow tenants to acquire rights cheaply and easily. Detailed requirements in the statutory regime, in particular for notices, have led to claims being regularly challenged by Landlords. The Court of Appeal has now dealt with this predicament.

The issues in the Upper Tribunal

Issue 1: Notice of Invitation to Participate (NIP)

The Upper Tribunal determined the NIP was invalid, as it did not specify inspection of the articles of association on a Saturday and a Sunday as required.

Issue 2: Service on intermediate landlord

The Notice of Claim (NOC) was not served on all relevant parties as an intermediate landlord of one flat did not receive it. The Upper Tribunal considered this a fatal flaw in the Claim.

Issue 3: Signing the NOC

The Tribunal said the NOC had been validly signed by a person with authority to sign for the RTM company, even though he was a director of a corporate officer of the RTM company rather than an officer himself.

The Tribunal determined the claim failed and the RTM company appealed.

WHAT DID THE COURT OF APPEAL DECIDE AND WHY?

The appeal was allowed.

Issue 1: The failure to comply precisely did not automatically invalidate the claim. The non-compliance was a trivial failure that should not result in the claim failing.

Issue 2: The intermediate landlord should have been served in compliance with the Act, but what were the consequences of that failure? The court considered the failure did not invalidate the claim. The intermediate landlord had an interest in a single flat and no management responsibilities. This is relevant because the statutory regime requires that those affected by the RTM (those with management responsibilities) should have notice of the claim.

Issue 3: The court agreed with the Upper Tribunal.

WHY IS THIS CASE IMPORTANT?

The Court focused on the substance of the Act and the consequences of non-compliance. It delivered a clear message on how to approach RTM claims. These should not be defeated because of minor technical faults of no real consequence. The Court criticised the complexity of the statutory process, with its "traps for the unwary". It called for legislation to simplify the procedure and lessen the threat of technical challenges that "bedevil" it.

Tenants will welcome the decision whereby Landlords will be discouraged from challenging applications on inconsequential grounds. However, any RTM company should still aim to follow the Act's requirements precisely, to avoid the risk of uncertainty, delay and costs in dealing with such challenges.

Eleanor Murray urges Right to Manage companies to follow the laws on long leaseholds following a recent court case

Eleanor Murray is a senior associate at CMS Cameron McKenna Nabarro Olswang LLP

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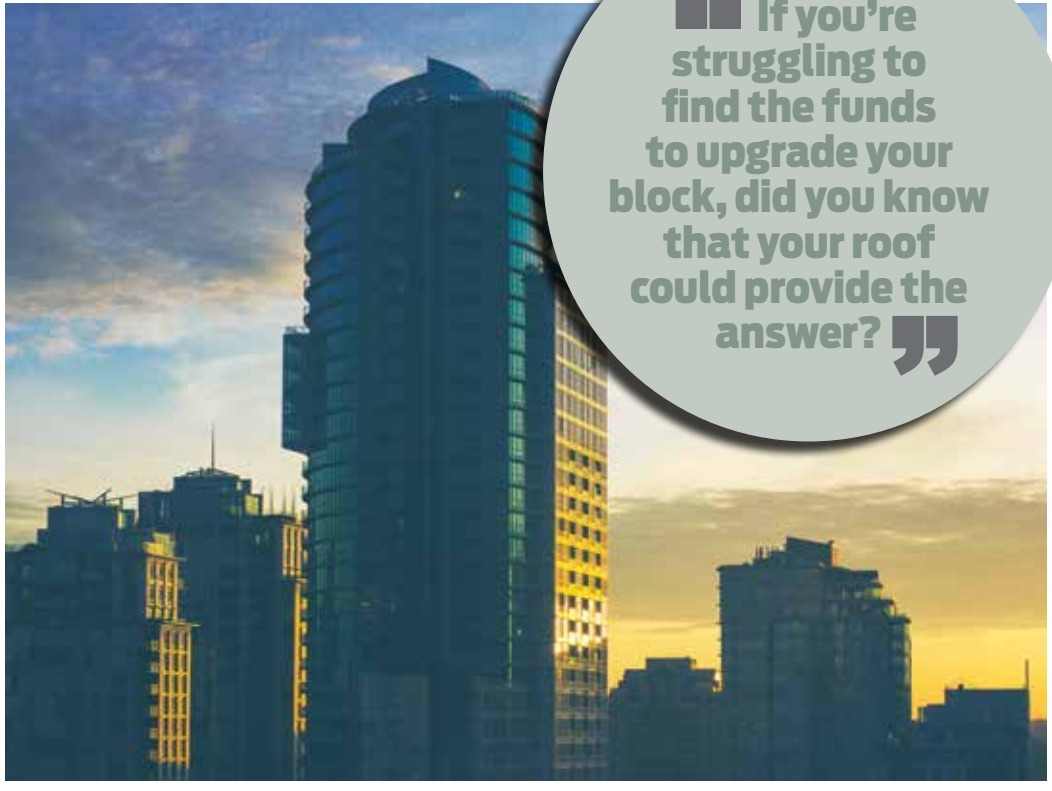
BMU UTILITIES IS ONE OF THE FEW COMPANIES TO OFFER BESPOKE BUSINESS MODELS TO HELP MANAGE LANDLORD ENERGY SUPPLIES, SAYS STEVE KNOX

ADVERTORIAL

Problem with managing Landlord Energy Supplies?



> "If you're struggling to find the funds to upgrade your block, did you know that your roof could provide the answer?"

IF you have a problem managing Landlord Energy Supplies then BM Utilities have the answer for you.

BM Utilities have been in the Block Management market for 10 years, previously under the Hallmark brand. But after selling their Lettings business last year, the block management portfolio was rebranded as BMU. Managing Director, Steve Knox, says: "BMU is totally committed to Block Management

Agents, RMC's and the Residents. Our business is totally focused on this business sector and we believe we are one of very few companies that offer a bespoke business model to help manage

Landlord Energy Supplies." It is extremely difficult for a Managing Agent to control Communal Energy Supplies, and that is why contracting to a specialist like BMU makes so much sense.

Steve goes on to say: "We have the systems and industry knowledge to be able to control this area of the business and help our clients deliver a more effective service to their customers."

Since selling their lettings business in March 2016, the Directors have been busy investing in new internal systems and improving their service offering to their customer base. "We have invested in excess of £100k in new systems and resource to enable us to manage property portfolios in a more effective way," adds Steve. "The process of managing contract end dates, termination clauses and renewals is now fully integrated and automated, which has allowed

BMU to say to their customers, 'If we don't get a meter live on time then we will pay the difference in the bill.'

"It's a commitment that could cost us a lot of money if we don't get it right, but we are confident in our systems to be able to deliver on our promise. If we get it wrong then the resident doesn't foot the bill... we do!"

In addition to new systems and improved services, BMU have also been busy cementing partnerships with three key service providers in the Block Management Industry. Partnership agreements have been signed with both Qube, Energicity and the Guild of Lettings and

Management. It is expected that going forward BMU will continue to offer new exciting service advancements to make life easier for their clients.

For further information visit www.bmutilities.com

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NEWS ON THE BLOCK

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QUESTION

Dear Sir

Can you provide some information regarding sinking funds? Can they automatically be instituted by a headlease or must provisions be provided in the sublease?

ANSWER

Many thanks for your question. It is common for leases to allow the landlord to collect sums of money from leaseholders to create a sinking fund. This allows sums of money to be built up, which will then be used to cover the costs of irregular and expensive works. The process avoids the "spikes" that would otherwise occur when these irregular and expensive works are undertaken.

Collecting a healthy sinking fund allows landlords to even out annual charges by helping to avoid large one-off bills and is in the interests of good estate management.

In order to collect contributions towards a sinking fund, there needs to be a provision in the lease which allows those contributions to be collected. The RICS Service Charge Residential Management Code suggests that where there is no provision in leases for a creation of a sinking fund, that consideration should be given to a variation to the leases to allow for a reserve fund to be set up.

In the situation you have described, it appears that there is a headlease between the superior landlord and intermediate landlord, and then a number of underleases between the intermediate landlord and residential tenants. It seems the intermediate landlord is required (under the terms of the headlease) to contribute towards a sinking fund. These costs would then generally be recharged by the intermediate landlord to the residential tenants under the terms of those underleases.

There should, in turn, be a clause(s) in the underlease which enables the intermediate landlord to recover those contributions. It may be that this clause is drafted widely, referring for example to all costs and expenses payable to the superior landlord under the headlease. You will need to look carefully at the terms of your lease to establish if there is a clause which entitles your landlord to recover contributions towards the sinking fund required by the headlease. Whether this is permitted will depend on the terms of the leases.

Cassandra Zanelli, Solicitor and Partner at PM Legal Services

QUESTION

Dear Sir

I have a problem with my neighbour and I wondered if you may be able to give me some advice.

My upstairs neighbour is selling his flat and the incoming tenant is planning to put down imitation wood flooring in the lounge and hall area, in spite of the fact that our lease clearly states that all areas must be closely carpeted apart from the kitchen and WCs.

I have reluctantly agreed to this providing that I can have a written guarantee that the new floor covering will be absolutely soundproof, but so far this has not been forthcoming. I am concerned that the new tenant will move in and

continued on page 44 >>

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Read LEASE Chairman, **Roger Southam's** regular column on the news and issues affecting the leasehold sector exclusively in News on the Block

Kim's game!

WHILST conspiracy theories will always abound – and it makes for interesting gossip about who has done what and why – in reality there is very little in property development that has the Machiavellian qualities of John La Carre's Tinker Tailor Soldier Spy.

In any area of life one should look at how something has occurred as much as why. This is certainly true with blocks of flats. Any professional will always want to do their best and hates for anything to be wrong or untoward. Mistakes can happen, they just have a much bigger consequence for a lease that will last 999 years!

Having development teams and experienced property managers working together to deliver manageability in all areas of a new building can make a real difference and spot what isn't there. In the 80s, when I was starting out, I worked with a development client who discovered the contractor had laid the first floor concrete slab without a hole in it for the internal staircase. They had failed to leave the hole for the staircase because the architect hadn't drawn it on the plan! A huge mistake and a costly one.

Certainly in the old days, when everything was done by hand, a lot of attention was paid to not have to redo. Now we have computer aided design and word processing, it is very easy to tweak and change! But, equally, previous versions of documents can be used in error or typographical errors made which go unnoticed.

I have come across leasehold estates where there have been differences in the leases when they should have all been the same. I suspect it was as simple as different lawyers within the firm handling the transactions and picking up different versions of the draft when there should be one master lease for the estate. Of course, it should never happen and, of course, it is people's lives and homes and fundamentally wrong... but we are all human.

> **"The lawyer had not been incompetent, he just made a mistake"**

I flag this because we need to all work together to ensure that mistakes are omitted as much as possible. Where they occur they are resolved quickly and simply. Quite naturally we would all want everything to be perfect. I once discovered the flat I had lived in for 10 years was not the flat that had been registered at Companies House. The lawyer had not been malicious or incompetent, he just made a mistake.

As with Kim's game, where you have tray of a large number of objects and look for two minutes and then spot what is missing when one thing is removed, all aspects of property development are similar.

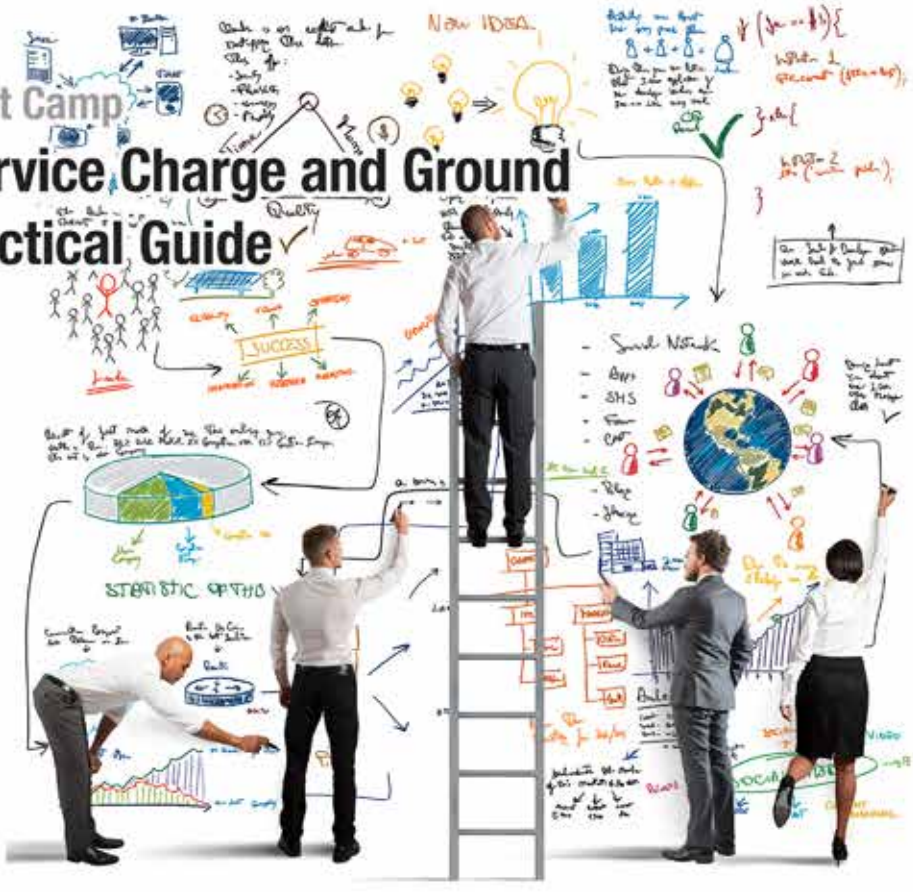
Starting with a clean sheet of paper to design a lease that reflects all the possibilities is challenging for a lawyer. As estates and developments get larger and more complicated and go on for tens of years, future-proofing the documents and accounting for what isn't yet built and won't be for a number of years is complex and challenging.

Being aware of the process may help for homeowners to understand more.

Roger Southam is non-exec chair of the Leasehold Advisory Service

Property Management Boot Camp

Breach of Lease, Service Charge and Ground Rent Arrears - A Practical Guide



Date: **4 July 17**

Time: **14:15 to 17:30**

Location:

The Oyster Shed
Angel Lane, London
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Our Property Management Boot Camps are informal and fun training sessions for Property Management Professionals, which cover a wide variety of topics across the sector.

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www.newsontheblock.com/events-and-training

Property Management Boot Camp

Professional Development Series

Date: **17 August 17**

Time: **14:15 to 17:30**

Location:

Brighton Media Centre Ltd
68 Middle St, Brighton
BN1 1AL

OVER A QUARTER (26%) OF HOMEOWNERS RECEIVED MONEY FROM PARENTS TO BUY A PROPERTY SOURCE: PLENTIFIC.COM

continued from page 40 >>

arrange for the new floor covering to be put in place without my consent. Any advice you can offer would be appreciated.

ANSWER

As you have been asked for permission, I assume that you must have a share of Freehold.

Firstly I admire your neighbourliness in accepting the installation of wood flooring with a written guarantee. However, what you are agreeing to is effectively contravening the lease and could cause you difficulties in the future. My recommendation would be that you request that the new owner enters into a formal Licence to Make Alterations (if the lease allows this) so that both parties interested are protected.

The licence is important as it should set out the terms of any alterations that can be made including the requirement for the Freeholders' surveyor to inspect the works, and ensure that adequate insulation is installed prior to the wood flooring being laid. Many of the solicitors I have dealt with in the past have a standard clause where a licence is given for wooden flooring such as:

"for the avoidance of doubt the grant of this icence shall not constitute a waiver of the tenant's obligation under the lease that all floors in the Premises shall be close-carpeted or covered with some other satisfactory sound deadening material. The landlord agrees with the tenant not to enforce the said provision in the lease concerning carpeting and covering of the floors of the Premises unless any complaints of noise transmission shall be received from other occupiers of the Building."

A clause like this can be of benefit to you as you can ensure that any works to the flooring should not cause any more noise nuisance than the current arrangement. The licence is also important for the new purchaser too, as they will have an official document confirming that the works have been authorised. If the new owner decides to proceed with installing the wood flooring without permission and you experience a noise nuisance issue then they run the risk of legal action being taken. This could be by either the Freeholder on your behalf, or by you directly with the result being that they will have to reinstate the flooring as per the terms of the lease i.e. carpet with costs being payable by them as they have breached the lease.

Due to the expense involved for all parties it is always advisable to engage in the formal process from the start and I am sure your neighbours will be grateful to avoid any additional expenses. Hopefully, they will also will appreciate the comfort of knowing that the same rules would apply should someone wish to carry out works that may adversely affect their property.

Sarah J Fisher, Director, MIH Property Management Ltd

QUESTION

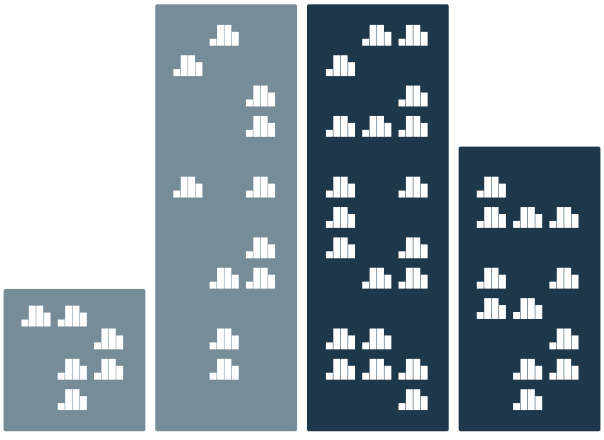
Dear Sir

I am the owner in a block of flats with a 900-year lease. All owners are also shareholders in the resident management company. One of the flats in the block is rented out and since the present tenants moved in some months ago we have been plagued with "fumes" in the common parts, which are entering our apartment during the early hours of the morning. Some residents are suffering from noise from this flat in the same early hours.

The weekends are the worst and the effects of the fumes are quite serious. We are pretty sure from what has been observed that the problem is due to drug use. We are anxious to resolve the problem as there are very real health implications for us. Can you please suggest a strategy to resolve this?

Our lease does protect us from "nuisance" and a number of residents/owners are complaining. The managing agents do nothing – in fact they are very obstructive in spite of the high service charges we

continued on page 46 >>



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59% OF POTENTIAL BUYERS STILL WANT TO MAKE A PURCHASE DESPITE THE GENERAL ELECTION IN JUNE SOURCE: eMOOV SURVEY

continued from page 44 >>

pay. The police appear to be limited in the help that they offer. We would be very grateful for your advice.
Name withheld

ANSWER

It's quite difficult to give you comprehensive advice, without seeing a copy of your lease. You are welcome to send me a copy via News On The Block and I will happy to advise you further.

That said, what I would be looking for in your lease, in addition to the 'nuisance' protections that you have identified, are covenants on the leaseholder, such as subletting and permitted use clauses.

By way of example, and because I have not read the relevant flat lease, it might be that the permitted use of the flat is a single private residence for the leaseholder only, or it might be that the leaseholder requires consent for subletting and said consent has not been obtained.

Further, the leaseholder might have to have lodged with your company and or your managing agent or solicitors a copy of the tenancy agreement and it is possible that agreement might have to have included certain covenants on the part of the sub tenant and in some cases, a lease may have required a subtenant to enter into a deed of covenant with the freeholder.

Your strategy must be to deal only with the leaseholder because that is the person with whom you have privity of contract, as the freeholder company. You are right to have contacted the police because, if you believe drugs are being used in the building, you have certain obligations under the misuse of drugs legislation, but you should also write to the leaseholder in this regard because the leaseholder also has obligations in this respect.

With regard to your managing agents, you must remember that they are agents of your freehold company and they are obligated to act on your instructions. If they are not doing so, it might be time to review your agreement with them and to consider your options going forward.
Shmuli Simon, Director of Legal Services at Integrity Property Management

Call of the Month

In addition to our out of hours service, Adiuvo also provides outsourced maintenance desks for block managers, and in that capacity get involved in the more mundane and day-to-day enquiries and correspondence, so this month is more of "email of the month". A resident wrote to advise of an ongoing noise nuisance from the neighbouring flat whose bathroom, and specifically the shower, is located next to their bedroom. The resident explained that the shower was the neighbour's seemingly preferred location for amorous activities! They requested the Management Company should write to them asking them to use other areas of their property for such acts!

Thanks to Adiuvo – specialist out-of-hours and call-handling solutions for the property management industry

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Debbie Phillips
@debrabretherto1
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What a wonderful venue, great evening ahead with good friends...#ERMAS2017 @brethertonsllp
8:03 PM - 8 Jun 2017

DCLG
@CommunitiesUK
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Welcome to our new Housing and Planning Minister @AlokSharma_RDG gov.uk/government/new... pic.twitter.com/OlkLETmg8o
3:51 PM - 13 Jun 2017

Colin Stokes
@Adiuvo_UK
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Hoping for a quieter weekend of emergencies after last weeks storms and flood of building of 400+ residents.

Philip Rainey
@RaineyQC
Follow

From apolitical #leaseholdreform standpoint sad we lost housing minister Gavin Barwell. APPG OK as Peter Bottomley & Jim Fitzpatrick back
10:54 AM - 9 Jun 2017

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in person

Upcoming events

21st June 2017

Property Management Bootcamp: The Practical Guide to the Lease Extension

Where: The Oyster Shed, Angel Lane, London EC4R 3AB
Time: 14:15 to 18:35

Join us at the practical guide to managing the lease extension process Boot Camp!

Many flat owners are now aware that time is ticking and that they are losing money with every year that passes by and the lease term remains un-extended. The result of this current increased awareness is the continued rise in section 42 Notices being served upon the competent landlord.

Angela Alexiou, Leasehold Enfranchisement Solicitor at YVA Solicitors and Richard Murphy, a specialist Leasehold Enfranchisement Valuer, at Richard John Clarke Chartered Surveyors will present an interactive, practical and informative boot camp which can be used as a guide to the effective management of the Lease Extension process.

For more information visit www.newsontheblock.com/events-and-training or contact Charlotte - charlottebh@newsontheblock.com T: 0203 538 8875

21st June 2017

Property Management Drinks:

Where: The Oyster Shed, Angel Lane, London EC4R 3AB
Time: 18:00

Following our boot camp session, please come and network with your peers at this great location on the Thames.

To sign up please visit www.newsontheblock.com/events-and-training or contact Charlotte - charlottebh@newsontheblock.com T: 0203 538 8875

Hosted at Twickenham Stadium, the home of England Rugby, this experience is one of a kind. You will have the opportunity to go on a guided tour and access some of the most exclusive parts of the Stadium. Take a seat in the England dressing room, absorb the atmosphere in the royal box and imagine the roar of the crowd as you run out of the player's tunnel to take in the view pitch side.

Once you have taken in the sights and sounds of the stadium you will dine and network in the President's Suite. The President's suite is Twickenham Stadium's most prestigious facility, being host to Royalty and VIPs on match days. Overlooking the pitch, this impressive facility provides the ultimate in Twickenham Stadium's historic past. You can also enjoy your drinks in the Royal Box overlooking the pitch.

For sponsorship opportunities please contact Nik Trevillion at nikt@newsontheblock.com T: 0203 538 8875

30th June 2017

NOTB Network Presents Twickenham

Where: Twickenham Stadium, Whitton Rd, Twickenham TW2 7BA
Time: 15:45 to 21:00

The NOTB Network are proud to present: Twickenham

Upcoming events continued...

4th July 2017

Property Management Bootcamp: Breach of Lease, Service Charge and Ground Rent Arrears - A Practical Guide

Where: The Oyster Shed, Angel Lane, London EC4R 3AB
Time: 14:15 to 17:30

Presented by Bolt Burdon Solicitors.

Landlords and Managing Agents are often criticised by the First Tier Property Tribunal for not having a complete and balanced understanding of landlord and tenant legislation. In an area of law subject to increasing change and renewed scrutiny, it is essential that you and your staff are properly equipped to deal with even the most straight-forward of issues.

Bolt Burdon are specialist Leasehold Reform Solicitors in Islington. On the 4th of July, they will be working with us to bring to you a fully interactive boot camp on "Breach of Lease, Service Charge, and Ground Rent Arrears a Practical Guide". No matter how large or small the development, regardless of age and experience, this promises to be an engaging, invoking and rewarding boot camp.

For more information visit www.newsontheblock.com/events-and-training or contact Charlotte - charlottebh@newsontheblock.com T: 0203 538 8875

6th July 2017

Arden Chambers Conference

Where: 30 Euston Square, London NW1 2FB
Time: 9:30-17:00

We are delighted to be working alongside

Arden Chambers to bring you an informative and stimulating conference, which will be of interest to property managers, solicitors, surveyors and others working in this challenging sector. Experts in property law Arden chambers are putting together a fully comprehensive program with the theme this year of "Long residential leases and management: Litigation perils and practice"

For more information or to book tickets please visit www.ardenconference.co.uk or contact Charlotte - E: charlottebh@newsontheblock.com T: 0203 538 8875

17th August 2017

Property Management Bootcamp

Where: Brighton Media Centre Ltd 68 Middle St, Brighton BN1 1AL
Time: 14:15 - 17:30

Presented by Rebecca Bailey, Co -Founder, Optimistic Fox and Emma Blaney, Found & Chief Productivity Champion, Productive Property People

This bootcamp will discuss how to shift the leaseholder experience through better communication & how to increase your productivity.

In this interactive workshop, we'll explore how changing the way you communicate with customers can reduce queries & complaints, create better understanding & relationships and make the property manager's job simpler and more effective.

For more information please visit www.newsontheblock.com/events-and-training or contact Charlotte - charlottebh@newsontheblock. com T: 0203 538 8875

14th September 2017

NOTB Network Presents: NAMCO

Where: Namco Funscape, County Hall, Westminster Bridge Road, Riverside Buildings London SE1 7PB
Time: 18:00-22:00

The NOTB Network are proud to present: Namco Funscape to its revised date the 14th September A unique, fun and engaging FREE networking event for Property professionals. We are taking over the VIP room at Namco Funscape where you will have access to bowling, snooker, and ping pong alongside our private bar! It's our Property Management drinks with a twist!

Availability is very limited and bookings will be dealt with on a first come, first served basis. You will be emailed if you have been successful.

To sign up please visit www.newsontheblock.com/events-and-training or contact Charlotte - charlottebh@newsontheblock. com T: 0203 538 8875

For sponsorship opportunities please contact Nik Trevillion at nikt@newsontheblock. com T: 0203 538 8875

September 2017 (TBC)

Tanfield Chambers - Service Charge Summit

Where: London

Details will be announced shortly. Please contact charlottebh@newsontheblock.com or visit the official site http://servicecharge-summit.co.uk/ for updates.

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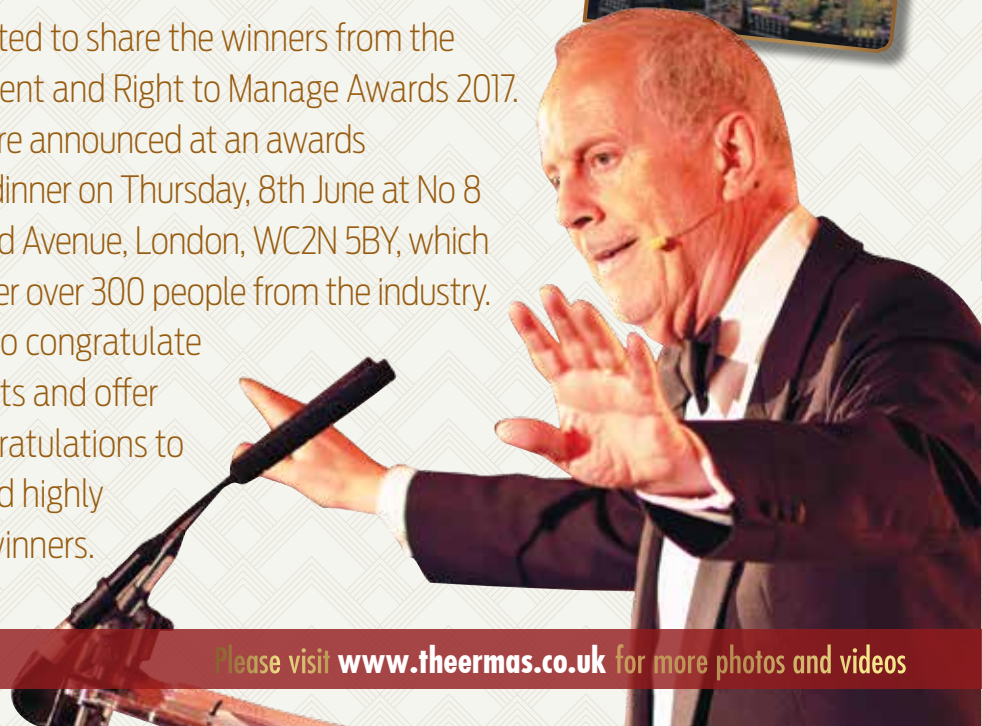
The Property Ombudsman ARLA NAEA ARMA

ermaswinners

NEWS ON THE BLOCK ERMAS 2017

ENFRANCHISEMENT & RIGHT TO MANAGE AWARDS 2017

We are delighted to share the winners from the Enfranchisement and Right to Manage Awards 2017. The winners were announced at an awards ceremony and dinner on Thursday, 8th June at No 8 Northumberland Avenue, London, WC2N 5BY, which brought together over 300 people from the industry. We would like to congratulate all of the finalists and offer extended congratulations to the winners and highly commended winners.



Please visit **www.theermas.co.uk** for more photos and videos

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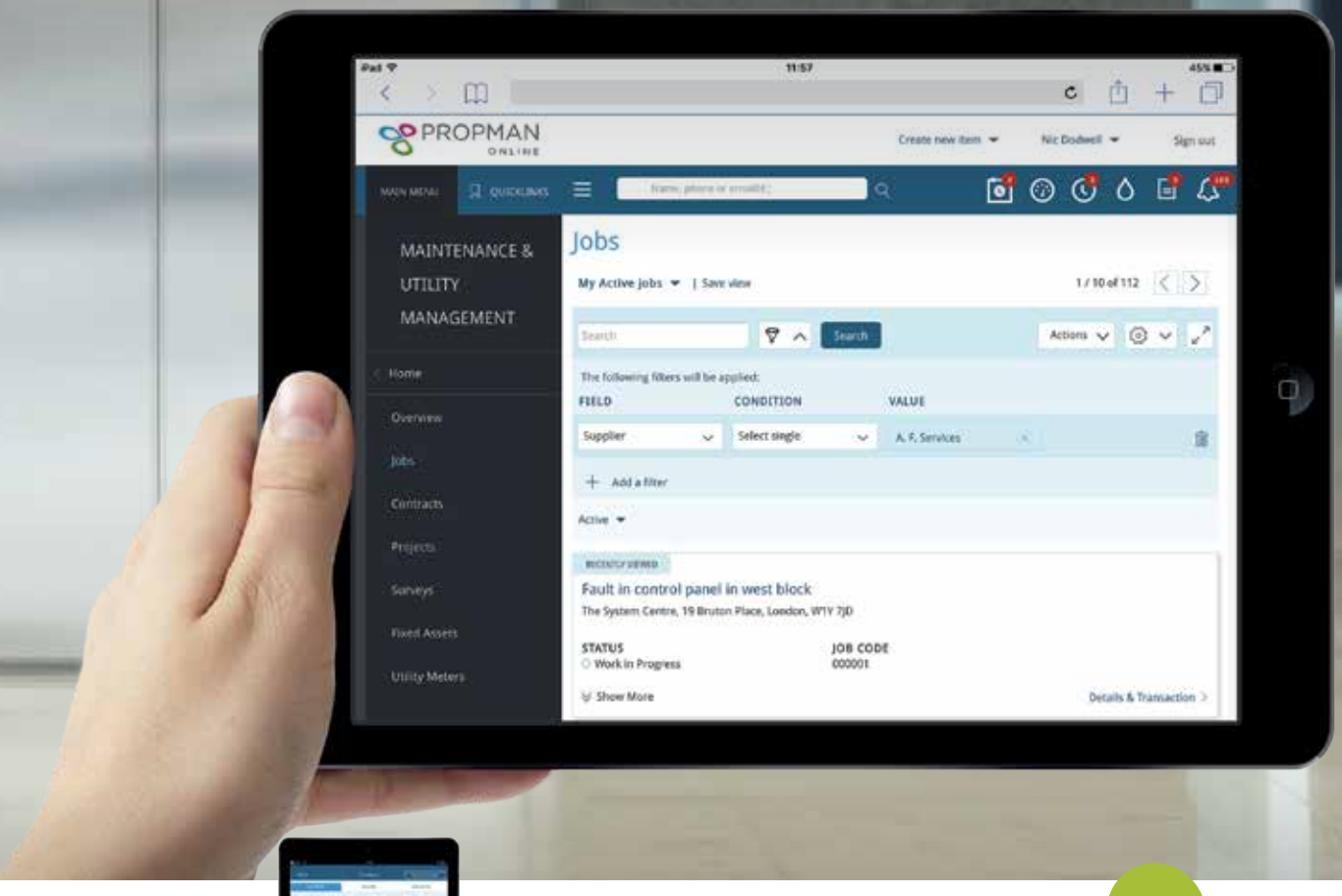

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ermaswinners

Solicitor of the Year
Winner: Roger Hardwick, Brethertons

Brethertons LLP SOLICITORS

Highly Commended: Hema Anand, Bircham Dyson Bell, Tim Morgan, ODT Solicitors
Finalists: Hema Anand, Bircham Dyson Bell | Roger Hardwick, Brethertons | Simon Masters, CG Naylor LLP | Tim Morgan, ODT Solicitors

Solicitors Firm of the Year
Winner: Forsters

FORSTERS

Highly Commended: Bircham Dyson Bell, ODT Solicitors
Finalists: Bircham Dyson Bell,
Bishop & Sewell, Brethertons, Forsters, ODT Solicitors

Chambers of the Year
Winner: Tanfield Chambers

TANFIELD

Highly Commended: Falcon Chambers
Finalists: Falcon Chambers, Tanfield Chambers
Sponsored by:

FORSTERS

Barrister of the Year
Winner: James Fieldsend, Tanfield Chambers

TANFIELD

Highly Commended: Stan Gallagher, Tanfield Chambers
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ermaswinners

Valuers of the Year

Winner: Marr-Johnson & Stevens

Marr-Johnson & Stevens

Highly Commended: myleasehold, Knight Frank

Finalists: Knight Frank, myleasehold, Marr-Johnson & Stevens

Sponsored by:

WALLACE LLP

Young Professional of the Year

Winner: Tornike Purcell - Bolt Burdon

bolt burdon SOLICITORS

Highly Commended: Sharan Dhadda, Brethertons, Jonathan Achampong, Wedlake Bell LLP

Finalists: Tornike Purcell - Bolt Burdon | Sharan Dhadda, Brethertons | Shu-Yan Cao, CG Naylor | George Calvert - Pemberton Greenish LLP | Jonathan Achampong, Wedlake Bell LLP

Sponsored by:

howard kennedy

Regional Professional of the Year

Winner: Roger Hardwick, Brethertons

Brethertons LLP SOLICITORS

Highly Commended: Cassandra Zanelli, PM Legal Services | Tim Morgan, ODT Solicitors

Finalists: Roger Hardwick, Brethertons | Emily Fitzpatrick, Hart Brown Solicitors and Leasehold Law LLP | Tim Morgan, ODT Solicitors | Cassandra Zanelli, PM Legal Services | Tim Morgan, ODT Solicitors

Outstanding Achievement Award

Winner: Alex Greenslade, Honorary Secretary ALEP and Chairman at Leasehold Solutions

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