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.

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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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Are you concerned about leaseholds? Do you invest in ground rents?

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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.

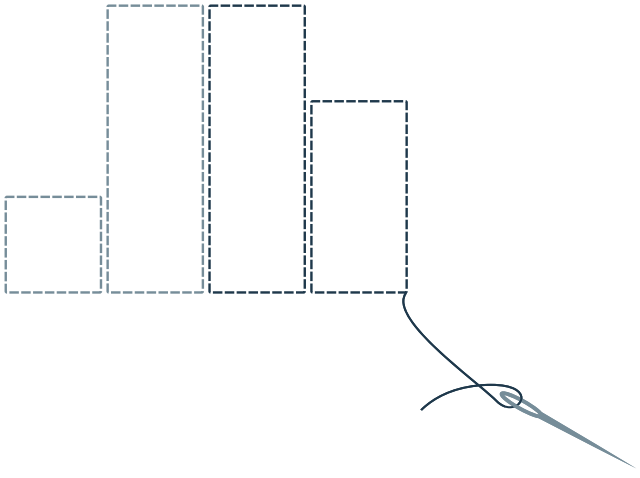
Provides an investor/landlord with a modest and secure income stream but does the leaseholder understand their liability under the lease?

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.

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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