BRITAIN'S BEST BLOCK MANAGEMENT MAGAZINE

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Help and advice for flat owners. SMS US: 0786 002 1858

Mum dies after being hit by falling bricks

A young mother has died after being hit with bricks and debris when a pallet fell 100ft from a crane at a development of flats in London.

MICHAELA BOOR, who became 29 while in hospital, died after losing her fight for life two days after the accident in Tower Hamlets in March.

Ms Boor was on her way home after taking her child to school and was passing the site where the crane was being operated at Bow Corner, a development of flats by Higgins Homes.

Ms Boor – who had announced her engagement on Facebook just two weeks before the incident – was taken to hospital but died of her injuries.

Police, who are investigating the incident with the Health and Safety Executive, said in a statement: "A 29-year-old woman who was critically injured after being struck by falling debris in Tower Hamlets has died."

Richard Higgins, chairman of Higgins Homes, said in a statement: "It is with great sadness and distress that we learned of the death of Michaela Boor. We are continuing to co-operate fully with the ongoing police and Health & Safety Executive investigation.

"Our thoughts remain with Michaela's family and friends at this exceptionally sad time."

Tribunal ruling on cladding removal leaves owners devastated and forced to pay

LEASEHOLD residents within a pair of tower blocks in London have been told by a tribunal they must pay for potentially hazardous cladding to be removed.

The leaseholders in Croydon's Citiscape apartments had argued that the cladding – which is of the same type used on Grenfell Tower – should be treated as defective following changes in regulation after the tragedy.

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News on the Block is the leading independent magazine providing help and advice to flat owners, landlords, managing agents and their professional advisors.

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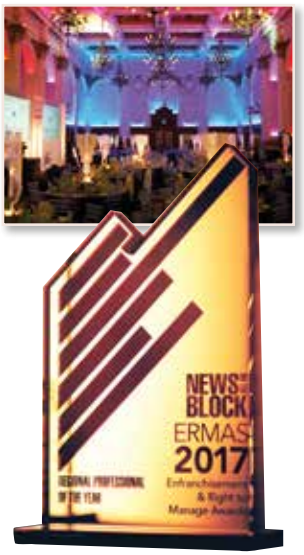

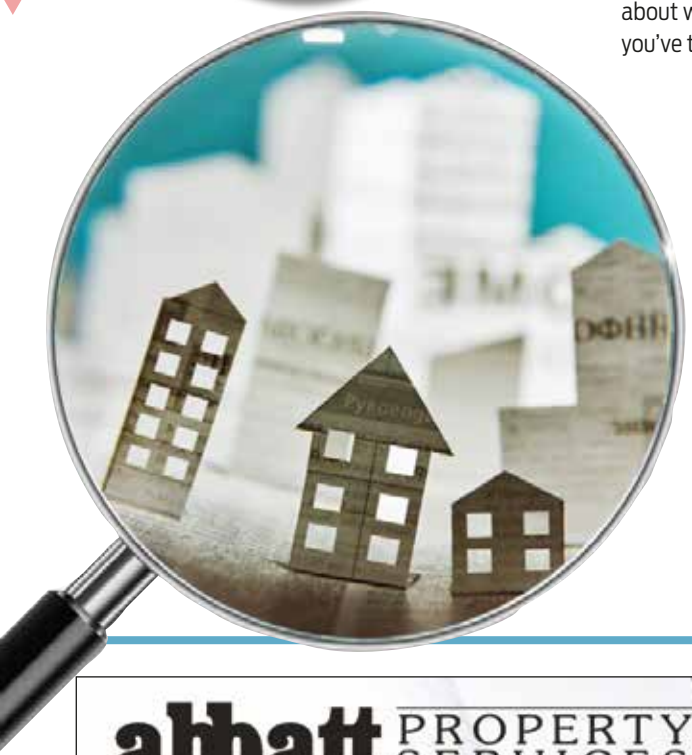

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Fines and ban warning to landlords over new energy laws

AROUND 6% of landlords in the UK could face fines of up to £4,000 and being banned from renting their flats if they fail to meet new energy efficiency rules.

From April 1, new regulations were introduced that make it illegal for landlords to sign new leases if the property's energy performance certificate (EPC) has a rating of F or G. And not having a valid EPC could result in a fine of £200.

Around 300,000 privately rented properties in the UK – which is 6% of the current stock of 4.7m flats and houses – have a rating lower than E, according the Office of National Statistics.

And landlords with those properties are being warned they must ensure they meet the new Minimum Energy Efficiency Standards (MEES) rules before signing new leases – or face fines and even a ban on letting their property.

The warning comes as new research exposed a nationwide ignorance to the law for all new lets and relets. The same laws will be enforced for existing tenancies on April 1, 2020.

Landlord insurance specialists Just Landlords, who carried out the survey, found that only 4% of those surveyed were even aware of the new legislation.

Of those surveyed, only 24% were able to identify the correct fine of up to £4,000 that could be administered if a property is found to have an Energy Performance Certificate (EPC) rating below E.

Rose Jinks, on behalf of Just Landlords, said: "The lack of awareness around this key legislation is astounding. Landlords and tenants need to know what their EPC rating is, as it could not only help them avoid a fine, but also could save them large sums of money."

Richard Truman, head of operations at Simple Landlords Insurance, added: "Ensuring that properties meet the new requirements isn't just good for the environment. A more energy efficient home will also be more attractive to let in a competitive rental market."

Labour's 'dogged' effort over pet rights

TENANTS would be given the right to keep pets in their flats as part of a package of animal welfare measures being proposed by the Labour party.

Jeremy Corbyn, who revealed the plans, said rules would state that unless there was evidence that a tenant's pet would be a nuisance they would be given a default right to keep their pet.

The move would mean landlords could not insist on a "no animals" clause being included in rental agreements.

Property management franchise Belvoir has produced tips to help tenants secure a rental property with their pets.

The firm's chief executive, Dorian Gonsalves, said: "For some years now many of our franchisees have worked with the Dogs Trust, which has produced some strict guidelines for landlords and tenants on the Lets with Pets section of their website."

"By applying this advice, together with some common sense, many of our landlords are very happy to accept tenants with pets."

She added that with more than 12m pet owners in the UK, a landlord could be missing out by people with pets as potential tenants.

Tribunal ruling on cladding removal leaves owners devastated and forced to pay

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They argued that the freeholder, Proxima GR Properties, should pay for the replacement cladding or that the managing agent – FirstPort – should pay and then find out whether the money was due from the freeholder, developer Barratt, the insurer or cladding manufacturer.

But, in Firstport Property Services Limited v The various long leaseholders of Citiscape, the First-tier Tribunal (Property Chamber) ruled that the cost was recoverable through the service charges.

It also ruled that the cost of providing fire marshals for a 'waking watch' at £14.75+VAT per hour was reasonable and was also recoverable from the leaseholders.

However, it said that following the publication of the Fire Safety Guidance Notice on September 19, 2017 the property manager should have considered other recommendations, including installation of a fire alarm system.

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Squalid flats hike rates to cash in on World Cup

SHABBY flats and no-star hotels are being advertised for eye-watering sums in the three Russian cities where England will play during this summer's World Cup.

In Nizhny Novgorod, a tired studio flat currently costing just £17-a-night is being offered at an astonishing £1,915-a-night when England play Panama on June 24.

Recent renters have blasted the flat's "awful condition" with one called Irina complaining: "The building is in poor state, it clearly needs to be renovated."

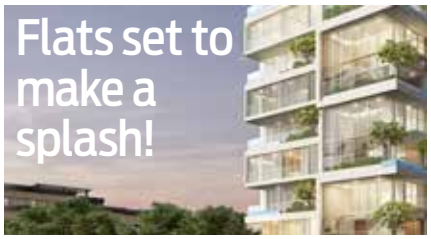
But that hasn't stopped the owners of the ramshackle apartment hiking the price by 11,164% to cash in on the football tournament.

Figures show average rents for Airbnb apartments in Nizhny Novgorod will soar to £352-a-night when England arrive with 182 of 300 available properties topping the £400-a-night mark.

In Volgograd, where England kick-off their campaign against Tunisia on June 18, the four-star Gallery Park Hotel is charging £438-a-night on match day for a room which costs £20 now.

Tourist chiefs estimate at least at least 1.5m foreign tourists will flood to the country during the tournament and spend £1.4bn.

NEWS IN BRIEF



LUXURY flats that feature a private swimming pool on all but two balconies are set to go on sale in Vietnam.

The southeast Asian country has one of the world's fastest growing property markets, with the 45 apartments being advertised for £2m.

Featuring luxury homes that include walk-in wardrobes, designer lighting and private lifts, the Serenity Sky Villas apartments are in District Three of Ho Chi Minh City in the south of the country.

They range in size from a one-bedroom flat costing about £260,000 to a four-bedroom option costing £1m and penthouses priced at £2m.

The sale of the apartments is being handled by Savills, who say the development could offer a rental yield of around 4.1%.

Become a neighbour of the Queen at luxury apartments

FANCY being neighbour to the Queen? Well, you will be able to realise your dream after developer Northacre released 72 luxury apartments for sale opposite Buckingham Palace. But you will have to be quick as 70% of the state-of-the-art apartments at No.1 Palace Street have already been sold, the company has said.

Priced from £2.5m to £30m, the palatial homes are set on a 300,000 sq ft island site inside a Grade II-listed property originally created in 1890 as The Palace Hotel – which hosted guest of Queen Victoria.

Due to be completed next year, the apartments offer views over the 47-acre Buckingham Palace Gardens.

Northacre says each apartment – from a one-bedroom flat to a grand penthouse – has a unique layout and a custom design to "complement the different architectural styles of the building"

The company says the apartment block will include a 6,500 sq ft "haven of wellbeing" which features a gym, treatment rooms and personal training suites. It will also boast one of London's "most impressive pools" that overlooks the courtyard and private garden.

There will also be a cinema room, library, and entertaining suite, while residents will be able to make use of personal catering from the development's restaurant.

High-rise photographer who scales dizzying heights

PHOTOGRAPHER Zohaib Anjum clearly has a head for heights – because he captures his stunning images of high-rise apartments by scaling neighbouring skyscrapers.

Forget drones, Zohaib spends around eight hours climbing buildings as high as 866ft before walking to the edge of the roof to get the best shots of the apartments above the clouds.

Although an estate agent photographer for the last six years, he has become best known for taking outstanding photos of tall buildings.

Zohaib says he's proudest of his work photographing Dubai in the fog, and capturing lightning bolts from the top of the Burj Khalifa.

He said: "I go out in all the weather especially when lighting strikes, it is very risky when you are at the top and you are shooting lightening strikes

"I was shooting last year on the 67th floor on the roof and I was shooting from the Burj Khalifa because that gets hit many times with lightning strikes.

"After five minutes of me setting my camera up, it just hit the Burj Khalifa and it was so close to me I felt the power of the lightening bolt."

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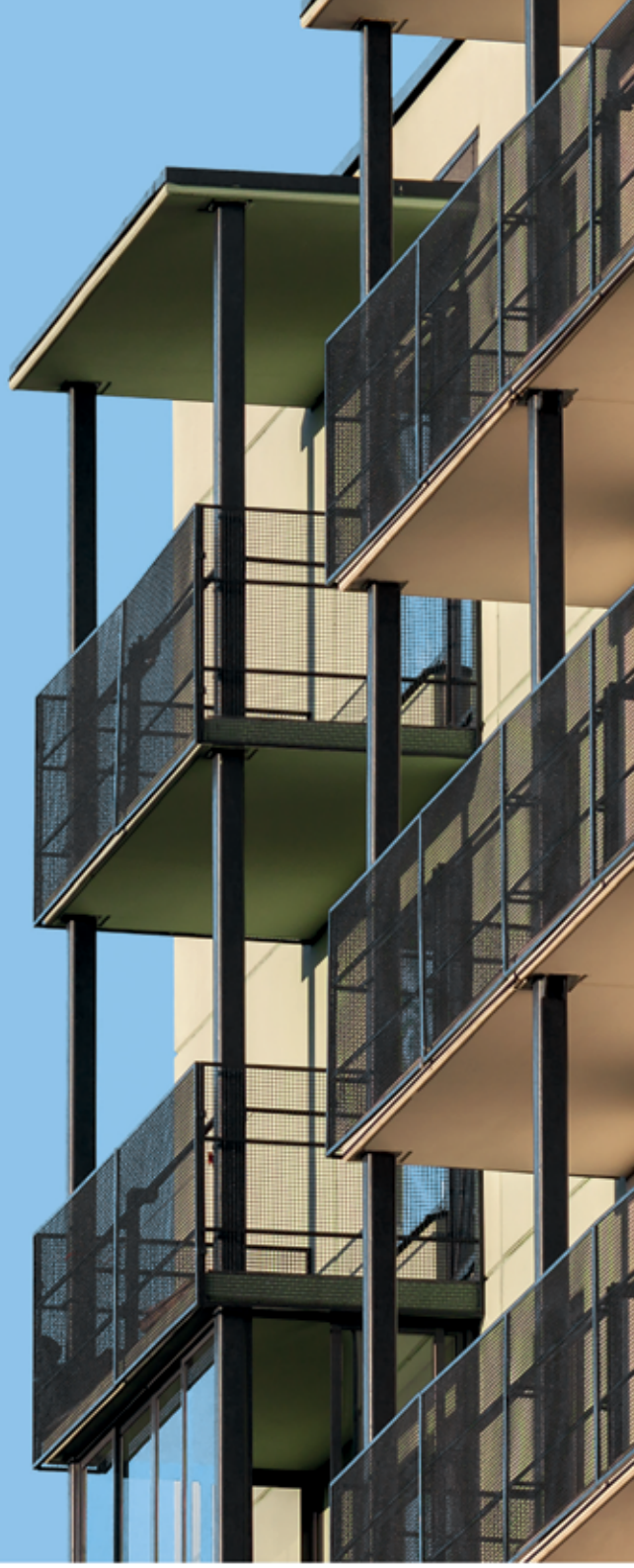

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Telecoms firms rapped for delays at flats development

TWO telecoms firms were rapped by the High Court after dragging their feet when moving equipment at an office building that was being converted into flats.

Hutchinson 3G UK – which operates the 3 network – and EE were taken to court by developer PG Lewins Limited for delaying the renovation works.

All parties had agreed that during the building work, the mobile telecoms equipment would be moved to scaffolding and then relocated once the works were completed.

However, the relocation work was delayed and the developer complained that the telecoms operators were in breach of contract and caused them loss.

In PG Lewins Limited v (1) Hutchison 3G UK Limited and (2) EE Limited, the telecoms firms used an old statutory power underthe Electronics Communications Code, which prevents landlords from claiming damaged from operators who fail to comply with contractual obligations.

In a landmark decision for landowners, the High Court agreed that there had been a breach of contract and the court told the telecoms operators they could not hide behind previous powers.

Kary Withers, of law firm Clarke Willmott Partner, who represented PG Lewins, said: "The difficulty with this case was that there is an 'Old Code' and a 'New Code' for electronics communications.

"Despite the repeal of the Old Code and introduction of the New Code on 28 December 2017, the principles established in this case survive the change in legislation.

"The supremacy of the contractual agreement conferring the Code rights is preserved in the new legislation and means that telecoms operators will need to be more careful to ensure its contractual obligations are complied with, like any other commercial entity.

"It is hoped that landowners and telecoms operators will continue to work together collaboratively under the New Code regime so as not to prevent or hinder landowners carrying out development."

Barking Riverside regeneration handed £500m boost

HOUSING association L&Q is to receive a cash injection of £500m after reaching an agreement with Mayor of London Sadiq Khan for the regeneration of Barking Riverside.

The 90,000-home landlord and the Greater London Authority will invest the cash in housebuilding and infrastructure through their partnership vehicle, Barking Riverside Limited, over the next 15 years.

The Section 106 agreement, reached with the Barking and Dagenham Council and Transport for London, means the project has secured funding for a host of facilities including a new TfL Overground station, seven schools, an ecology centre and a combined health care and leisure centre.

Barking Riverside will also be London's first and only NHS Healthy New Town, which will embed health into design and living. Half of the new homes will be affordable.

The Mayor of London Sadiq Khan, said: "This is an incredibly exciting project for Barking & Dagenham, but also for the whole of London. As well as housing, our investment will create the new transport, education and health services needed to turn this into a thriving new community."

Andy Rowland, L&Q's east region managing director, said: "This agreement marks a vital step for Barking Riverside, ensuring we are able to deliver the necessary infrastructure to build a well-connected and thriving community which will benefit existing and future residents for years to come."

Lawyer evicted from penthouse on a technicality

A LAWYER is to be evicted from his plush penthouse that overlooks New York's Central Park after losing a court battle.

Barry M Fox has been a tenant at the $25,000-a-month apartment since the 1970s, but when he agreed to take over a neighbour's flat to extend his penthouse 10 years ago he renewed the lease under a business name.

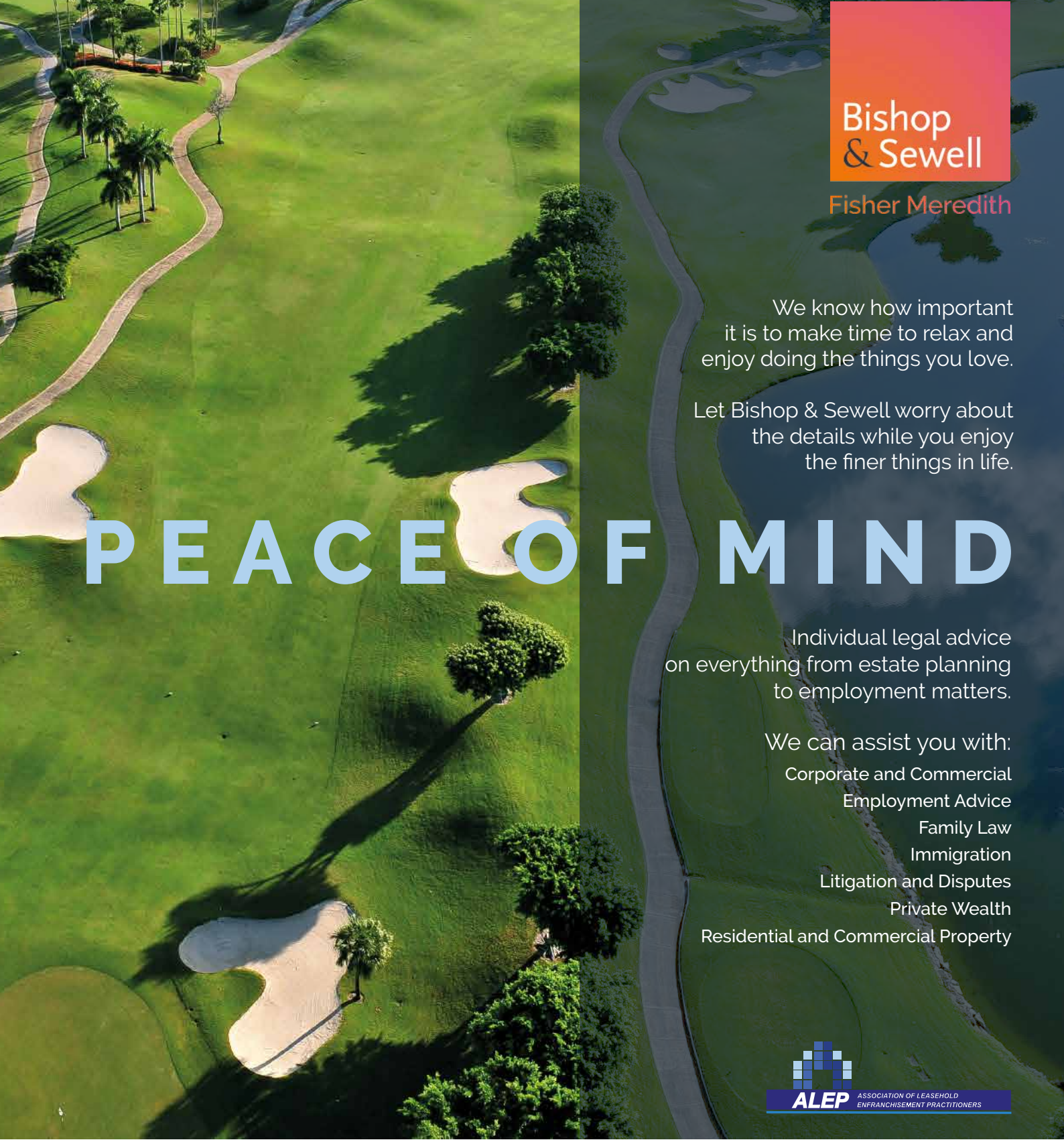
He was informed in 2014 that a developer had bought the building at 12 East 88th Street to convert it into condominiums and his lease wouldn't be renewed that year. He was told, however, that he could buy it for $25m.

Lawyers for his landlord, which sought to evict him and develop the building, claimed he renewed the lease as a company to write his rent off on tax.

Mr Fox argued the landlord illegally deregulated the apartment and he should be able to demand a lease renewal as he had previously.

But four of the five First Appellate Division judges ruled he gave up the right to a rent-controlled lease when he started using a business to renew it, as his name was never actually on the lease after that.

They wrote: "From that time onward, Fox ceased being a tenant and no longer had any of the rights to which a rent-stabilized tenant is entitled."



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ARMA offers insurance through new partnership

THE Association of Residential Managing Agents (ARMA) is to partner with a leading insurance provider as it aims to raise standards in the property industry.

The organisation has launched ARMA INSURE after teaming up with NFU Mutual. The association said the partnership would offer members who insure with the firm "first-rate 'no-quibble' claims handling for the benefit of managers and leaseholders alike and access to expert advice from local dedicated agents based around the UK".

Dr Nigel Glen, ARMA's chief executive, said: "We are delighted to have secured NFU Mutual as our new insurance partner, which we believe will allow us to bring an array of new benefits to our members.

"We are always looking for ways we can innovate and features, such as an improved claims management process that takes away the headache of having to keep a handle on the progress of claims, will help drive value for money for ARMA members."

NFU Mutual's property sector specialist Rob Mayo, added: "This is a partnership which will support both parties in achieving our strategic goals to improve best practice in the property industry. Working together presents new opportunities to make real change that will reduce risk and raise standards through a focus on health and safety, regulation and protection."

Probe after claims workers threw rubbish from flats' roof

WORKERS who were clearing up on the roof of a block of flats are being investigated after they were alleged to have thrown rubbish from the top of the 40ft high block.

In pictures caught on camera by a member of the public, the pair are seen close to the edge of the roof peering down after one throws material to the ground.

The workers arrived at the site in East Kilbride in a South Lanarkshire Council van before making their way to the top of the building, onlookers said. Council officials have launched an investigation into the incident.

One onlooker said: ""I looked out of my window and saw two council workmen on the roof of the block of flats.

"They were walking very close to the edge of the roof and leaning over and it didn't look very safe. They appeared to be cleaning the roof and sweeping up debris then one threw handfuls of rubbish over the side of the building to the ground below."

Management services firm agrees deal for 150th development

A COMPANY that specialises in management services for retirement housing has reached a milestone.

Millstream Management Services (MMS) is celebrating after agreeing a deal for its 150th development at Sarum Lodge, Salisbury.

The agreement at the Churchill Retirement Living site takes the number of apartments being managed by MMS to 5,906. To mark the announcement, the company held a special event for staff and owners at Sarum Lodge in March.

As well as managing all Churchill Retirement Living developments, MMS is also fast becoming a leader in the Right to Manage field and has now been appointed on this basis by a total of 21 developments – about 1,000 units – around the country. MMS – which was established 11 years ago – also provides management services for housing associations, investors and resident management companies.

MMS managing director Simon Crewe said: "MMS is growing fast and we recently appointed our 200th colleague, as well as announcing plans to double the size of the business and move to brand new office premises in Ringwood later this year.

"Reaching the milestone of 150 developments under management is a major step along the way to achieving our growth plans. It's a clear sign of our progress and a testament to the whole team's hard work and commitment in putting our customers at the heart of everything we do."

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ALMOST ONE-IN-TEN BRITONS WILL FORGET THEY'VE MOVED HOME IN THE WEEKS AFTER RELOCATING SOURCE: ZOOPLA

Property law firm recruits two legal experts as part of growth plans

TWO legal experts have joined a property law firm as it continues to grow and offer services across the full range of legal work in the leasehold and property management sector.

Alexandra Byard and Cheryl Bates have joined Nottingham-based Brady Solicitors as the firm handles an increase in both the quantity and variety of instructions.

Cheryl Bates joins the firm's service charge team and brings substantial experience in a wide range of property and debt recovery work. Most recently, she was a Partner at Shakespeare Martineau LLP and was head of the firm's repossession sales and recoveries team.

Alexandra Byard, who previously worked at Taylor & Emmett LLP, joins the litigation team and qualified as a solicitor in April. She graduated from Coventry University with a First Class degree and was President of Coventry Legal Advice Service from 2011 to 2013.

Clare Brady, managing director of Brady Solicitors, said: "With such growth comes the challenge of finding solicitors with experience in the property management sector, so I'm delighted we've been able to recruit two such talented and ambitious lawyers to our team.

"Cheryl and Alex bring not only specialist legal expertise but the proactive, commercial and client-focused approach to their work that is valued by our clients."

The firm recently moved into new premises on Castle Gate to provide more office space.

MMS welcomes its 200th employee

RETIREMENT housing management company Millstream Management Services (MMS) has reached a major milestone after welcoming its 200th employee.

Clare Overgaard has been appointed lodge manager at Churchill Retirement Living's Hadley Lodge development in the Birmingham suburb of Quinton

MMS manages 6,000 apartments nationwide and provides its services to almost 7,000 people. Its lodge managers oversee safety and security for the property's owners and look after residents' daily needs as well as organising regular social events.

To celebrate the significance of Clare's appointment, she was presented with a bottle of champagne and flowers by MMS managing director Simon Crewe.

He said: "Reaching the milestone of 200 employees is a significant step along the way to achieving our growth plans, and I look forward to welcoming more people to the team over the coming years to help continue our success."

Clare added: "I'm delighted to be joining Millstream Management Services. The professionalism and friendliness of the staff I have met so far has been overwhelming."

As well as managing all Churchill Retirement Living developments, MMS is becoming a leader in the Right to Manage field and also provides management services.

Neal Highfield

New director for Albany Surveyors

ALBANY Surveyors have announced the appointment of a new director as the firm continues to expand.

Neal Highfield joins the company, which was established in 2016, with more than 20 years of experience in building surveying and providing advice to a range of clients, including leading property management companies.

Albany Surveyors' co-founders, Phil Stylianou and Desmond O'Mahoney, said: "We are delighted to welcome such an experienced and well respected surveyor to Albany."

Double appointment to meet build to rent demand

PROPERTY consultancy Allsop has appointed two members of staff to its lettings and management team to cope with an increase in demand for build to rent services.

Kelly Smith and Matt Smith join the company after it was awarded an instruction by Moorfield Group funds to manage to large schemes in Manchester and Newcastle.

Kelly has joined Allsop as head of build to rent operations from her previous role as head of PRS operations at Pinnacle Place

Matt has been appointed head of mobilisation and has joined from Liv, where he was responsible for both asset management and mobilisation.

Lesley Roberts, executive development director at Allsop, said: "We are delighted to welcome Kelly and Matt to our growing team; both come with excellent experience and enviable track records.

"Their appointments build on a string of recent successes and come at an exciting time for the department. More than ever, build to rent is playing a crucial role in the provision of quality homes and our continued investment in skills, experience and systems ensures that we are equipped to provide the expertise, support and services our customers need."

Outstanding arrears collection.

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Christina Le Riche advises flat-owners to take action now to minimise the cost of extending leases

Five good reasons to extend your lease

SERVICE CHARGES TURN TO PAGE 18

LEASEHOLD houses and flats have had a lot of coverage in the press recently culminating in the report prepared for Sajid Javid (Secretary of State for Communities and Local Government) on abuses of the leasehold system in the housing market.

As a result of all this coverage, more and more people are becoming aware of the length of their lease and that maybe it is not as long as they thought it was.

Here are five good reasons why you should consider extending your lease:

1. A lease is a diminishing asset which means that for each year after it is granted, it becomes shorter and less valuable. Any lease with less than 80 years left is regarded as a short lease. As the lease becomes shorter, it becomes more expensive to extend.

The Leasehold Reform Housing and Urban Development Act 1993 entitles the leaseholder to a lease extension of 90 years, in addition to the existing term of the lease. It also entitles the leaseholder to reduce the ground rent to a peppercorn (£0) from the date that the lease is extended, and all the other terms of the lease remain unchanged.

You have the right to a lease extension if you have owned your lease for a period of two years or more, and your lease was originally granted for a term of 21 years or more. You do not need to live at the property to exercise your right to extend the lease.

2. Most leaseholders do not realise that they have a short lease until they come to sell the property. At that stage they discover that their lease is short and that they cannot easily sell. In these circumstances it is still possible to sell but you will need to ensure that the solicitor dealing with the sale understands the process so that they can assist you to start the lease extension and assign the benefit to your buyer, who can continue and complete the extension after they have bought the property. In this way the buyer does not need to wait two years to extend the lease.

3. Re-mortgaging the property can also be difficult when you have a short lease. Depending on the number of years remaining, some lenders will not lend. It is very important that you know the length of your lease and that you do not allow it to fall below 80 years. For technical reasons, the cost of extending the lease increases sharply once the 80-year mark has been passed.

4. Much of the press comment referred to above has been about increasing and extremely high ground rents. A ground rent is a payment made by the leaseholder to the freeholder for the term of the lease. The lease will usually provide that this ground rent increases over time. In some leases, the increases happen over a long period of time and therefore are not noticeable; however some leases have very large increases in very short periods of time making a ground rent which was affordable when the leaseholder purchased a property unaffordable.

A statutory lease extension gives you the right to extend your lease and reduces your ground rent to a peppercorn going forward. In this way, a lease extension can resolve the issue of high ground rent.

5. By extending your lease, you ensure that the value of one of your main assets is preserved to safeguard the financial security of you and your family for the future.

These comments specifically relate to flat leases. However a similar system applies to leases of houses which can also be extended.

What should you do next?

Once you have established that you have a short lease you will need to consider how you will extend it. If this is not going to be done as part of a sale then you will need to consider how you will fund the lease extension. Remember, the shorter your lease becomes, the more expensive it will be to extend it, so it is better to take action sooner rather than later.

Here are a few practical next steps which you can take:

- Get in touch with a surveyor who specialises in leasehold enfranchisement work. Ask them to carry out a valuation for you, so that you have a better idea of how much the lease extension will cost you.
- If you don't have sufficient funds to extend your lease then speak to your mortgage company or bank to see if they will lend you the money. As this will improve the value of the asset, which they hold as security, they are likely to agree to this.
- Get in touch with a solicitor who specialises in leasehold enfranchisement work to start the lease extension process. At VWV, we have many years of experience dealing with this type of work and we would be happy to assist you with your lease extension or just talk through the process with you so that you can understand what needs to be done.

Christina Le Riche is a senior associate at national law firm VWV

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Service Charge

Paying ground rent with a long lease

MORE and more people are occupying properties under long leases. Unlike freehold ownership, a long leaseholder may well have to make monthly, quarterly or annual payments to his or her landlord by way of ground rent.

Ground rent is payable in addition to service charge and should there be a dispute between you and your landlord about ground rent, there are consequences in failing to pay.

What is ground rent?

Ground rent is a sum of money payable under a long lease of a property by you, a tenant, to your landlord. The amount is paid by way of ground rent and in most circumstances, ground rent is a nominal amount. However, this is not always the case and proposed purchasers of long leasehold interests should be mindful of any terms in the lease which allow the ground rent to be increased and on what basis any increase is calculated.

The normal position is that it will be payable on the dates set out in the lease, whether or not it has been formally demanded. The lease pursuant to which you occupy any property will set out your obligations, i.e. payment dates, in respect of the ground rent payable.

Demanding a demand

The exception to this is where your landlord, under a lease for a term of 21 years or longer, must complete a form in respect of any unpaid ground rent before such rents are lawfully due.

Section 166 (s166) of The Commonhold and Leasehold Reform Act 2002, sets out the prescribed form that your landlord must use in order to properly demand unpaid ground rent. There are a number of things that the notice must contain, including but not limited to the amount due and the date on which payment must be made.

A s166 demand is not a straight forward form and there is a great deal of room for error. The ground rent due under a lease will not be formally recoverable, and therefore your landlord cannot take any steps to enforce its rights in respect of a default in payment, until such time as a valid s166 demand is served. It should be noted that your landlord's failure to serve a valid s166 demand does not extinguish his or her right to the unpaid ground rent but simply postpones your landlord's ability to recover it until such time as a valid demand is served, albeit subject to the six year rule.

The sky is the limit or is it?

Essentially, your landlord's entitlement to ground rent is a contractual right and, therefore, the normal limitation periods, as set out in the Limitation Act 1980, apply.

Assuming, if appropriate, your landlord has served you with a valid s166 demand in respect of the unpaid ground rent, the limitation period for a claim for unpaid ground rent is six years. Unless your landlord makes a claim for historic unpaid ground rent within six years of it falling due, he or she will lose the right to pursue you for it.

The price you pay for non-payment

By not paying the ground rent due under a lease you are at risk of your landlord taking steps to forfeit the same. Again, the circumstances in which your landlord's right to forfeit your lease arise will be set out in your lease.

Assuming those criteria are met, it is open to your landlord to pursue forfeiture proceedings in circumstances where the unpaid ground rent exceeds £500 or, where the amount outstanding is less than £500 but has been outstanding for more than 3 years.

Your landlord would have to issue proceedings in the local county court. Although the initial cost would be for your landlord to incur, you should be aware there may well be a clause in your lease that entitles your landlord to recover from you his or her costs of bringing those proceedings.

Once court proceedings are issued, the court has discretion to make an order requiring one party to pay another's costs.

If your interest in the property is subject to a mortgage, your landlord may also contact your lender requesting payment. Subject to the terms of the mortgage, your lender may well comply and simply add the amount paid out to your mortgage, which may in turn increase your monthly payments. You could also be at risk of triggering your lender's right to call for immediate satisfaction of the mortgage in full (if such a right has been reserved).

If your landlord takes steps to obtain possession by way of forfeiture proceedings, you may, in certain circumstances, be able to apply for relief from any such action. You would however need to agree to pay what is properly due either in full or by way of a payment plan agreed with your landlord.

A long lease is an incredibly valuable asset and as a tenant you will not want to run the risk of losing it on a point of principle.

What you should do next

The true position will depend on the facts of the dispute and the terms of your lease. If you are having problems relating to the ground rent payable under your lease you should consider taking legal advice, especially if you intend to contest that the ground rent is due and withhold payment of the same.

Liberty Chappel is a solicitor at Pemberton Greenish LLP

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Why lessees need the right to demand a TECH03/11 report!

A statutory right for lessees to demand a TECH03/11 report would be far more beneficial, argues **Gordon Whelan**

EVERYONE who contributes towards estate or service charge expenditure should have an equal and statutory right to demand an accountant's report prepared under TECH03/11. This was the basis of our response to the recent government consultation, "Tackling unfair practices in the leasehold market"

What is a TECH03/11 report?

A common complaint made by leaseholders is the poor quality of financial information that they receive. Service charge accounts can lack transparency, be difficult to understand and badly presented.

For many of the service charge disputes that reach First-tier Tribunal, the root cause of the problem is unreliable or absent service charge accounting information.

Accounts prepared under TECH03/11 address all of these issues. TECH03/11 is the best practice guidance for preparing service charge accounts. The guidance requires service charge accounts to be reported on and signed off by a qualified accountant independent of the landlord or managing agent.

TECH03/11 is now recognised best practice and is included within the 3RD RICS Residential Code, The Private Retirement Housing (ARHM) Code of Practice and ARMA Q.

How would a statutory right to demand a TECH03/11 report work?

The statutory entitlement to receive a TECH03/11 report could be in line with the legislation detailed under section 21 of Landlord and Tenant Act 1985. This legislation includes the following important terms:

- The right for a leaseholder to demand a section 21 accountant's report on service charge expenditure.
- On receipt of the demand the landlord must meet the demand within 1 month of the demand or 6 months after the accounting year end whichever is later.
- Failure to meet the demand without reasonable excuse is a criminal offence and can result in a fine on the landlord of up to £2,500 (Level 4 on the Standard Scale).

However, the section 21 report is a hopeless report, conceptually flawed and difficult to understand. A statutory right for lessees to demand a TECH03/11 report would be far more beneficial to lessees.

If the legislation could be backed up by a tougher penalty regime and the term "reasonable excuse" tightly defined then the instances of poor quality or missing service charge accounts would be significantly reduced.

Conclusion

There are some strong arguments for giving lessees a statutory right to demand service charge accounts prepared under TECH03/11 including:

- The measure should be relatively easy to introduce and involve little additional cost as it only would be enforcing what is already accepted best practice
- Lessees would have some assurance that they have a statutory right to demand service charge accounts prepared in accordance with best practice
- It would raise the standards of service charge reporting and result in greater consistency and transparency.

Gordon Whelan, Managing Director at Haines Watts Service Charge Limited

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How to manage your service charge budget more efficiently

There are better ways to keep within service charge budgets than just cutting back on staff, reckons **David Hurren**

IT'S that time of year again... setting the budget for service charges. Half of the board wants the internal area decorated and the other half wants a more experienced concierge. What are you going to prioritise?

You want to meet all of the building demands whilst keeping within budget, but at the same time you don't want to cut back on quality. Decisions, decisions! But are the two really mutually exclusive? We suggest not.

In an independent survey performed by Abbatt Property Services, it was concluded that on average 29% of property management companies' service charge spend goes on staffing costs. So in order to cut back you must hire fewer people or pay lower salaries, right? Unfortunately, it's not that simple and taking these actions might end up costing you even more. As we all know, you get what you pay for and this applies to staffing as well.

We suggest that you take one or more of the following actions instead:

Increase retention of staff

Taking into account management time, agency fees and lost building knowledge, losing staff can cost thousands, so if you're watching the budget, increasing retention can be a good area to focus on. The famous saying is "people don't leave companies, they leave managers" and it's no different for on-site staff. When interviewing candidates, we find that this is the number one reason for staff leaving their job. Salaries are important and staying competitive is vital for your business in retaining staff, but so is communication. Staff want to see their manager once in a while and know that they're doing a good job (or if not, what to improve). Ask them what's going on, make them open up to you. Making them feel valued will make them stay longer, appreciate their job more and this way work harder as well. Win-win!

Train your staff

Training is also important when getting the most out of your staff. Training in customer service, fire marshal, working-at-heights and on-the-job training can help up-skill and empower them so you get fewer callouts, thereby saving property management time. For example, if your concierge has been trained to work at heights, they can change a light-bulb so you won't have to call a handyman to do this anymore. Training them will also provide a better service for residents and you will get fewer of those awkward emails (let's face it, every block gets them). It also helps with retention, so again less risk of recruitment cost.

Outsource your on-site staff

A third solution of managing your budget more efficiently without losing quality of service is to outsource your staff. Outsourcing staff not only frees up time allowing property managers to concentrate on property matters, you can also save on VAT and recruitment costs (no agency fees).

So, as staffing costs is such a large proportion of the service charge budget, we recommend that you either take initiatives to retain your staff, train them or outsource them in order to cut back on the spend, but still maintaining your quality of service for residents.

David Hurren is director at Abbatt Property Service

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Should you combine service charge and ground rent arrears?

Clare Brady highlights five considerations for managing agents who face pressure to amalgamate service charge and ground rent liabilities

WHEN acting for a Right to Manage Company (RMC), managing agents will often be told by the freeholder to allow them to deal with the service charge arrears. The benefits of such an approach are clear from the ground rent owner's perspective – but is it in the best interests of the management company, the leaseholders and the block?

With ground rent recovery increasingly in the spotlight, both managing agents and freeholders must take care to ensure recovery procedures are legal, in line with the terms of the lease and, importantly, in the best interests of the RMC and leaseholders.

When assessing whether or not to allow service charge arrears to be transferred over to the freeholder and/or its advisers, we recommend taking into account the following five factors:

To whom is the service charge payable?

Read the lease: who has the benefit of the service charge clause? Sometimes it is the management company, sometimes it is the freeholder and, occasionally, it is both.

Who is legally entitled to bring a service charge claim?

It cannot always be assumed it is the freeholder. Where the RMC has the sole right to claim service charges under the lease, the freeholder will not be legally entitled to do so and vice versa. Where the lease states that the service charge is payable to both the landlord and the RMC, there is a choice in who collects the service charge. Where the RMC has the right to demand – and recover – the service charge arrears, combining these arrears with the ground rent can cause problems for a managing agent tasked with collecting service charge arrears as effectively possible.

Who issued the service charge invoices?

In practice, the freeholder has often had no dealings with the service charge collection, and has not issued any service charge demands. The cause of action therefore lies with the managing agent on behalf of the RMC and the managing agent is not legally obliged to instruct the freeholder's legal team to recover the arrears.

What are the forfeiture provisions?

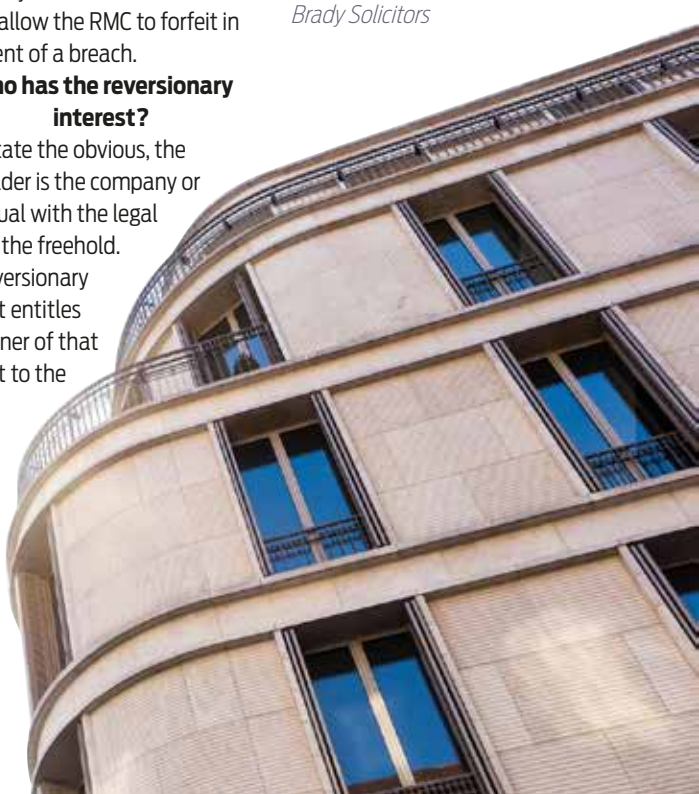
While freeholders often have the sole right to forfeit the lease, this is not always the case. Some modern leases allow the RMC to forfeit in the event of a breach.

Who has the reversionary interest?

To state the obvious, the freeholder is the company or individual with the legal title of the freehold. The reversionary interest entitles the owner of that interest to the leasehold title on forfeiture. Less obviously, the reversionary interest does not always belong to the freeholder. A typical example of a "hidden" reversionary interest is a head lease. Head leases are often created where an RMC takes the freehold from a developer once the development is completed.

Before combining service charge and ground rent arrears, all relevant points should be considered. From a managing agent perspective, you need to take care that you are acting in the best interests of your client.

Clare Brady, Managing Director of Brady Solicitors



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What you need to know to recover service charge debts

If a leaseholder hasn't paid make sure you comply with the requirements of the lease to ensure you can recover the debt, warns **Rebecca Smith**

WHEN you have a leaseholder who doesn't pay, the obvious thing to do would be to send them a legal letter (letter before action) with the demand and request payment. However, it is important that you make sure you have complied with the requirements of the lease in relation to service charge accountability and your statutory obligations, as this could prevent you being able to issue proceedings for recovery of the debt.

Summary of leaseholder's rights and obligations

Section 153 of the Commonhold and Leasehold Reform Act 2002 ("CLRA") requires that "a demand for the payment of service charge must be accompanied by a summary of the rights and obligations to tenants of dwellings in relation to service charges, the font of which must be at least 10 point". A tenant can withhold payment until it has been provided. The wording can be obtained from the Act itself.

Details of the landlord

Under Section 47 Landlord and Tenant Act 1987, any written demand for rent or other sums payable to the landlord pursuant to the lease must contain the landlord's name and not that of the landlord's agent. Further, pursuant to Section 48, it must also provide an address where notices can be served in England and Wales. In some circumstances, therefore, this will require two different addresses on the demands.

The lease

You must comply with your obligations pursuant to the lease in respect of accounting for service charges. There are often a number of conditions set out in the lease in respect of service charge accounting, for example the timing of when a demand can be made, providing a signed certificate containing a summary of the costs and expenses incurred.

Timing of the demand

A demand for payment of service charges must be served within 18 months of those costs being incurred. If the relevant costs were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, the tenant will not be liable for those costs unless, within the period of 18 months following the costs being incurred, the tenant was notified that they had been incurred and that he would subsequently be required to contribute to them pursuant to Section 20B(1) and (2) of the Landlord and Tenant Act 1985

Request for information

Pursuant to Section 21 Landlord & Tenant Act 1985 a tenant has the right to demand certain accounting information from the landlord. The landlord should comply with such a request within one month of the request, or within six months of the end of the accounting period, whichever is later. The tenant may withhold payment of a service charge if the landlord does not provide the information or a report, but the tenant may not withhold payment once the correct information or report has been supplied, even if supplied late.

Rebecca Smith is a chartered legal executive at Blake Morgan LLP

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Beware the black hole!

To effectively recover your service charge you need the right legal processes and procedures in place, says **Cassandra Zanelli**

SERVICE charges are essential to effectively manage any block of flats. However management companies and landlords who are contractually required to provide these services can only do if leaseholders stick to their contractual obligation and pay the charges as laid out in the lease.

Recovering your service charges requires having the right legal processes and procedures in place and following the steps below.

Restrictions on recovery are either contractual (based on the lease) or statutory. Sometimes mistakes made when those restrictions are not adhered to can be corrected and service charges become payable. But that's not always the case, and there are occasions on which service charges may become "stale" and unrecoverable. Following the steps below will help with effective recovery.

Understand (and implement) the lease

Service charge recovery is always about the lease – and every lease is different. When demanding service charges, ensure you read, review and implement the mechanisms set down by the lease relating to recovery.

If your apportionments don't add up to 100% (and mean that you're under-recovering), then consider varying the leases so that you can recover 100% of your service charge costs.

Also, overlook pre-conditions for payment at your peril! Leases often set out certain things that require doing to "trigger" the leaseholder's obligation to pay service charges. Again, read, understand and implement any mechanisms set down by your eases.

The Court of Appeal in Skelton v DBS Homes (Kingshill) Limited determined that the 18-month rule applies to on account demands for service charges. Here the landlord served demands, but neglected to serve a summary of the estimated costs – a mechanism set down by the lease – with them. This rendered the demands invalid, and by the time the landlord served valid demands, more than 18 months had passed.

Although a windfall decision for leaseholders, it also serves as a cautionary tale to ensure contractually valid demands are served.

Identify your landlord

Sections 47 and 48 of the Landlord and Tenant Act 1987 require any demand to contain the landlord's name and address and an address in England and Wales where notices may be served.

If a demand does not contain that information, service charges aren't payable; however, there is some leeway if you get this wrong. The Upper Tribunal recently confirmed the effect of section 47(2) is suspensory – meaning the service charges become due when the leaseholder is given written notice of the landlord's name and address. This can be done at any time.

Consult!

As is commonly known, in situations where you intend to undertake a project of major works and recover costs of over £250 via the service charge that:

Consultation is required; or

Dispensation from consultation obtained from the Tribunal.

Often forgotten is the limitation placed by section 20 on leaseholders' contributions for costs incurred under a qualifying long-term agreement (QLTA) – an agreement for a term of more than 12 months with a cost per leaseholder per financial year of more than £100. Management agreements have been under the spotlight recently following the Upper Tribunal's decision in Corvan (Properties) Limited v Abdel-Mahmoud, and with the appeal scheduled for late April, it's one to watch...

Be reasonable

Perhaps the thorniest of the statutory restrictions is reasonableness. Service charges are payable only to the extent that they are reasonably incurred, and when incurred in relation to works or services only to the extent that those works or services are of a reasonable standard.

Recent cautionary tales on recovering service charges relate to when there are alternative means of recovering those costs. Most recently, the Upper Tribunal in Avon Groundworks Limited v Cawley examined the interplay between recovery of costs under an NHBC warranty and on account payments for service charge.

Factors requiring taking into account to determine the reasonableness of that kind of advance payment include:

- The time when the landlord would (or would be likely) to become liable for the costs;
- How certain the amount of those costs is;
- What the works will be carried out and paid for during the period covered by the advance payment.

As with many cases, it's not an application of rigid rules, but an assessment in light of the specific facts of the particular case. Ultimately, a thorough understanding of the mechanisms set down by the Lease is a key priority.

Cassandra Zanelli is partner at PM Legal Services

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Property Fraud What's the Solution?

A recent appeal will have a significant impact on conveyancing, argues **Steven Porter**

THE much-awaited appeal hearing in the cases of Dreamvar (UK) Limited -v- Mishcon De Reya and others and P&P Property Limited -v- Owen White & Catlin LLP and others has now taken place before the Court of Appeal and the resultant judgment is awaited.

There is no doubt that many within the legal world recognise that the result of the appeal, whichever way it goes, is likely to have a significant impact on the law and practice of, in particular, conveyancing. However, it will inevitably also affect the conduct of other areas of law too.

As the legal representatives of P&P Property Limited, a small property development company I do think that a thought should be spared both for them and Dreamvar because the judgment will inevitably have far-reaching repercussions for both.

In looking at both cases there are 2 facts which are irrefutable.

The first is that both P&P and Dreamvar are totally innocent parties who themselves were in no position to prevent the frauds taking place. From their perspective they relied on the professionals involved amongst other things to ensure that what they paid for is what they received.

The second is that whatever the Court of Appeal decides some party or parties will come out of the case carrying the loss arising from the fraud.

One of the options open to the Court of Appeal is to find that all the parties against whom a claim has been made are not liable in which case the result will be that the party in each case which is totally innocent on any view will be left not only suffering the loss but having to pay the substantial legal costs that have been incurred.

It seems to me that whatever the legal position is it cannot be right that in this scenario the parties which on any view are blameless should be vulnerable to carry the loss.

From the perspective of the professionals it also would seem unjust that any of them should carry the responsibility of compensating the losing party if they have done nothing wrong.

Whilst the problem may be relatively easy to identify the solution to it is not.

There are measures that can be undertaken by sellers to make their properties less vulnerable to fraud but none of those steps are fool proof. Furthermore if a property is sold by a fraudster and the transaction is registered at the Land Registry then the losing party can apply to the Land Registry to be compensated for its loss. Thus in these circumstances the Land Registry broadly provides insurance against fraud.

However the Land Registry scheme does not apply to transactions where the fraud is discovered after completion but before registration is completed.

Certain insurance companies now offer insurance against fraud which if available at the time might have protected P&P and/or Dreamvar but I do not know what the take up of such insurance is.

I note that The Law Society have already expressed a concern in The Gazette that "smaller firms could be priced out of conveyancing ..." if the decision in Dreamvar is allowed to stand by the Court of Appeal (Article: Dreamvar loss could price out small firms – 5 March 2018).

However, the Law Society ends by repeating what they had said in written submissions to the Court of Appeal ".. that if either solicitor firm is held liable where a property is fraudulently sold, it should be the vendor representative. But this scenario would still create problems ..." and therefore, they do not propose any practical solutions.

I do think, however, that as part of the CQS Protocol it would be sensible to look at the possibility of making it compulsory for buyer's to take out fraud insurance on every transaction. The cost as matters stand is relatively small and with compulsory insurance the premiums may even become cheaper due to the economy of scale.

If this applied to the P & P and Dreamvar cases it would have meant that both would have been recompensed relatively quickly for their losses thus avoiding not only the considerable and unexpected financial strain but also the anxiety and stress caused by a situation in which they are blameless.

The insurers would, of course, have any claim subrogated to them so that if any of the professionals are proved to be at fault then the insurance company would still be entitled to pursue a claim against them.

My suggestion is not a perfect answer to the problem. However it does, at least, is provide a fairer means of dealing with those involved.

Steven Porter is partner and commercial practice group leader at JPC Law

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IT would be fair to say that taking over the freehold of a property is no easy task. It requires a great deal of planning, with many legal and technical issues to address along the way. And once formed, there are many responsibilities that the new freehold company takes on. One that's often overlooked, but so incredibly important, is insurance.

Insurance is something that's often overlooked, but so incredibly important says **Tom Russo**

A quick whistle-stop tour through the types of cover you need reveals there's plenty to think about. Let's start with the insurance for the building itself. It's really essential that you insure for the full rebuilding cost value, and not its current market value. And, although residents need their own contents insurance, the building will need communal contents insurance for shared areas that normally include furniture, carpets and curtains.

An often-overlooked cover is plant inspection and breakdown insurance, a policy that includes such things as engineering insurance should a lift breakdown. Any building with lifts will need to comply with the statutory requirements for inspection and maintenance.

As crucial as these are, there are also key liability policies that are just as vital to have in place. Employer's liability is essential where staff, such as gardeners, concierge or caretakers, are employed. Property Owner's liability protects you against injury, damage, or death to third party individuals on or around the property, such as postmen, meter readers or council employees.

And finally, there's Directors' and Officers' liability. Alas, the law does not differentiate between the director of a freehold company and one running a commercial business. Actions of freehold directors can have a real impact on other residents and they can face unlimited liability if they get things wrong. So, having protection is a must.

Tom Russo, Property Insurance Specialist at Kerry London Insurance Brokers

> **"An often-overlooked cover is plant inspection and breakdown insurance"**

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QUESTION

Dear Sir

We are faced with the situation in many of our blocks where the flat doors do not comply with the fire safety regulations; for example they are not fire doors (FD30) and they do not have hydraulic door closers, three-butt hinges, intumescent door strips or cold smoke seals. In many instances, letterboxes and/or spyholes have been cut into the door.

The landlord's obligation is obviously to ensure the main escape routes are protected but that is not possible if the flat doors are not compliant. However, in most leases, the flat doors are part of the leaseholder's demise and the landlord doesn't have the ability to carry out the work with the costs to be recovered from the leaseholders. This is also despite almost every fire risk assessment stipulating that the doors must be changed if not compliant. Up to now the only way to resolve this was to write to the leaseholders and ask them to replace the door according to the required specification. These requests are rarely accommodated, so the situation remains largely unchanged and a potential risk to residents.

In light of the Grenfell Tower disaster, and the fact that it was smoke that killed most of the victims, what is the official view now about whether the landlord can get these works done?

Name Withheld

ANSWER

There have been a couple of recent cases that might assist here, but unfortunately the position is still not entirely clear and will come down to the facts of each individual matter.

Southwark LBC v Various Lessees of the St Saviours Estate [2017] UKUT 10 (LC) dealt specifically with fire doors that were not FD30 compliant (albeit in the context of reasonableness of service charges).

The key question that the tribunal in that case identified was whether the fire doors were actually in disrepair. In that case there was no evidence of disrepair and as such the obligation to "repair" was not invoked. It follows therefore that if the doors are not in disrepair (that being, a state worse than their previous state) the repairing covenants will not be triggered. If the landlord is responsible, they will be unable to recover the cost as a service charge; if the leaseholder, they could not be obliged to replace the door. The fact that they are not FD30 doors is unlikely to matter in the context of disrepair unless they were previously FD30 compliant but have fallen into a state worse than that.

The recent case of E&J Ground Rents No.11 LLP v Various Leaseholders potentially assists. The First-tier Tribunal held that the cost of a waking watch was recoverable as a service charge owing to the landlord being obliged pursuant to the lease to comply with the "requirements and directions of any competent authority".

The individual leases should be reviewed but assuming they require similar compliance, then

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

All things to all people!

THE wind of change is blowing across our land! It is not the exceptionally cold snap that is hitting the Country as I pen this piece I am referring to! The wonderful world of leasehold appears in all media and has the focus from a lot of different directions. If we manage to see fairness for all come out of the attention then that will be a fantastic outcome.

> **"For over a decade, I have thought regulation as a good thing and I hope it arrives"**

Of course everyone can have a different perspective and desired outcome. But there are certain templates that surely no one can argue with. To have light at the end of the tunnel that is fresh that is not an oncoming train then I would venture to suggest the following are simple solutions to challenging issues:

Firstly, we have to ensure that no one has the ability to charge excessive fees or charges for administration tasks and activity. This can be achieved with compulsory regulation of agents and clear guidelines on what is reasonable. We can recognise what is unreasonable charges so why not make it simple for everyone and put strict guidelines and parameters on what can and can't be charged?

Secondly, service charges have to be reasonable and at present the way to achieve challenges where this doesn't happen is a trip to First-tier Tribunal. This can be daunting for most and not worth it in a large number of cases. It relies on a lot of time and commitment from the aggrieved party. We could make this simpler by compulsory regulation of agents and enacting the accounts clauses in Commonhold and Leasehold Reform Act. The last part can be done without any Parliamentary legislative time.

Thirdly, leaseholders want to be able to choose their managing agent and have control on the running of the building. It would be desirable to deliver a simpler right to manage solution than currently enacted and this would take legislation but would be worthwhile to remove the acrimony that can ensue when there is a desire to take picky points and challenges to the process. However there could be assistance to resolution in regulation of agents to control and restrict the ability to make fatuous challenges.

The list can go on!

For over a decade, I have thought regulation as a good thing and I sincerely hope that it arrives in the current focus of the Secretary of State. Making it robust and meaningful to ensure we remove the bad guys but not tying the good guys up in red tape is a tight rope that needs treading. It would make a difference to the market and to leaseholders.

Seeking fairness in leasehold has to be the desire and the objective. If all work together this can be achieved. It will take engagement and openness on all sides. With the sheer amount of consultations and deliberations then making sure we do not get sticking plaster solutions or poor outcomes is vital.

If we all work together then this can be a time for great change for a fair leasehold market.

Roger Southam, Leasehold Expert & Advisor

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A STAGGERING 78% OF BURGLARS USE SOCIAL MEDIA TO TARGET PROPERTIES. BE CAREFUL POSTING ON SOCIAL MEDIA WHEN GOING ON HOLIDAY! SOURCE: ADT

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I see no reason why the decision in the E&J case would not assist with other fire-safety works including replacement doors. It should be noted, however, that any such obligation will only be triggered where a "competent authority" directs the landlord/management company to take action. In E&J the local fire service made a fire safety order and action plan. Without any such order it may be difficult to justify the works.

Following on from that and where the leaseholders own the doors, it might be possible to invoke the leaseholders' obligation not to invalidate the building insurance (which most leases have provision in respect of). If the insurance policy requires a landlord to maintain the block to current fire safety standards or similar, it might be possible to argue that by not replacing their doors, the leaseholders are in breach of their covenants as to compliance or invalidation of insurance. You would then be required to take the usual enforcement action (via a tribunal pursuant to s168 Commonhold and Leasehold Reform Act 2002) and ultimately, forfeiture. It is then probable that a court would grant relief from forfeiture on the basis that the door is replaced.

In the absence of the above provisions or circumstances, if the leaseholders own their own door all you can do is ask that each leaseholder takes steps to make it compliant and hope that this can be agreed. If the landlord owns the doors and none of the above applies, then if they choose to replace them, it would be at their own cost.

Sarah Goodall is a solicitor at Bolt Burdon

QUESTION

Dear Sir

We are a block of 50 flats and our landlord has told us he is going ahead to remove a safety hazard from the roof without following the usual consultation process "due to the urgency and the large costs that the development would incur".

My understanding is that even with urgent works, he needs to get authorisation to bypass the Section 20 process in order to speed things up. Has there been a change in the law?

Also, when he wrote the letter the hazard had been stabilised so there was no immediate danger.

I'd be grateful for your help in the matter because it strikes me that he could claim safety hazard for any works he doesn't want to consult on.

Name Withheld

ANSWER

Assuming that the cost of roof works amounts to more than £250 for one or more of the residential lessees, Section 20 of the Landlord and Tenant Act will be engaged.

As such, the landlord must either follow the consultation process prescribed by s20 and associated regulations (requiring the service of at least two notices upon the tenants) or obtain dispensation from the consultation requirements. Failing this, the landlord will be able to recover no more than £250 from any leaseholder in respect of the cost of the works.

As you have identified, there has been no change in the law in the above respect (and there is no exemption in respect of works which abate/remove a safety hazard).

Applications for dispensation of the s20 requirements are made to the First-tier Tribunal (Property Chamber).

From your enquiry, it appears that the works have not yet been carried out. If your landlord is experienced (or seeks legal advice), you will most likely receive notification of a dispensation application shortly. Any such application will probably be accompanied by directions (from the tribunal) informing you how to object to the application.

The effect of recent case law is that the tribunal will often grant dispensation, albeit sometimes on terms. Examples of terms which the Tribunal may attach to dispensation are that only a certain percentage of the cost of the works may be recovered via the service charge or that the landlord is to pay the tenants' legal costs of dealing with the application.

The leading case on dispensation is Daejan Investments v Benson. This case establishes that the key question which the tribunal must consider when deciding whether to grant dispensation (or on what conditions to grant dispensation) is whether the tenants have been prejudiced by the landlord's failure to follow the usual consultation process. If you receive a dispensation application, you should give some careful consideration as to whether you feel that the lack of consultation prejudices you – perhaps the landlord is paying in excess of the market rate for the works or there is a more effective way of removing the hazard.

Richard Owen is solicitor at JB Leitch

QUESTION

Dear Sir

We wonder if you could advise us on the following. We have a situation of a lessee who is now permanently in a care home with

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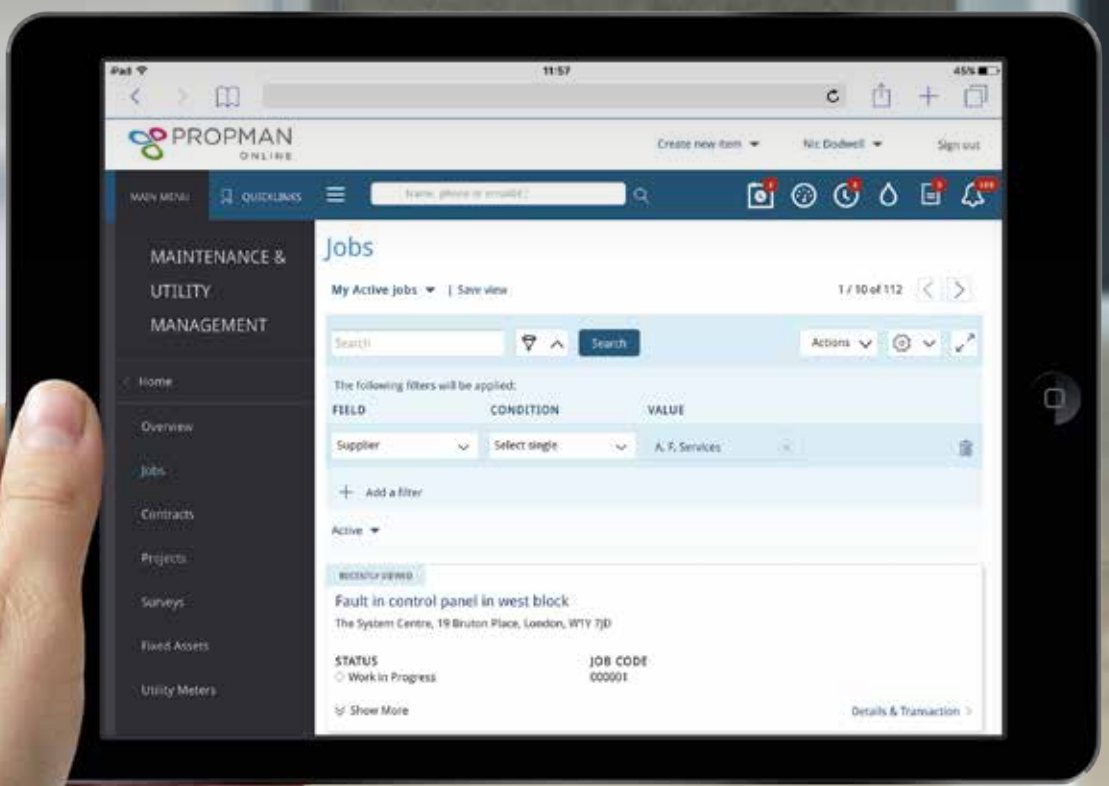

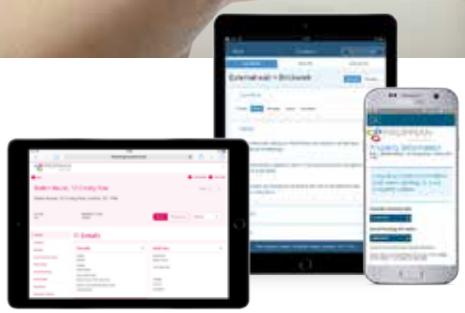

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live in the USA and intend to rent out the flat.

The lease is ambiguous with regard to subletting stating only: "Not to assign, underlet or part with the possession of part only of the said flat". Regardless of this, a number of flats are already sub-let.

We are wondering if the power of attorney gives them the right to sublet the flat. Any advice on the matter would be much appreciated.

Name Withheld

ANSWER

Many thanks for your question. In replying, I have taken advice from a colleague in the probate team of my firm.

By way of background, if the donor has granted a lasting power of attorney (LPA) in respect of their property and financial affairs, which has been duly registered at the Office of the Public Guardian, their attorney will be authorised to make any decisions in respect of the property or finances that the donor would otherwise be able to make herself. This is subject to any contrary instructions or preferences in the document.

Depending on how the attorneys are appointed to act within the document, all three will need to be party to the agreement to sublet (if it is a joint appointment) or, alternatively, only one or two of them need to be party (if it is a joint and several appointment). If the donor retains the capacity to make decisions regarding her own affairs, but is physically unable to deal with them, the attorneys are able to proceed with the agreement to sublet – provided that they do so with her full knowledge and consent.

If the donor has granted an enduring power of attorney (EPA), her attorney should only be able to enter into the agreement to sublet on her behalf if the document has been registered at the Office of the Public Guardian. Although an EPA can be used by the attorneys without any formal court registration in some circumstances, if they have reason to believe that the donor has become – or is becoming – incapable of managing her own property or financial decisions, they should ensure that the document is fully registered before making any further arrangements in respect of the property.

In all cases, the attorneys are obliged to act in the donor's best interests. Accordingly, any sublet of the flat can only go ahead if it is in her interest for it to do so.

In dealing then with the clause itself, I am not sure I agree that the lease is ambiguous with regards to subletting. The clause you have cited restricts subletting of part of the flat. If it is the intention to sublet the whole flat (which I assume it is) then, from the information you provided, there does not appear to be a restriction against this.

Cassandra Zanelli is a solicitor and partner at PM Legal Services. Colleen Dooney is a senior associate at hlw Keeble Hawson LLP

QUESTION

Dear Sir

I need advice on a lease extension with a landlord who is acting on behalf of his mother and increasing prices drastically from one year to another. The lease just slipped below 70 years; it's a small studio flat located in London N10. What costs are involved (legal, survey, tribunal costs etc) if going via statutory method?

Name Withheld

ANSWER

You are asking about the additional costs of making a claim that will result in a fairly modest premium being paid. In addition to the premium, you will have to pay the freeholder's legal costs, the costs of the freeholder getting a valuation and your own legal and valuation and negotiation costs. If the premium is over £40,000 (which is very unlikely in this case) there is also stamp duty land tax to be paid.

The best way of finding out about your costs is to get quotations. There is no charge for that and most of us professionals are used to prospective clients getting competitive quotations.

Many firms advertise their services in the pages of News on the Block, on the LEASE website and elsewhere and would be only too glad to give estimates of their own costs and to guess at those of the landlord.

However, as a very general guide, I would put your costs at about £3,500 including VAT and estimate that the landlord's costs will be about the same.

You also refer to tribunal costs. All prospective claimants should ask solicitors to cover the cost of making an application to the tribunal to preserve the life of the claim beyond six months after the counter-notice. That is in effect a procedural application. However the case will probably never proceed beyond the application stage.

While the tribunal refers to itself as informal, in fact there is considerable formality and expense to its proceedings if a party is to be properly represented. While the tribunal is an expert tribunal, it is judging between the parties and the evidence put to it. It cannot act for the lessee and cross-examine the landlord's expert and it cannot find evidence of its own.

A party incurs considerable cost in going to a hearing, say £7,500 to £10,000 per day of hearing. In practice no one goes that far unless the amount at stake is at least double the cost. So very few cases are actually heard; the tribunal has estimated that less than 1% of all applications made, result in hearings. You are unlikely to incur tribunal hearing costs, and should not consider them further.

Jennifer Ellis is partner at Langley Taylor

QUESTION

Dear Sir

I am a director (unpaid) of a RM company responsible for a block of 21 flats and we own the freehold. Each flat has one share.

Under the terms of the lease, when a transfer occurs the share should transfer and the new leaseholder should become a member of the company. When this happens a new share certificate is issued which involves a small cost and the new owner is entered onto the company membership register.

It is clear that this process will apply when flats are sold. But should the same process apply in the case of transfer by inheritance?

I have two cases in mind. In the first, a flat was owned jointly by a married couple and both names were

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continued from page 40 >>

names were entered on the share certificate and the register of members. When the husband died the widow inherited sole ownership. In the second case the transfer was from a deceased leaseholder to her son. Despite reminders in both cases neither has sought a transfer and both appear not to be a shareholder or a member of the company and in breach of the lease. How can they be persuaded to comply?

ANSWER

This was a really interesting enquiry. When a shareholder dies, the shares vest by operation of the law of succession in his or her executors or administrators. That process of automatic vesting is known as the transmission of the shares.

With the first case that you described, as the widow is already named on the share certificate there is no need to issue a new one in her name alone. Her right to membership of the company hasn't ceased at anytime.

In the second case, I've assumed that the son has continued to make payments towards service charges etc. as required. Indeed, as the beneficiary of the flat (as part of his late mother's estate) he would remain liable for such charges. In terms of trying to get an individual to comply with your request to complete the relevant transfer documentation; you could raise the fact that failing to do so now will simply cause delays and potential issues at the time of a future sale of the flat.

Naveen Agnihotri, Barrister at Arden Chambers

Call of the Month

The recent cold weather brought many emergencies and increased pressure and volumes as managing agents and contractors alike struggled with availability and response times however amongst the genuine calls we did receive, one slightly less important call with a resident expressing concern over the three snowmen that had appeared in the common gardens. The caller felt they were an eyesore and wanted them removed perhaps due to the "arm" of one appeared to be giving the V sign according to her.

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Where: Powerleague Shoreditch, Braithwaite Street, London, E1 6GJ

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June 7 2018

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Time: 6:30pm to midnight

Where: Church House Westminster, London, SW1P 3NZ

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June 28 2018

Arden Chambers Property Law Conference 2018

Time: 9am to 5pm

Where: St. Pancras Renaissance London Hotel, London, NW1 2AR

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To book your place and join the industry elite, or for sponsorship opportunities, contact Nik Trevillion: nikt@newsontheblock.com

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- Leasehold Law reform – the Government and the Law Commission proposals
  Speaker: Andrew Dymond, Head of Chambers
- The wider impact of Grenfell Tower
  Speaker: Justin Bates, Barrister
- Question Time - Meet the Experts

Workshop sessions

- Up, down, all around – covenants and consents for extensions
- Right to manage
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