

INTRODUCTION

This Fact Sheet sets out details relating to the payment of service charges and other matters relating to long leases of residential flats. The rights set out below are in addition to your rights and responsibilities set out in your lease and are contained in the Landlord & Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002.

We have tried to make this Fact Sheet easy to understand but we have not attempted to cover every aspect of the legislation. It is not intended, therefore, for this Fact Sheet to be a substitute for professional advice.

SERVICE CHARGES

Service charges are one of the principal areas for dispute between leaseholders and their landlords. For these purposes, service charges (levied by landlords to recover costs that they incur in providing services) includes the costs of such matters as general maintenance and repairs, insurance of the building and (where appropriate) central heating, lifts, lighting and cleaning of common areas etc.

The best place to look for the terms of the service charges is your lease, which will set out the items of expenditure for which you will be liable. If your flat is in a block, your lease will also normally state the overall percentage of the service charge payable by you. It may also require you to make such payments by a certain date and/or allow your landlord to operate a "sinking fund" or reserve to which you will have to contribute to pay for future expenditure.

SERVICE CHARGE DEMANDS

All demands for service charges must be in writing and must contain the landlords name and address. All demands served after 1 October 2007 must in addition be accompanied by a summary of the leaseholder's rights and obligations. A landlord can only recover the "reasonable" costs that he has incurred. If a leaseholder considers a demand to be unreasonable, he can refer the matter to the Leasehold Valuation Tribunal. A landlord must also issue a demand for service charges within 18 months of his incurring the costs and if the landlord serves a demand after this date, he cannot recover those costs.

SUMMARY OF SERVICE CHARGES ACCOUNTS

Leaseholders have a statutory right to seek a summary of the service charge account from the landlord. The request must be in writing and can be sent direct to the landlord or the managing agent. You may require a summary of the relevant costs in relation to the service charges payable for the last accounting year or the past 12 months. The landlord must provide the summary within 1 month.

CONSULTATION: MAJOR WORKS

Where a landlord proposes to carry out works of repair, maintenance or improvement which would cost an individual leaseholder more than £250.00 he must formally consult all those affected by using the following procedure:-

Step 1

The landlord must serve a Notice of Intention on each leaseholder describing the proposed works and explaining the reasons why he considers them to be necessary. The notice must also specify the person who he proposes to carry out the works and must invite observations from the leaseholders. It must also state that the leaseholders can nominate a person from whom the landlord should try to obtain an alternative estimate. The leaseholders must respond to this notice within 30 days.

Step 2

Where the leaseholder has nominated an alternative contractor, the landlord must try to obtain an estimate from that person or persons and at least one of the estimates must be from a contractor wholly unconnected with the landlord.

Step 3

The landlord must serve a Notice of Proposals on the leaseholders, which must set out the details of the proposed works and the likely costs. It must also set out the estimates specified in at least two of the estimates obtained and include a summary of the leaseholder's observations to the first notice together with the landlord's responses. The leaseholders have a further 30 days in which to respond to this second notice.

Step 4

The landlord must then have regard to the observations received from the leaseholders. This does not mean he is obliged to follow or act on the observations but he will need to be able to justify his reasons for not doing so.

Step 5

If the leaseholders made observations or nominated an alternative contractor then the landlord must serve a further notice on the leaseholders stating his reasons for awarding the contract to his preferred contractor. This must also include a summary of any observations received together with his response to them and must be served within 21 days after entering into such a contract. The landlord need not serve this notice if the contract is awarded to the person nominated by the leaseholder or who submitted the lowest estimate.

If the landlord fails to follow this procedure, he is limited to recovering no more than the statutory limit of £250.00 from each leaseholder.

CONSULTATION: LONG TERM AGREEMENTS

Where the landlord intends to enter into a contract for the provision of services for a period of more than 12 months, he must also consult the leaseholders by following the correct procedure where the cost to any individual leaseholder is more than £100.00 per year. This procedure is similar to the one described above and must invite observations from the leaseholders etc. Again, if the landlord fails to follow the correct procedure he is limited to recovering the statutory limit of £100.00 from each leaseholder. After the landlord has entered into such a contract, he is still required to consult (albeit on a more limited basis) if he intends to carry out works, the cost of which would exceed £250.00 for any individual leaseholder.

VARIATION OF LEASE

A leaseholder has the right to apply to the Leasehold Valuation Tribunal to ask it to determine whether the lease should be varied on the grounds that it does not make satisfactory provision in respect of the calculation of the service charge payable under the lease.

ADMINISTRATION CHARGES

These are charges which the landlord is entitled to seek from leaseholders under the provisions of their leases. These would include the landlord's charges for such things as grants of approval, the costs incurred in connection with the non-payment of rent (or other sums) due and the costs incurred in relation to an alleged breach of the lease. Any such administration charges must be reasonable and must be accompanied by a summary of the leaseholder's rights and obligations. If the leaseholder considers these charges to be unreasonable, he can make an application to the Leasehold Valuation Tribunal.

INSURANCE

Where a lease provides for the landlord to insure the building and to recover the costs of doing so from the leaseholders as part of the service charge, an individual leaseholder can ask the landlord for a written summary of the policy or request to inspect and take copies of the policy. This request must be in writing and the landlord must comply within 21 days. If the leaseholder is not satisfied that the charge is reasonable, then he can apply to the Leasehold Valuation Tribunal. If the landlord fails to comply with such a request, without reasonable excuse, he commits a summary offence and is liable for a fine of up to £2,500.00.

FORFEITURE

Most leases contain a clause allowing the landlord to bring the lease to an end (or "forfeit") and take possession of the flat if the leaseholder is in breach of the lease by failing to pay the services charges, ground rent or administration charges. In practice, very few landlords take this extreme measure but those that do, must follow a strict procedure. This includes applying to the Leasehold Valuation Tribunal to determine the amount that is outstanding and that such amount is reasonable (where such charges have not been agreed). The landlord must then serve a notice under Section 146 of the Law Property Act 1925 and after its expiry, apply to the Court for an order for possession.

The landlord cannot serve a valid notice where the amount of service charges, administration charges or ground rent owed are less than £350.00 or have been outstanding for less than 3 years.

For further information or to arrange a free, no obligation initial meeting please call a member of our team on Exeter 01392 285000, Cullompton 01884 33818 or Newton Abbot 01626 330127.

Dunn & Baker Solicitors – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn & Baker Solicitors will be responsible only for advice specifically given to you.