

- **Why are flats leasehold?**
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## What is a Leasehold Property?

There are two ways you can hold land, freehold and leasehold.

Most houses are freehold, and virtually all flats are leasehold.

The basic difference is that, if you buy a freehold then you own it indefinitely. If you have a leasehold, then eventually the landlord gets the property back at the end of the lease. Lease terms for residential property are usually at least 80 years, and there are statutory rights for most tenants to renew their leases, so this isn't usually a problem. There is nothing wrong with owning leasehold property, as long as the lease has been drafted properly. Your conveyancer will check the terms of the lease as part of the conveyancing process.

## Why do flats need to be leasehold?

The reason that flats are sold leasehold is so the repairing obligations for the structure of the building can be enforced. In contrast, positive freehold repairing obligations cannot be enforced. This is a problem with land law that has been unresolved for a very long time. With leasehold property, the positive and negative obligations can always be enforced between the current landlord and the current tenant.

Let's assume that there are two freehold flats, Steve has just bought the freehold of his first-floor flat and the roof, and John has just bought the downstairs freehold flat and the foundations. If John doesn't repair the roof and guttering, damp and flooding could ruin John's flat. However, because 'positive' freehold covenants are not enforceable against the other flat owner, John has no way of making Steve maintain the roof or gutters.

Similarly, if a large crack formed in the ground floor flat, meaning that the first-floor flat became dangerous to live in, there would be nothing Steve could do to make John comply with his 'covenants' to maintain his flat.

However, if the flats had been leasehold, with a common landlord owning the structure, both John and Steve could force the landlord to repair the roof and walls, though they may have to accept that they would pay the cost of this through the service charge provisions in their respective leases.

## Ground Rents

Most residential flat leases require the tenant to pay a small ground rent to the landlord. Sometimes this is a nominal rent of a few pounds a year, or even what is known as a 'peppercorn' rent (meaning that no actual payment is needed). However, often the rent can be £150 or more a year, and can be subject to increase. The landlord does this to create a valuable investment.

If the ground rent increases periodically, you have to check that it does not eventually rise to unacceptable amounts. For example if it starts at £200 and then doubles every 50 years, and the lease is a long one, say 250 or 999 years, this could make the flat unsaleable.

Some landlords also use the terms of lease as a way of getting additional fees from tenants each time the tenant wants to sell, or make improvements to the property. The lease will also require the tenant to register notices of the sale of the lease with them. Landlords will charge for providing information about service charges and insurance to your buyer.

## Service Charges & Insurance

Most landlords arrange insurance for the structure of the building, and most leases contain a service charge provision, that allows the landlord to divide up the cost of insuring and maintaining the building between the tenants. There are statutory controls over how a landlord must go about asking for service charges, and if they do not follow these requirements, the service charge may be irrecoverable. For further information see the Lease Advice Service mentioned on the next page.

## The Leasehold Advice Service

You can find lots of helpful advice on the subjects mentioned in this note at the Leasehold Advisory Service online portal, found online at [www.lease-advice.org](http://www.lease-advice.org). There are many advice guides, videos, podcasts and leaflets to download, that will give you more information, or you can ask your conveyancer. If you are thinking of extending your lease, there is an online calculator that will give you an indication of the price of a new lease, plus other helpful guides to the process.

## Check the lease plan

Your conveyancer will send you the lease plan to check. It is very important you make sure that it is correct, and that the boundaries, the position of any parking spaces, paths, balconies, bin stores and communal areas are correctly shown on the plan.

You must tell your conveyancer if something doesn't seem quite right. You cannot rely on the Land Registry plan being accurate, or assume that someone has checked this before.

## Lease Extensions

If you have owned your flat for 2 years, you can apply for a lease extension. This will give you a new lease for new term of a total of 90 years plus what is left on your old lease.

The procedure is complex, and the price will be assessed by a specialist valuer. Your conveyancer can give you more information. If there is less than 80 years left on your lease, the price payable for an extended lease will be higher, so it is best to extend it well before that date. If you are interested in buying a flat where the seller's lease is short, then the seller can start the application process for you, and you can take the process over once you have bought it. Your conveyancer can give you more advice on this.

## Why are leases so complex?

Landlords want to make sure all flat owners will keep their property well maintained, and that they will not use it in a way that causes a nuisance or interference with other flat owners. So the lease will contain many pages of 'Tenant's Covenants'. You must read these carefully and obey them. They will restrict your ability to make alterations to the property and also what you do, and how you use it. If a neighbouring flat owner breaches their covenants you can report them to the landlord.

Leases are not standardised, and they can vary a great deal. Leasehold conveyancing is more complicated than freehold conveyancing, and may cost more because of this.

## Management Companies

Sometimes you will have shares in the Management Company for your flat, and you may be a Director. If so, it is very important you make sure that the company records are appropriately filed each year. If not, the company may be struck off Companies Registry. This may make it impossible to sell your flat until it has been reconstituted.

If the Management Company owns the freehold, this may be very expensive, as the freehold will have vested in the Crown.