

- **Historic Rentcharges**
- **Estate Rentcharges**
- **Title insurance**



What is a “rentcharge”?

There are two types of rentcharge. Firstly, what we will call an **Historic Rentcharge**. This is an obligation of an owner of freehold land to pay someone (the ‘Rentcharge Owner’) a small sum of money, typically around £5 a year, forever, with no time limit. The payment is the ‘rent’ and the ‘charge’ part of it refers to the fact that the obligation to pay the rent is secured on the property that is subject to the payment as a ‘charge’ or mortgage.

Rentcharges were often set up on the sale of a freehold house in the early 1900’s to give the seller of the house (usually the builder) an income - forever. Secondly, there are **Estate Rentcharges**. Usually these will have been set up by the builder of a housing estate to pay the builder the cost of maintaining walls, landscaping and services on the estate in perpetuity. The plot purchasers will be obliged to pay a proportion of the service charge, and the Estate Rentcharge will also be binding on whoever owns the plot in the future.

The system was reformed following the Rentcharges Act 1977. No new Historic Rentcharges can be created, but Estate Rentcharges can still be created.

The Act also provided that all Historic Rentcharges will end on 22 July 2037 at the latest, and in many cases will end 60 years from the date they first became payable.

Why are they a problem?

If the homeowner doesn’t pay the rent when due then s.121 Law of Property Act 1925 states that the Historic Rentcharge or Estate Rentcharge Owner can take draconian action against the homeowner as follows:

- It can take possession of the property, without notice, and without the ability of the owner to apply to the court for ‘relief’ from the Rentcharge Owner’s actions.
- If the rentcharge is unpaid for 40 days, the Rentcharge Owner can grant a statutory lease of the property to a Trustee and register it at the Land Registry, again without notice. This effectively means the Trustee can even exclude the homeowner from their own home and rent it out to tenants! The Trustee can then sell the statutory lease to recover the rent due. However the lease will remain in existence even if the rent owed is paid off, unless the Rentcharge Owner agrees to surrender the lease to the homeowner.

Some unscrupulous investors have been known to buy up old rentcharges and use these powers to ransom the homeowners by registering statutory leases against their properties at the Land Registry. This has the effect of making the homeowners’ properties worthless in the presence of the statutory lease to the Trustee. Recent cases on this have shown that the courts are powerless to order the removal of the statutory lease from the title. The government has promised further reforms, but to date no new legislation is in prospect.

Title Insurance against Rentcharge risks

In many cases the rentcharge may be shown on the registered title of the property but the identity of the Rentcharge Owner is unknown, and there may never have been any demand for payment of the rent or service charges. In such cases, if you want to buy the property, the only practicable solution to the risk is to pay for a Title Insurance policy. This will cover some aspects of the risk, but you must read the policy carefully and comply with all of its terms.

Historic Rentcharges title insurance can usually be obtained for rentcharges created before August 1977, and will cover both the homeowner and their lender. If the Historic Rentcharge Owner does re-enter the property (or create a statutory lease), then you should be able to claim for the reduction in the value of the property and the legal expenses of defending any claims by the Rentcharge Owner.

However, policies don't cover the considerable upset and inconvenience caused, or the costs of buying a new property if needed. In the case of Estate Rentcharges, Title Insurers will generally only cover the risk to the lender of not being able to recover their loan in the case of the homeowner defaulting on the mortgage. There will be no cover for the homeowner as they will have caused the problem by failing to pay the Estate Rentcharge. If the Rentcharge Owner repossesses the property as a result, the lender will be able to claim the amount of the mortgage loan. Alternatively, if the Rentcharge Owner creates a statutory lease of the property AND the homeowner defaults on their mortgage then the Title Insurer will generally pay the lender the amount of any shortfall on the mortgage after the property has been repossessed and sold. The homeowner will receive nothing under the policy in either case. Thus, at worst the homeowner might lose the property completely, and at best may lose their deposit or 'equity' in the property. In order to protect their home the homeowner will have to try and negotiate a compromise with the Rentcharge Owner, at the homeowner's own cost and expense. For this reason Estate Rentcharges must continue to be paid.

The cost of Rentcharge title insurance policy will depend on the value of the property and the circumstances. For example, for a £300,000 property, a policy from Stewart Title will probably cost around £60. It is important to realise that Title Insurance does not make the rentcharge go away. If the rentcharge isn't paid, title insurance will not stop the Rentcharge Owner trying to repossess the property or putting in place a statutory lease. It won't prevent the property being more difficult to sell or mortgage, as it is still subject to the rentcharge. If you have taken out a Title Insurance policy and there is any enforcement action taken against you by the Rentcharge Owner, then usually under the policy terms, you must contact the Title Insurer immediately. They will then deal with the matter as they think fit. They may pay the rent or charges due, they may try and negotiate a release of the rentcharge with the Rentcharge Owner and they may try to negotiate for the cancellation of any statutory lease that has been registered against the property.

If you need any legal advice in the event of any claims against you or the property or in relation to the title insurance, please note that this is not included in the fee we have charged for the purchase of the property, and you may need to obtain independent litigation advice.

Getting rid of an Historic Rentcharge

You can apply to redeem an Historic Rentcharge (only) under a statutory process set out in s.8 Rentcharges Act 1977. The relevant webpage on GOV.UK says the cost is usually about 16-17 times the rent - so for a £5 p.a. this would only be £85. However, the process is not quick, may take months and will delay any sale or purchase considerably. You may also need legal advice in order to operate the procedure.

Can you get rid of an Estate Rentcharge?

Unfortunately, you cannot remove an Estate Rentcharge under the Rentcharges Act. You would have to negotiate the release of it with the Estate Rentcharge Owner. They would be unlikely to agree to this unless an alternative system was set up to recover the costs of the services provided to the estate by the Estate Rentcharge Owner. This will take time and will involve specialist legal advice.

Risks for mortgage lenders

Faced with the extreme powers of the Rentcharge Owner in the case of nonpayment of the rent charge mentioned opposite, many lenders are concerned about lending money on a property subject to a rentcharge. Actions taken by the Rentcharge Owner against the homeowner and property could make it more difficult or impossible for the lender to sell the property to recover the mortgage loan.

Many lenders will have specific rules on what types of properties subject to rentcharges they are prepared to lend on.

Your conveyancer will be able to advise you on what your proposed mortgage lender's requirements are, and the appropriate way of dealing with the risk, whether by title insurance or otherwise.

Estate Rentcharges

On new housing developments there might be shared access or facilities that need to be maintained and repaired. The more usual way of dealing with this is to have these areas transferred to a Management Company, with the plot buyers being obliged under a Deed of Covenant to pay the management company the amount of service charge costs due.

However, instead some developers may have set up an Estate Rentcharge system to recover the cost of the upkeep of these areas. In principle this works just the same as a Deed of Covenant and Management Company system, but there are risks to buyers and their lenders.

Firstly, with an Estate Rentcharge there is no statutory power for a homeowner to challenge the amounts of service charge demanded, like there is with service charges demanded under a lease or a management company set up.

Secondly, there is the same risk that the Estate Rentcharge Owner might use the enforcement powers mentioned on the previous page to create a lease of the property and register it at the Land Registry. The effect of this is likely to make the property unsaleable and possibly even valueless.

If you buy a property subject to an Estate Rentcharge it is vital that you pay the Estate Rentcharge when demanded. If you fail to do this you might invalidate any title insurance policy obtained.