

Absentee landlords

How leaseholders can take control

By Alan Zeffertt

What can you do if the landlord or freeholder of your building has disappeared or failed to carry out their obligations under the leases of your building? Absentee landlords are, unfortunately, a common problem which can cause a building to fall into disrepair for many years or leave flats without insurance against fire and usual comprehensive risks.

In such a situation, the tenants or leaseholders of the building should act together to take effective legal action and remedy the problems which have been occurred. Various laws have been passed since 1987 to help leaseholders manage their building. The options which are now available to leaseholders are discussed in this factsheet.

Apply to the court for an order acquiring the freehold.

One option is for a majority of the qualifying tenants of the flats to apply to the court under the Landlord & Tenant Act 1987 for an acquisition order. This applies where the landlord is in breach of any obligations to keep the building in a proper state of repair or maintenance, or adequately insured or where there has been a failure to manage the building, and these circumstances are likely to continue.

Before applying to the Court, you must have made an effort to trace the landlord, for example using a private investigator and advertising in a local newspaper. The leasehold valuation tribunal will usually determine what is a fair and reasonable value of the landlord's freehold interest. The Judge will sign the transfer of the freehold.

The advantages of this method are that:

- The basis of valuation under the 1987 Act is usually lower than buying the freehold under the provisions of the Leasehold Reform, Housing & Urban Development Act 1993 (see below).
- If the absence of your landlord has meant that the repairing and other obligations under the leases have not been carried out, the court will usually make an order for costs against the landlord. You can deduct the legal costs from the value of the freehold and pay just the balance, if any, of the price to the court. This may mean that you don't have to pay anything extra for the freehold since the costs of the court proceedings are often more than the value of the freehold.

Your right to purchase the freehold

If the freeholder has not been in breach of his obligations under the leases you may not be able to use the 1987 Act. A qualifying majority of the leaseholders, do however, have a legal right to compel the Landlord to sell the freehold under the 1993 Act instead. The price payable may be higher under this Act. Once the freehold has been purchased by the leaseholders, they will then own the building and have control of it.

There is a procedure for applying to the court if the landlord cannot be found. Efforts must be made to try and serve a notice on the landlord. If this does not prove possible, then your solicitor will make an application to the court for an order vesting the freehold into the name of a company formed by the leaseholders or into the name of a nominee for the leaseholders.

After a vesting order has been made, your solicitor will apply to the LVT for its decision on the terms and price to be paid for the freehold. As the landlord is missing, the LVT will only consider the price put forward by the leaseholders when calculating the value of the freehold interest, since there is of course no landlord to dispute the price or valuation made. This is under s26 of the 1993 Act.

Once the LVT has determined what price is to be paid, the decision of the Tribunal will be sent to the county court and the price payable for the freehold must be paid into court. The court will then make the order for the transfer of the freehold.

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Dealing with a landlord that has been dissolved or is insolvent

The freehold company may have been struck off or dissolved. If so, the freehold will have vested in the Crown as bona vacantia. Enquiries should be made of the Treasury Solicitor who will usually sell the freehold to the leaseholders at open market value. This is done by negotiation and there is no need to serve a legal notice.

If the landlord is a company in receivership, then the initial notice to purchase may be served on the Receiver; similarly, if the owner is an individual who is bankrupt, the notice may be served on the Trustee in Bankruptcy. Both the Receiver and the Trustee are acting in the capacity of landlord for the time being and are legally obliged to respond by serving a counter-notice, and proceeding with the sale of the freehold.

Your right to manage

The Commonhold & Leasehold Reform Act 2002 came into effect in September 2003, and provides a right to leaseholders of flats to force a transfer of the landlord's management functions to a Right To Manage Company of their own. Such company will be limited by guarantee and registered at Companies House. The landlord's consent is not required and even where the landlord is missing the leaseholders should be able to secure the management. There is no need to prove mismanagement by the landlord or the landlord's managing agent to implement the right.

Basically it means that the lessees, using a Right To Manage Company which they set up and own have control over the management functions of the building with respect to services, repairs, maintenance, improvements, insurance and management, - that is, the delivery of all the duties reserved to the landlord under the lease. the day-to-day management of the building.

Where a RTM company wishes to acquire the right to manage premises but cannot find the landlord, or ascertain the identity of the persons to whom the claim notice should be given, it may apply to the leasehold valuation tribunal for an order that the RTM company should acquire the right to manage the premises. Before making the application, the RTM company must take all reasonable steps to find the missing landlord and, if unsuccessful, must inform all the qualifying leaseholders of the building of the intention to seek the order from the LVT.

The LVT may require the company to carry out further investigation or may simply make the order. Should the missing landlord be found before the order is made, then the Tribunal will decide how the matter should be dealt with.

Such an order may be made only if the company has given notice of the application to each person who is the qualifying tenant of a flat contained in the premises. Before an order is made, the company may be required to advertise for the purpose of tracing the persons who are the landlords and other parties to such leases.

Conclusion

It is not always easy to know how to deal with the problems caused by a missing or neglectful landlord. But the various laws passed since 1987 are there to assist long leaseholders of flats or maisonettes in buying or managing their own properties. We will guide you through the legislation and work with you and your fellow leaseholders to achieve a satisfactory resolution of matters.

LZW offers a quick and reasonably priced service. Fixed fees can, in many cases be agreed. Where this is not possible, we will give you an indication of the likely costs involved and, where the circumstances of the case permit, we will seek to recover your costs from a defaulting landlord or set off those costs against any sums that may be due to the landlord.

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