

# Buying or selling your flat

## With an absentee landlord

By Andrew Weir

**Special consideration needs to be given when dealing with a sale or a purchase of a flat where the Landlord cannot be traced.**

Under the terms of a flat's lease the Tenant (the owner of the flat) pays rent and service charge to the Landlord. In return the Landlord uses the service charge to meet the cost of maintaining and insuring the structure of the building as a whole.

If the Landlord is absent there is no one responsible for insuring and carrying out the maintenance responsibilities. This is likely to create difficulties for the tenants of flats in a building, since no formal and enforceable arrangements exist for repairing and insuring the building's structure.

If you are selling or buying a flat in a building where the landlord is missing, careful consideration needs to be given to the following issues:

### Where you are selling:

- The buyer of your flat and their solicitors will need to receive confirmation that there are proper arrangements in place for the ongoing maintenance and insurance of the structure of the building. Even if you have maintained your flat to an impeccable standard, it would be of considerable concern to a prospective buyer if the rest of the building (including the roof, the outside walls and any pathways etc., as well as any internal common parts) is not adequately maintained.
- Even if you are happy to make your own arrangements for the maintenance of the rest of the building, it might well be that one or more of the other flat owners may not be similarly motivated, or may refuse to contribute to the costs.
- If that is the case then unfortunately there is no contractual relationship between you and the owners of the other flats to jointly contribute to the upkeep of the rest of the building. It is the role of the Landlord to perform this task, and only the Landlord can legally oblige the other flat owners to pay their service charge, as a result of the direct contractual relationship between the Landlord and the Tenant created by the Lease.

### Where you are buying:

- When you buy a flat you will want to check that the Building is properly run, and that you will not be exposed to any unforeseen expenses once you become the flat owner.
- For example, if a Landlord had been missing but suddenly makes an appearance, the Landlord would be entitled to recover from you, as the present owner of the lease, up to the last six years' rent. The Landlord may in addition seek to challenge any acts or omissions relating to the property that ought to have been carried out with the Landlord's consent, such as physical alterations to the flat.
- You as the Buyer will want to be assured that, as far as can be ascertained, all of the terms and conditions of the lease have been properly complied with. Where a Landlord issues a "clear ground rent receipt" that, in the eyes of the law, is confirmation from the Landlord that the Landlord is not aware of any breaches in the terms of the lease. Clearly, if no Landlord exists, no confirmation can be had (other than on the say so of the Seller) that there are no existing breaches that you will become responsible for rectifying, at your cost, once you become the flat's owner.

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- The Council of Mortgage Lenders (CML) is a professional body that acts on behalf of banks and building societies that offer residential mortgages. The CML publishes a handbook that sets out what mortgage lenders legal requirements are in relation to properties being mortgaged. One of the conditions is that there are adequate covenants and arrangements in respect of the following matters: building insurance, maintenance and repair of the structure, foundations, main walls, roof, common parts, common services and grounds. Where a Landlord is missing, and under the terms of the Lease the landlord is responsible for those matters, these requirements will not be satisfied, and the lender may refuse to grant a mortgage on the flat unless suitable alternative arrangements are in place.

At LZW Law we will be able to advise you in relation to your rights and obligations in circumstances of a missing Landlord. We will be able to make practical suggestions as to how the difficulties can be overcome, to enable you to buy or sell the property.

Suitable safeguards can be put in place to protect the parties from difficulty where the Landlord suddenly appears. The solutions include putting in place documentation with the other tenants of the Building, effectively bridging the absence of the Landlord as far as contractual liability for the maintenance and insurance of the Building is concerned. This will involve the co-operation and agreement of the other flat owners, and their mortgage lenders, but the solution will be in all the flat owners' best interests.

LZW Law has close links with insurance companies that will be able to provide suitable indemnity insurance policies that will compensate a party financially for any unexpected loss that might arise as a result of a "missing Landlord" scenario. These policies are often able to be effected at short notice, for a reasonable cost, and ought not to delay the successful sale or purchase of your flat.

There are statutory rights given to a majority of the qualifying tenants in a building to enable them to buy their freehold or take control of the management of the building.

Please see our other factsheet for further information about leasehold properties.

### For further information, please contact:

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