

Note:- One of ARMA's key roles is to provide its members with technical support. However, from time to time, technical or other issues arise where guidance for lessees as well as their property manager is deemed appropriate. Such guidance is contained in these Lessee Advisory Notes (LANs) which ARMA members can copy and distribute to their clients and lessees as appropriate.

Summary

- This note gives an outline of the typical events in selling a leasehold flat.
- It also explains the usual ways in which a managing agent will be asked to be involved in that process and the kinds of information that they are asked to provide by sellers' solicitors.
- It explains the usual sorts of restrictions placed in leases about the way sales of flats can be carried out.
- Lessees can speed up the process by being aware of these restrictions and briefing their solicitors about them.

The Typical Steps in the Selling of a Flat

- You decide to put the flat up for sale with an estate agent.
- Your estate agent explains you will need to prepare a Home Information Pack (HIP).
- You successfully market the flat and accept an offer.
- You and your buyer each instruct your own solicitors to deal with the sale/purchase.
- The buyer has to arrange (mortgage) finance and sell his/her home.
- Your solicitor obtains proof of your ownership of the flat usually by obtaining a copy of your title from the Land Registry.
- Your solicitor prepares a draft contract of sale.
- When your buyer is able to proceed, your solicitor sends the draft contract, copy of your title, copy of the freeholder's title and a copy of your lease to the buyer's solicitor. (These are all contained in the HIP).
- The buyer's solicitor will make enquiries about the flat. Some of these enquiries are questions about the management of the block of flats and your solicitor will send these to the managing agent and/or freeholder to answer.
- Various searches will be undertaken, usually by the buyer, on the advice of his/her solicitor.
- Once the enquiries are completed and the contract agreed, contracts can be exchanged and a deposit paid.
- A final check is made on ownership by the buyer's solicitor, the mortgage deed has to be prepared and signed, and any final queries are dealt with.
- Completion takes place.
- Leases often require the landlord to be notified in writing of a sale within 28 days of its taking place.

Home Information Packs (HIP)

All residential properties including leasehold flats require a HIP before they can be sold. The elements in the HIP for flats include an energy performance certificate, a copy of the lease for your flat plus any variations and the completion of a Property Information Questionnaire. The questionnaire requires you to answer about 10 questions including what is the name of the person to whom you pay the ground rent, the amount of the ground rent and the current annual service charge, information on any proposed major works to the block and some basic questions about your lease. Usually local and drainage searches are also required.

Please note that your managing agent does not normally have a copy of your lease. You or your estate agent or solicitor can obtain a copy from the Land Registry if you do not have one yourself.

If you are thinking of selling your flat it is in your interest to keep documents relating to the management of the block so that they are available to answer enquiries. If you do this it will save you time and money later on. The information you should keep is:-

- Annual statements of account and budgets for service charges.
- Recent demands for service charges and ground rent.
- Letters about proposed major works to your block. (What agents call Section 20 notices.)
- Share or membership certificates if your ownership of the flat also requires you to be a shareholder or member of a residents' management company.
- Minutes of meetings if there is a residents' management company.
- Any regulations about the management of your block additional to the lease.

Conditions on Sales in Leases

Assignment is the legal jargon for the sale (by the lessee) of the rest of the term of a lease to another person. Most leases contain assignment conditions, clauses in the leases which a seller of the lease must comply with. Such conditions are used to assist with the better management of schemes. They enable an agent to keep

track of who is the lessee and so be able to effectively collect ground rent and service charges. Assignment conditions often also include references to mortgages and sub-letting.

There are three main types of condition:-

1. Deeds of Covenant

The seller often has to ensure that the buyer enters into a deed of covenant with the landlord/managing agent or management company. In this way the landlord or management company has a direct contract with the buyer and prior notification of the new lessee.

2. No Assignment Without Consent

A typical lease will require that the sale or mortgage of the flat cannot take place without the prior written consent of the landlord. Even if a lessee assigns a lease without prior consent the assignment is still legally valid. However, if the landlord or agent did not wish to recognise the new lessee, it could refuse to register the assignment if the lease requires it. This is extremely rare.

3. Requirement to Register the Assignment

With this type of assignment condition the leaseholder has freedom to sell but the lease requires that the landlord (and/or the agent) must be notified of the sale usually within 28 days of the sale by the buyer's solicitor.

The buyer will also pay the management company/freeholder a fee for registering the deed of covenant or granting consent and assignment of the lease.

Land Registry, Assignment and Restrictions in Leases

A Restriction is an entry on the Land Register that prevents or regulates making a change to the register regarding a sale (or other disposition such as a mortgage). If a restriction is to be created to control the sale of a lease at the Land Registry, it is placed jointly on the Register usually by a clause in the lease. A typical clause might be that the lessor and lessee hereby apply to the Registrar for the entry on the Register of the following restriction on the title - then would follow the actual words of the restriction.

The form of words of the restriction should mirror the assignment conditions referred to above. So a restriction may require proof of an entry into a deed of covenant, certificate of written consent, or registration of the assignment.

The effect of the restriction is that the ownership of the property cannot be passed until the landlord has given notice that the restriction has been complied with.

What are the Enquiries that an Agent will have to Answer?

Your managing agent will usually be asked to supply the answer to a number of pre-contract enquiries about the management of the block and the lessee's payments of service charge and ground rent. These queries will usually be raised by the buyer but should be sent to the agent by your solicitor. An agent cannot give information direct to the buyer because to do so may breach data protection law.

The number of queries that an agent is expected to answer can vary from a few to over 100. ARMA is keen to see solicitors use a standardised form of enquiries.

The usual subjects include:-

- Provide copies of insurance policies
- Provide copies of last 3 years' service charge accounts
- Provide latest service charge budget
- Provide copies of latest ground rent and service charge demands
- Confirm that payments of service charge and ground rent are up-to-date
- Advise if any surplus or deficit may be due after the end of the current financial year
- Provide information on any major works underway and planned
- Provide information on any reserve funds held
- Provide details of any breaches of lease
- Provide details of any consents for alterations or improvement
- Provide a copy of the health and safety risk assessment for common parts
- Provide a copy of the fire risk assessment for common parts
- Provide a copy of the asbestos survey for the building

Fees Charged by Managing Agents

Agents will charge fees for work arising out of flat sales. Leases do not allow for such tasks to be part of the management fee charged as part of the service charge and it would be wrong for an agent to do this. Not all fees go to the agent. Sometimes the landlord carries out the work, sometimes the agent.

Typically there will be fees for:-

- Answering pre-contract enquiries
- Where consent is required before sale
- Deeds of covenant upon sale

- Registration of the assignment-the change of lessee after a sale
- Registration of a mortgage after a sale

Such fees are often referred to as ‘administration charges’ by agents, because most of them are defined as such in Landlord and Tenant legislation. Lessees who believe that the fees are unreasonable or not payable according to the terms of their leases have the right to challenge them at a Leasehold Valuation Tribunal. In a sale it is customary for the seller to pay for these costs.

Arrears of Ground Rent and Service Charges

You will be asked to settle all outstanding debts before the sale is completed or your solicitor will be asked to give an undertaking to pay the debts at completion. Even though you may be planning to sell you should pay the service charge normally, in advance if required. Any apportionment of service charge or ground rent is worked out between the two solicitors on completion. Agents and landlords will not give consents, deeds of covenant or register sales if debts are not paid.

You may have paid all debts due at the time of sale but there could still be a debt due afterwards. Why? Because there is a deficit for the financial year during which you lived there but the sum is not known until the accounts for the block are issued some months later.

The usual way to allow for such debts is for your solicitor to hold back a small amount of money from the sale proceeds which will be passed on when the actual amount of the debt is known. This is called “a retention”.

Share and Membership Certificates

Many blocks of flats are owned and/or managed by the lessees who live in them. Often anyone owning a flat has to also become a shareholder or member of a company set up in which some or all lessees are shareholders or members. If this applies to you on sale you will need to return your shareholder’s certificate or assign your membership of the company. Your solicitor will also deal with this.

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