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# BRIEFING

## COMMONHOLD & LEASEHOLD REFORM ACT 2002

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### Commonhold

1. Part I of the Act introduces a new system for ownership of flats and other interdependent units of real property to be known as a Freehold Estate in Commonhold Land, provided that none of the land concerned consists of a "flying freehold".
2. A commonhold development consists of two or more units, which have shared facilities or service and require a system for communal management. Once established the owner of each unit will be the freehold owner of that unit and the ownership and management of the common parts will be vested in a commonhold association.
3. The decision to establish a Commonhold Association rests with the original developer. If a lease (or leases) of a building has (or have) been created before the freeholder decides to adopt the commonhold approach, on registration of the land as commonhold any existing lease of the whole or part of the commonhold land is extinguished. This creates transitional difficulties for any leasehold units with existing mortgages. The consents of the existing leaseholders are one of the requirements necessary for registration.
4. The unit holders will have control over the shared accommodation through their membership of the Commonhold Association, which will be a company limited by guarantee. Its initial obligation is to provide a commonhold community statement that will be analogous to the service charge provisions in a lease.
5. It will be possible for transfers of commonhold units and mortgages of them to be created but the regulations are not yet available which will govern the particular restrictions applicable. The legislation is framed in terms that transfers, leases or charges will not be regarded as valid unless they comply with certain "prescribed" conditions.
6. The Act also provides for the enforcement and payment as appropriate of compensation for taking certain acts or desisting from them and the specific requirements will be set out in Regulations to be promulgated. The Act further provides for termination of the Community Association and the closure of the Commonhold.

### Right to Manage

7. Part 2 of the Act deals with a Right to Manage company which can be required from the landlord without implying a failure of management as was required under the Landlord and Tenant Act 1987. This will require a minimum of 50% of residential flats in the premises to exercise their right of claim. The Act also lays down an obligation for a landlord who is to lose his management responsibilities under a Right to Manage company to give notice to his contractors of the transfer of the Right to Manage in accordance with regulations to be prescribed. The right to manage company is also entitled to obtain information that it considers necessary to take up its right to manage.

### **Right to Enfranchise**

8. The right of a residential leaseholder in a block to enfranchise under the Leasehold Reform Act, as amended, is extended by the abolition of the residential requirement of the participating tenants, when a collective right to enfranchise is sought.

9. The requirement will be at least 50% of the tenants of flats, and non-resident tenants are to be counted. There is also a variation of the proportion of the marriage value to be taken into account by first disregarding any very long lease, i.e. with more than 80 years to run and reducing the freeholders marriage value in other cases to 50%.

10. Similarly where a tenant of a flat wishes to extend their lease the same valuation provisions are applied to their lease as to a right to enfranchise company and the qualification period for the right to extend is reduced to 2 years.

11. The right to enfranchise a house is also affected by the abolition of the residents requirement for the enfranchising tenant except a resident landlord who has created flats in the remainder of the building where the resident landlord himself holds a leasehold estate. The resident landlord in this case must reside in the property, as is only his main residence, for two years or periods totalling two years in the last ten years in order to qualify to enfranchise.

12. Any person claiming a right to enfranchise or an extended lease under the Leasehold Reform Act 1967 must satisfy a two-year ownership requirement without obligation to reside and should they fail to proceed with enfranchisement, after all the procedures have been followed, they may re-apply within twelve months (previously three years).

13. The right to enfranchise is also granted to business tenancies granted for a fixed term exceeding 35 years. This would, however, only seem to apply to a leasehold house.

14. A tenant entitled to enfranchise no longer must chose between enfranchisement by acquisition of the freehold or a grant of an extended lease. Once an extended lease is in force, his ability to enfranchise and acquire the freehold remains in place.

## Service Charges

15. The Deputy Prime Minister will, in due course, prescribe amended figures for the consultation requirements under the Landlord and Tenant Act 1985.
16. Administration Charges contained in a Lease are now also open to challenge and the Leasehold Valuation Tribunal has the right to determine what is reasonable.
17. Before service charges are due and payable the landlord must supply a written statement of account dealing with service charges, the costs relating to those charges and any aggregate balance due or owing at the commencement of the accounting period and at the end of the accounting period.
18. This information must be supplied not more than six months after the end of each accounting period, together with a certificate of a qualified accountant and a statement of the rights and obligations of the tenant.
19. The Deputy Prime Minister may also make regulations as to precisely the format of this information. In the absence of this information a tenant may lawfully withhold payment of service charge
20. There are to be new regulations with regard to the holding of service charges in a separate trust account and the financial institution operating the account must be notified of the trust status. Further regulations are to be prescribed by the Deputy Prime Minister in relation to this.

## General Leasehold Reform

21. There are other provisions with regard to modifications of various leasehold requirements, such as:-
  - nominated insurance companies (may safely be breached provided other arrangements are in place as set out in Section 164);
  - the requirement for a ground rent demand to be issued in a prescribed form;
  - forfeiture of leases of dwellings, restriction on amount and length of time outstanding to be set out in prescribed regulation;
  - no forfeiture notice before establishing breach of covenant by the Leasehold Valuation Tribunal; and
  - no forfeiture for failure to pay service charge until a determination by a Leasehold Valuation Tribunal or a court of the amount of service charge is payable by the tenant.
22. This is an amending Act and must, therefore, be read in conjunction with the primary legislation to which it refers. In cases of difficulty as to the application of a particular provision or the status of a particular section, please refer to your usual contact in Legal Services or the writer.
23. The Act is operative from 1 May 2002, at which date only Sections 177-179 and 181-183 were in force. The Act applies to England and Wales, but arrangements are in place for the commencement of different sections of the Act to be different for England and Wales.

**For further advice on this paper, please contact Roger Lloyd, Principal Solicitor on:-**

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