

## ENGLISH APARTMENT LEASES

### Overview

Most English apartments are held under long leases. The purpose of leasehold ownership is to impose conditions on the terms of ownership for the benefit of the entire development. There are “commonhold” rules in England which are an alternative management structure to using leases, but they have not been widely used as of yet.

As in Ireland, a lease can be “forfeited” and taken back by the landlord, if its conditions are not complied with. This would mean the tenant’s ownership would be terminated. There are protections against forfeiture of lease. It does however remain an ultimate risk in the event that the lease terms are persistently breached.

Restrictions have been in force since 2005 which prevent a landlord forfeiting a lease for non-payment of ground rent, where the unpaid amount does not exceed £350 and is outstanding for less than three years. A landlord can no longer forfeit a lease for non-payment of service charge without an order from the Leasehold Valuation Tribunal or court.

In Ireland, ground rents in apartment leases are usually nominal. Since, 1978 new leases of dwelling houses have been banned in Ireland. This is not the case in the United Kingdom. Ground rents can vary from nominal amounts to sums of up to £100 - £450 per annum. The ground rent is separate from the service charge contribution.

The developer must give the owners the right to buy the ground rents out, if he is selling them. He must offer the benefit of the ground rents to the leaseholders in the apartment block as a whole. The majority of the leaseholders, acting collectively, can buy out the freehold. Typically the price to purchase a ground rent would be 15 to 20 times the

value. Therefore where an apartment reserves a rent of say £200 per year, it may be necessary to pay £4,000 in order to buy out the ground rent.

English leases terms and conditions are typically shorter than in Irish leases. Terms of 70-150 years are quite common, although longer leases are also commonly found. The Council of Mortgage Lenders which sets the Conveyancing standards for most bank lending, requires a minimum unexpired period of 50 years.

### **Structure of Apartment Leases**

Because an apartment is part of a larger structure, an apartment lease usually gives the apartment holder exclusive ownership of the inside of the apartment only, together with certain easements and rights over the common parts. These include rights of protection provided by the structure, rights for services, rights of access, the use of the common parts of the building and the external common areas.

The common parts of the building include the structural parts, foundations, roof together with the internal common parts such as corridors lifts etc and external common parts such as gardens and car parks. They are usually vested in the landlord or management company and may be managed by either. The “landlord” may be the original developer or a successor.

The landlord’s or management company’s ownership of the common parts will be subject to the easements and rights of the apartment owners. On some occasions, the landlord will reserve rights to build and develop further.

It is essential that the landlord or management company is responsible for the repair, management and maintenance of the common parts. There must be a system for the maintenance and management of the common parts so that the title is acceptable in accordance with the conveyancing practice and standard bank requirements.

The common parts may be held by the original landlord or may have been transferred to a management company. Preferably the apartment owners will be members or shareholders in the company. Under company law, where the apartment holders are members of the management company, they will control it. They will be entitled to elect the board of directors which will run management company.

In some developments (much more commonly than in Ireland) the original developer will remain as landlord and there will either be no management company or the apartment holders will have no rights of participation in the management company. There are however certain legal rights to replace the management company which do not exist in Ireland.

The management company will generally set the service charge by reference to a budget for its entire costs in managing, maintaining, repairing etc. the development. Typically, the service charge will be fixed and charged in one, two or more instalments. After the end of the relevant period, the management company or landlord is obliged to make up an account of the expenses and charges. There will then be reconciliation between the previous year's accounts and the next year's budget, so that any shortfall or surplus is added to or credited against the following year's liability.

### **Responsibilities under the Apartment Lease**

Apartment owners are usually liable for repair, maintenance, compliance with legal requirements and decoration in relation to their own apartments which usually include the interior part of the unit only. The more significant long term repairing obligations in relation to the structure and the common parts will be undertaken by the landlord or management company and will be paid for through the service charge. There is always the risk that the management company will be inefficient or that other apartment owners refuse to contribute service charge leaving shortfalls in the budget. However the rights of apartment owners are stronger in England than in Ireland.

Apartment leases usually contain obligations on the part of the apartment owners which are designed to protect and maintain the standard of the entire development. Nearly all

apartment leases contain restrictions requiring the apartment to be used as a single residential unit, prohibiting alterations and changes to the layout of the apartment and restricting what can be placed on the outside. Typically prohibited are signs, satellite dishes and washing lines. Apartment leases will usually contain rules regarding pets, nuisance, antisocial behaviour, noise etc. House rules will often be found in the lease or in a separate rulebook published by the management company.

Breach of the lease obligations can leave the apartment owner liable for damages and ultimately, could cause the lease to be forfeited. The obligations are strict and remain with the apartment owner, irrespective of whether the particular problems have been caused by tenants to whom the property has been let. It is a matter for the apartment owner to ensure that his tenants are compliant.

Apartment leases will usually restrict or place conditions on the sale, transfer or subletting of the property. In all cases, it will be necessary to notify sales or changes of ownership to the landlord and/or management company. There will typically be a fee of £50-100 to register the change of the identity of the owner in their records. Mortgages will also need to be registered.

The lease will say whether and to what extent the management/landlord company must be notified of a subletting. Generally subletting for more than a particular period must be notified to the management company and registered in its books. This will usually not apply to the common "assured shorthold" tenancy.

Typically a subletting or sale of part only of the property will be absolutely prohibited. In some leases (and this is permissible) the landlord's or management company's consent is required to transfers. The landlord cannot unreasonably withhold consent. The landlord would be acting unreasonably unless it had a good objective reason for withholding consent, such as outstanding service charges or ground rent.

### **Insurance and Service Charges**

Because apartment developments form a continuous structure, it is necessary to insure them in common. There will typically be a block insurance policy which insures the entire development. Usually the interest of individual owners will be noted automatically.

It is important as a residential investor to ascertain exactly what is covered by the block policy. This varies from case to case. A residential investor should not assume a policy will cover his moveable items in the property nor that it will insure potential liability to tenants in respect of accidents, falls, claims etc. A residential investor should always consider what additional insurance may be necessary before he lets a property to tenant.

Service charge levels can be significant in the UK. Most developments are managed by professional managing agents. Failure to pay service charge constitutes a serious breach of lease. The management company / developer is entitled to sue to recover the charges concerned. An English judgement can ultimately be effective in recovering monies against an Irish resident.

The insurer, or management company may well alert the investor's bank which is likely take a serious view of the matter as it jeopardises their mortgage. Mortgage banks may pay service charges and recoup it from the borrower/investor.

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