

## Lease Conferences



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## Disclaimer



Whilst we make reasonable efforts to ensure our content is accurate and up-to-date, information and guidance in this webinar does not and is not intended to amount to legal advice in any particular case.

No responsibility for any consequence of relying upon the webinar material or presentations of the webinar is assumed by LEASE or any of our advisers

The law is stated as at 11<sup>th</sup> October 2016

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## Much Obligated – a guide to residential leasehold covenants 2016



Dona Awano  
11<sup>th</sup> October 2016

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## Learning Objectives

- By the end of this webinar, you should understand the common obligations imposed on a landlord and leaseholder by the terms of a lease, including:
  - Payment of ground rent and service charges
  - Repair and maintenance
  - Sub-letting
  - Alterations
  - Keeping of pets
  - Nuisance and annoyance
  - Enforcement and remedies

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## WHAT IS A LEASE

Contents of a lease: main clauses

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## Introduction

- What is a lease
- Who is a leaseholder
- Who is a freeholder




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## Introduction



- Types of leases
  - Private
  - Right to buy
  - Shared ownership
  - Head lease
    - Underlease
  - Tripartite lease
    - Resident management company (RMC)

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## Introduction



- Other relevant parties
- Managing agents
- Right to manage Company (RTM)
  - (Split management)
- Scheme Manager
  - Retirement properties
    - Resident or non resident

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## Covenants - landlord



- Implied covenant
  - Quiet enjoyment
    - Kenny v Preen [1963] 1 QB 499
  - Non derogation from grant
    - Platt v London Underground Ltd [2002EGR 121] 2
- Implied by law
  - [Schedule 6 Housing Act 1985](#)

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## Covenants - landlord

### Express covenants

- Structure and exterior
- Common parts
- Reserved property
- Roof and foundations

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## Covenants – leaseholder

### Common covenants

- Pay ground rent and service charges
- Use for purpose of a residence
- Allow the landlord access in certain circumstances
- Not to carry out alterations without consent
- Keep the demised premises in repair
- Not to cause a nuisance

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## GROUND RENT AND SERVICE CHARGES

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## Ground rent

- Landlord and tenant relationship
- Amount
  - Fixed/Increasing/ Reviewable
  - RTB - £10
  - Peppercorn – Lease extension
- Method of payment
  - Annual/bi-annual/ quarter days
  - Prescribed demand –Section 166 of 2002 Act
  - 6 year limitation
    - S19 Limitation Act 1980

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## Service charge clauses

- Will usually set out the leaseholder's liability to contribute to costs incurred by the landlord
  - Often the service charge provisions will relate to other clauses and definitions spread throughout the lease
  - Precise meaning of words that are used can be important
- Subject to statutory rules

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## Service Charges – Items included

- Maintenance and Services
- Improvement
  - *London Borough of Wandsworth v Griffin and Cunningham [LRX 40 1999]*
- Management fee/ professional costs
- Building insurance
- Sweeper clauses
- Interest on loans

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## Service charges – method of payment

- Fixed/ variable
- Additional rent or freestanding charge
- Advance or in arrears
- Interim demand
- Sinking/ reserve fund
- Apportionment
- Certification
- Auditing

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## Service charges – additional requirements

- Demand
  - Landlord's name and address
    - *Beitov Properties Limited v Martin* [2012] UKUT 133 (LC)
  - Summary of rights and obligations
- Limitation
  - 6 or 12 years
    - Limitation Act 1980
- Codes of practice
  - RICS
  - ARHM

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## Buildings Insurance - flats

- Usually landlord's responsibility
- Items covered
  - Terrorism
- Joint names
- Handling claims
- Excess
  - *Sutcliffe v Bradford & Northern Housing Association Ltd and AEL Properties (Southern) Ltd v Wallis*

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## Buildings Insurance - flats



- Vitiating of insurance
  - Not to invalidate
- Insurance information
  - Schedule to Landlord and Tenant Act 1985

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## Buildings insurance – houses



- Usually leaseholder's responsibility
- Landlord's nominated insurer
  - Section 164 Commonhold and Leasehold Reform Act 2002

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## QUIZ



Can you think of any problems that may arise where individual flats are responsible for taking out their own building insurance?

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# RESTRICTIONS, BREACHES AND REMEDIES

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## Absolute vs. qualified provisions

Absolute	Qualified
<i>Not to keep any Tigers in the flat</i>	<i>Not without the Landlords prior consent to keep any Tigers in the flat</i>

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## Sub-letting

- **Absolute prohibition**
  - Shared ownership leases
  - Retirement properties
- **Qualified prohibition**
  - prohibits sub-letting without the prior written consent of the landlord
    - Section 19(1)(a) Landlord and Tenant Act 1927
    - Landlord and Tenant Act 1988
    - Subletting part only of the property
    - Lodgers
  - To use as private dwelling in one family occupation
- **No prohibition**

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## Subletting



Provision	Effect
<i>Silent on subletting</i>	<i>Leaseholder can sublet subject to any other restrictions in the lease</i>
<i>Absolute prohibition against subletting of the flat</i>	<i>Can't sublet</i>
<i>Qualified restriction against subletting (part or the whole) of the flat with prior permission of the Landlord</i>	<i>Can only sublet with prior permission of the Landlord</i>
<i>Absolute prohibition against subletting part of the flat</i>	<i>Can't sublet part but can sublet the whole of the flat subject to any other restrictions in the lease</i>
<i>Qualified restriction against subletting part with permission of the Landlord</i>	<i>Can only sublet part with prior permission of the Landlord but can sublet the whole of the flat subject to any other restrictions in the lease</i>
<i>Qualified restriction against subletting the whole of the flat</i>	<i>Can sublet part but can only sublet whole of the flat with the prior permission of the Landlord</i>

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## Landlord & Tenant Act 1988



- The Act applies to qualified covenants relating to assignment, charging, and subletting
- Section 1(3)
  - Landlord to respond to written request for consent within a reasonable time
  - Burden on landlord
- Section 1(3)b
  - Landlord required to provide written notification
  - If conditional consent then to outline the conditions
  - If refused to outline the reasons
- Remedy for leaseholder
  - Breach of statutory duty
  - County Court 'declaration' that consent withheld unreasonably
  - Damages

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## Alterations



- **Absolute prohibition**
- Could be a restriction or total prohibition
  - Important to ensure stability of the building and to prevent neighbour disputes
- **Qualified prohibition**
- prohibits making alterations without the prior written consent of the landlord
  - Structural
  - Non structural
    - Landlord & Tenant 1927 Section 19(2)

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## Granting consent

- A landlord cannot refuse consent on grounds that are unrelated to property interests
  - International Drilling Fluids Ltd v Louisville Investments (Uxbridge) Ltd [1986] ch 513
- It is for the tenant to show that the landlord has unreasonably withheld consent
- Consent cannot be refused on the basis of pecuniary loss alone
- Problems
  - No obligation on the landlord to respond promptly
  - Burden of proof on the leaseholder

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## Pets




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## Keeping of pets

- **Absolute prohibition**
  - OFT guidance on unfair terms in tenancy agreements 2005 indicates this as an example of potentially unreasonable prohibition. It states:
    - Our objection is to blanket exclusions of pets without consideration of all the circumstances. Such a term has been considered unfair under comparable legislation in another EU member state because it could prevent a tenant keeping a goldfish. We are unlikely to object to a term prohibiting the keeping of pets that could harm the property, affect subsequent tenants or be a nuisance to other residents

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## Keeping of pets

### • Qualified prohibition

- Prohibits keeping pets without the prior written consent of the landlord
- Prohibits keeping pets that cause a nuisance or annoyance

### • No prohibition

- Permits any sort of pets to be kept without needing prior permission

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## Nuisance/annoyance



### General catch all

- Not to do
- Cause
- Permit
- Suffer




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## Nuisance/annoyance

### • Regulations

- Illegal
- Immoral purposes
- Carpeting clauses
- Business use
- Private dwelling
- Noise
  - Radio
  - TV
  - Musical Instruments
- Satellite dishes

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# REMEDIES

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## Leaseholder's remedies

- Typically for landlord's breach of quiet enjoyment and failure to keep the building in repair
- Common law remedies
  - Contractual principles
    - The leaseholder would look to be put in the position he would have been in had the landlord performed his duties under the lease –
      - Damages
      - Set-off and self-help

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## Leaseholder's remedies

- Statutory remedies
  - Specific Performance
- Tort
  - Nuisance / negligence
- Apply to the First-tier Tribunal (Property chamber)
  - To determine liability to pay and/or reasonableness of service charges and administration charges

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## Mutual enforceability

- May allow a leaseholder to enforce breaches directly against neighbours
  - Negative covenants only
- May allow the leaseholder to force the landlord to enforce covenants in other leases
  - At expense of requesting leaseholder
  - Can use to enforce positive/negative covenants

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## Mutual enforceability – typical clause

- *That on the request of the Lessee the Lessor will enforce the covenants in the leases of the other flats in the Building provided that the Lessee shall indemnify the Lessor against all costs of enforcement incurred by the Lessor*

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## Landlord's remedies

- Landlord usually in a stronger position than the leaseholder
  - General Contractual Remedies
    - Damages
    - Injunction
  - Remedies within the lease
    - Withholding consent
    - Interest on late payment
    - Rights of access
    - Forfeiture

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## Forfeiture – the process

- There must be a forfeiture clause in the lease
- There must be a breach
- The landlord must not have waived the right to forfeit
- Breach must have been determined by a court or tribunal
- Section 146 notice
- Possession proceedings in the civil courts
- Relief from forfeiture

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## Questions?



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 London EC4Y 8JX

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## Next webinar: 19 October 2016

- Lease extension – Part 1
  - Join our experienced adviser, Nicholas Kissen, as he guides you through the lease extension journey in this 2-part webinar series. In the first one, he covers:
    - Qualification criteria
    - Initial investigations
    - Drafting the initial notice

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