

LEASE CONFERENCES



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The six honest serving-men of leasehold property notices

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17th January 2013

www.lease-advice.org Page 4

Relevant statutes

- Landlord and Tenant Act 1927
- Recorded Delivery Service Act 1962
- Leasehold Reform Act 1967
- Interpretation Act 1978
- Landlord and Tenant Act 1987
- Leasehold Reform Housing and Urban Development Act 1993
- Commonhold and Leasehold Reform Act 2002


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Key questions

- WHAT notice should be served?
- WHY is the notice served?
- WHEN should the notice be served?
- HOW to serve a notice?
- WHERE to serve a notice?
- WHO to serve with a notice?

www.lease-advice.org Page 6

Personal service



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Personal service

- Hand delivery, get a receipt
- Letter box
- Individual
- Limited company
- Process server?
- Serve by post as well?

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Postal service



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First class post

- Check
 - Correct name
 - Correct address
 - Correct contents
 - Correct postage
 - Posted in time

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Recorded delivery – dangers



The image shows the cover of an Elvis Presley record titled 'RETURN TO SENDER and WHERE DO YOU COME FROM?'. It is part of the 'COLLECTORS' SERIES LIMITED EDITION' and features the RCA logo. The cover art depicts Elvis Presley in a classic pose.

www.lease-advice.org Page 11

Email and Fax

My thoughts:

Best not to serve in this way unless in addition to another method of service which you are confident is valid.

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Leasehold Reform Act 1967 – why and when?

- Notice of tenant's claim to acquire the freehold
 - Starting gun
 - Prescribed form
- Estate contract
- Valuation date
- Limitations on forfeiture
- During term of the lease or its continuance
- Costs

Leasehold Reform Act 1967 – who?



- Any person with interest superior to the lessee
 - Sch.3,para.8(1)(a)
- Copies on
 - Any other person known/believed to have such an interest
- Notice must state
 - Whether copies being served on anyone other than recipient and, if so, on whom
- Mortgagee in possession
- Receiver appointed by mortgagee or the court
- Service on former landlord if lessee not served with notice of change
 - Section 23(2) of the 1967 Act

Leasehold Reform Act 1967 – how?



- Section 23(1) of 1927 Act
 - Deemed service
- By personal service
- Leaving notice at last known abode
 - In England and Wales
- Leaving notice at last known place of business
 - In England and Wales
- Registered post or recorded delivery to last known abode/business address
 - In England and Wales
 - Section 1 of 1962 Act
- Service on duly authorised agent of the landlord


Leasehold Reform Act 1967 – how?



- Can serve in other ways but need to show notice actually came to the recipient's attention
- Best to use one of the methods of service laid down in Section 23(1)

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Leasehold Reform Act 1967 – where?



- Last known place of residence/business
- Landlord's address given for service of notices
 - Section 48 of the 1987 Act
- Landlord's address given on demand for ground rent, service charges
 - Section 47 of the 1987 Act
- Local/Public authority, statutory or public utility company

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Leasehold Reform Housing and Urban Development Act 1993



- Notice under Section 11(1)
 - Information
- Notice under Section 11(3)
 - Information
- Notice under Section 11(4)
 - Information
- Notice under Section 13
 - Starting gun

www.lease-advice.org Page 18

Section 11(1) of 1993 Act – who?



- Immediate landlord
- Any person receiving rent on behalf of the immediate landlord eg managing agent

Section 11(1) of 1993 Act – why?



- Recipient to provide lessee within 28 days (so far as is known to them) the name and address of every person owning
 - A freehold interest in the building
 - Freehold of any property not contained in the building which is demised by the tenant's lease, or lessee entitled to use in common with others
 - Any superior leasehold interest in the building or other property

Section 11(3) of 1993 Act – who?



Notice served on any person who owns a freehold interest in the building

Section 11(3) of 1993 Act – why?



- Recipient to give lessee within 28 days (so far as is known to them) the name and address of every person apart from the lessee who is
 - A lessee of the whole of the building
 - A lessee/licensee of any separate set of premises contained in the building
 - A lessee/licensee of whole or any part of common parts so contained, or of any property not so contained, which is demised by the lease of qualifying tenant, or qualifying tenant entitled to use in common with others

Section 11(4) of 1993 Act – who?



- Anyone with freehold interest in building or whole or any part of common parts which is demised by the lease or lessee entitled to use in common with other persons
- Lessee of the whole of the building
- Lessee/licensee of any separate set of premises contained in the building
- Lessee/licensee of whole or any part of common parts so contained

Section 11(4) of 1993 Act – why?



- Information relating to
 - Recipient's interest(so far as is known by them) or any interest derived
 - Receipt of any Section 13 notice or copy of any such notice served: if so date it was given and name and address of nominee purchaser
 - Whether property designated as exempt under Inheritance Tax Act 1984
- Right, on reasonable notice, to be provided with list of documents sight of which reasonably required by lessee which, on a proposed sale, seller would be expected to make available to buyer
- Right to inspect any such documents and seek copies

Section 13 of 1993 Act – why?



- Starting collective enfranchisement claim
- Valuation date
- Landlord's costs
 - Section 33
- No further notice may be given whilst continues in force
- Prevents severance of freehold
- Limitations on forfeiture
- Suspends statutory notice to extend term of lease

Section 13 of 1993 Act – who?



- Reversioner
- Relevant landlords
- Special categories
 - Mortgagee in possession
 - Landlord under disability
 - Landlord with interest in trust
 - University or college landlord
 - Ecclesiastical landlord
 - The Crown

Section 13 of 1993 Act – how?



- Notices must be in writing and may be sent by post
 - Section 99(1)
- Service by post

“ Where an Act authorises or requires any document to be served by post (whether the expression ‘serve’, or the expression ‘give’ or ‘send’ or any other expression is used) then, unless the contrary intention appears, service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post”

 - 1978 Act Section 7


Section 13 of the 1993 Act – where?



- Only one signed original notice
- Last known place of residence or business
- Landlord's address given for service of notices
 - Section 48 of the 1987 Act
- Landlord's address given on demand for ground rent, service charges
 - Section 47 of the 1987 Act
- Copies to
 - Every other person known/believed to be relevant landlord

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Right to Manage – what?



- Commonhold and Leasehold Reform Act 2002
- Section 82
 - Information Notice (pre-claim)
- Section 78
 - Notice of Invitation to Participate
 - Prescribed form-different one for Wales
- Section 79
 - Claim Notice
 - Prescribed form-different one for Wales
- Section 93
 - Information Notice (post-claim)

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RTM notices – how?




- Any notice in relation to RTM
 - Must be in writing
 - May be sent by post
 - Section 111 (1) of 2002 Act
- Service by post

"Where an Act authorises or requires any document to be served by post (whether the expression 'serve', or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post"

 - 1978 Act Section 7

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Section 82 Information Notice – why/when/who?



- Can be served once the RTM company is formed
- Requires *any person* to provide company with information in its possession/control which company *reasonably requires* for ascertaining the particulars to be included in the Claim Notice
- Company can inspect any document containing that information and obtain copies on payment of reasonable fee
- Any person-agents, solicitors, accountants, letting agents
- 28 days for recipient to respond
- Seeking correspondence address

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Section 78 Invitation Notice – why?



- Invite qualifying tenant to become member of the RTM company
- 14 days interval between service of Invitation Notice and service of Claim Notice
 - Section 79(2)

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Section 78 Invitation Notice – who?




RTM company serves anyone who is

- The qualifying tenant of a flat contained in the premises
- Neither is nor has agreed to become a member of the RTM company
- NB-issue with joint tenants

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Section 78 Invitation Notice – where?




- Notice may be given to a leaseholder at the flat in the premises

UNLESS they have notified the RTM company of a different address in England and Wales at which they wish to be given the notice

- Service by hand is best

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Claim Notice-why?/when?



- Starts the claim to RTM
 - Relevant date
 - Date for counter-notice
 - Date for commencement of management
- Timing of acquisition date
 - Ready to take over
 - Service charge accounts
- Are the minimum number of leaseholders registered as members at relevant date?

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Section 79 Claim Notice – who?




RTM company serves on

- A landlord under a lease of the whole or any part of the premises
- A party to such a lease otherwise than as landlord or tenant
- A manager appointed under Part 2 of the LTA 1987 to act in relation to the premises, or any premises containing or contained in the premises
 - Section 79(6))

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Section 79 Claim Notice – who?



- Copy of claim notice must be given to
 - Each person who on the date the claim notice is served is the qualifying tenant of a flat in the premises
 - Section 79(8)
 - The leasehold valuation tribunal or court by which any manager was appointed
 - Section 79(9)

Section 79 Claim Notice – where?



- Unless a landlord has notified RTM company that it wishes to be served at a different address a landlord may be served at an address given to a member of the RTM company under Sections 47 or 48 of the 1987 Act
- Can still serve at abode, registered office or principal place of business
- Service by hand is best

Section 93 – Information Notice – why?



- Service charges
 - Arrears etc
- Insurance
- State of building
- Disputes
- Liaise with managing agents

Section 93 – Information Notice – who?/when?



- Landlords, management companies under leases and 1987 Act appointed managers to provide information and/or provide copy documents *reasonably required in connection with the exercise of RTM*
- 28 days to reply but not before acquisition date
- Information in managers possession/power/control
- Could serve whenever needed after RTM acquired

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Final thoughts

- Double-check notice before serving
- Double-check name and address before serving
- HM Land Registry entries
- Problem of unregistered interests
- Where relevant serve copies on others
- Belt and braces
 - Serve by hand, ordinary/recorded/registered post
- Absent/deceased freeholder

www.lease-advice.org Page 41

After service


DO NOT FORGET TO REGISTER THE ENFRANCHISEMENT NOTICE WHETHER TITLE TO THE FREEHOLD IS REGISTERED OR UNREGISTERED

www.lease-advice.org Page 42

Avoid disappointment

www.lease-advice.org Page 43

Enjoy success



www.lease-advice.org Page 44

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www.lease-advice.org Page 45

Questions?

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Page 46

Next webinar

14 February 2013

Cracking the Code – Understanding and implementing the RICS Service Charge Residential Management Code

- Why the Code matters
- Detailed analysis of the Code including
 - Duties and conduct of a manager
 - Best practice for budgeting/estimating
 - Best practice for dealing with contractors
 - How to approach disputes between occupiers
- Using the Code in court and tribunal proceedings
- Other useful codes

