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THE LOST LANDLORD – CURES FOR A COMMON PROBLEM (WEBINAR)

Manjit Rai
17th March 2016

Objectives



- What practical steps you can take to locate the landlord
- The relevant court and tribunal procedure
- What to do if there are multiple landlords and one or more is missing
- What to do if the landlord re-appears

Missing landlord



- Cannot be found
- Identity not known
- No valid address for service



Missing landlord - key issues



- Freeholder not around to undertake obligations under the lease
- Freeholder not around to deal with consents/licences
- Can lead to significant disrepair



Further issues



- No building insurance
- Problems with selling
- Difficulty for leaseholders to exercise their legal rights
- Missing landlord could turn up in future



What we will cover



- Indemnity insurance
- Lease extension/ collective enfranchisement
- Right to Manage
- Appointment of manager
- Acquisition Order



Appropriate forum



- 'Tribunal'
 - First-tier Tribunal (Property Chamber) England
 - Leasehold Valuation Tribunal Wales
 - 'Court'
 - Civil Procedure Rules
 - County Court (Part 8 Procedure) England and Wales
- <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part08>

Practical steps



- Land Registry
- Electoral roll
- Births, Deaths and Marriages Registration – <http://www.gro.gov.uk/gro/content/>
- Probate Registry - <http://www.courtservice.gov.uk/cms/wills.htm>



Make further enquiries



General lines of enquiries:

- Neighbours
- Conveyancing Solicitor



Practical step



- Enquiry agent



Further practical step



- Advertisement/local and national press.



In the case of unregistered land...



- The district valuer (part of Inland Revenue, see <http://www.inlandrevenue.gov.uk/home.htm>) may also be a useful point of reference in that any movement of any capital value should be duly registered with their offices
- Central Land Charges Registry (Plymouth)
- Searches

Indemnity insurance



- **CML Handbook (England and Wales) 5.14.15**
'Must report to us (see part 2) if it becomes apparent that the landlord is either absent or insolvent. If we are to lend, we may require indemnity insurance (see section 9, part 1) See part 2 for our requirements'

Indemnity insurance



- Some lenders insist on absentee indemnity insurance
- Some lenders point blank refuse it – find out if lender will be prepared to lend



Lease extension – flats



- Leasehold Reform, Housing and Urban Development Act 1993
- **Section 50** - Applications where landlord cannot be found



Vesting Order



- CPR Part 8 - application to Court for Vesting Order
- Set out the facts which establish qualification
- Inability to serve notice
- Lack of response
- Witness statement should accompany the claim form
- Exhibit relevant documents such as; the official copies of the entries at Land Registry, lease and the notice.

Lease extension – flats



Conditions to be satisfied:

- Must show that tenant is a qualifying tenant as defined by Section 5 1993 Act
- At relevant date – qualifying tenant is not precluded from serving a valid notice of claim (section 42 1993 Act)
- Landlord cannot be found/ identity cannot be ascertained

Lease extension – flats



Court directions

- Court is entitled to make any directions it sees fit in relation to application to trace missing landlord
- May also require further information such as:
 - i. Date purchased
 - ii. Last time ground rent demanded or paid
 - iii. Service charge arrears

Lease extension – flats



The order

- Order providing surrender of the tenants lease and grant of a new lease on such terms as may be determined by Tribunal
- Lease will be executed following payment into court of the 'appropriate sum'



Lease Extension - flats



- The court will usually refer the case to the Tribunal for determination of the 'Appropriate sum' - premium and other amounts determined by the Tribunal
- 'Relevant date' for assessment of premium will be date of application



Lease extension – flats



- Kathryn Sara Gent v Zul Jamal Habib [2015]
- Tribunal determined the premium for the lease extension of a flat in Putney
- A) the form of the new lease
- B) sum to be paid into court of £7,261 in accordance with S51(5) of the 1993 Act

Collective Enfranchisement – flats



- Leasehold Reform Housing and Urban Development Act 1993
- **Section 26** - Applications where relevant landlord cannot be found



Collective Enfranchisement – flats



• Section 27 (1993 Act)

- Multiple landlords and one cannot be found – application for permission to dispense with service on the landlord who cannot be found



Collective Enfranchisement – flats (qualifying conditions)

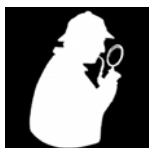


- In either case, the following conditions must be satisfied:
 - Application by 2/3rds of qualifying tenants
 - 'Premises' Part 1 of Chapter 1 of Leasehold Reform Housing and Urban Development Act 1993 applies
 - Claimants would not have been precluded by any provision of Part 1 Chapter 1 of the Act from serving a section 13 notice with respect to the premises
 - And – freeholder cannot be found

Collective Enfranchisement – flats



- Application to the Court for a vesting order dispenses with the need to serve an initial notice under S13
- CPR Part 8 form
- Provide evidence of efforts made to trace the freeholder



Collective Enfranchisement – flats



Court Order

- Application to Tribunal to determine the 'appropriate sum' and approval of a draft conveyance
- Claimant will pay 'appropriate sum' into Court
- Claimant to lodge with the Court a conveyance approved by the Tribunal

Collective Enfranchisement – flats



(continue)

- Conveyance executed by district judge on payment into court of the appropriate sum (section 27(3) and Schedule 5)
- Premises will vest in the transferee named in the conveyance as the new freeholder of the premises



Lease extension - houses



- Leasehold Reform Act 1967
- No procedure for leasehold extension of house where freeholder is missing



Enfranchisement of a house



- **Leasehold Reform Act 1967**
- **S27** - Enfranchisement where landlord cannot be found



Enfranchisement of a house



Amendments:

- **Commonhold and Leasehold Reform Act 2002**
- **S148** - County Court (jurisdiction)
- **S149** - Valuation

Vesting Order



- Application to Court for vesting order - CPR Part 8 form with witness statement in support



Court conditions and directions



- Certain conditions to be satisfied:
 - tenant must be entitled to acquire the freehold
 - unable to serve notice on freeholder because he cannot be found or identified
- Directions
 - Court may give such directions as it thinks fit ie further steps to trace missing freeholder

Court Order



- Order will provide for payment into court of the 'appropriate sum'
- Appropriate sum – consists of the amount determined by Tribunal to be payable pursuant to S9 and the amount of rent due up to date of the conveyance



Court Order



- Terms of the conveyance will be a matter for the Court to determine
- District Judge will execute the conveyance and property will vest in the claimant as freehold owner of the property



Enfranchisement of a house



- Shaun Peter & Wendy Leigh Connolly v Unknown [2015]
- Determination of price payable for enfranchisement of a house
- Price payable by applicant £25 for reversion of the property
- Benjamin Dainton & Elizabeth Dainton v Unknown [2015]
- Dispensed with service of Notice
- Tribunal made determination on price to be paid by applicant £60 for freehold interest

Appointment of a manager



- Landlord and Tenant Act 1987
- **S22 (3)** – Application to Tribunal for appointment of a manager in the case of a missing landlord



Appointment of a manager



- Application to Tribunal
- **S24** - Landlord and Tenant Act 1987
- Application by a tenant for the appointment of a manager or for the variation or discharge of an order appointing a manager
- Request for dispensation of requirement to serve notice under section 22 (1987 Act)

Appointment of a manager



- Fault based
- Must persuade Tribunal that it is just and convenient to make the order in all the circumstances of the case
- Justify reasons for appointment



Right to Manage



- Commonhold and Leasehold Reform Act 2002
- **S85** – Landlord not traceable



Right to Manage



- RTM is a 'No fault based' solution - for leaseholders to take over the management of the building
- Application to Tribunal
- **Chapter 1 Commonhold and Leasehold Reform Act 2002**
- **S85** – Missing Landlord



Right to Manage



- **Section 85 (1)** applies where a RTM company wishing to acquire the right to manage premises -
 - (a) complies with subsection (4) or (5) of section 79, and
 - (b) would not have been precluded from giving a valid notice under that section with respect to the premises, but cannot find, or ascertain the identity of, any of the persons to whom the claim notice would be required to be given

Right to Manage



- **Section 79 (4)** If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company
- **Section 79 (5)** in any other case, membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one half of the total number of flats so contained

Right to Manage



- Before an order is made by Tribunal, the RTM may be required to take such further steps e.g. advertisement
- If landlord is traced after application is made but before the order is made, no further proceedings shall be taken with a view to the making of an order

Acquisition Orders



- Part III Landlord and Tenant Act 1987
- **Section 27** (1987 Act) and subject to provisions of section 33 of the Act
- Fault based



Acquisition Orders



- Application to the Court (Part 8 Claim) for an order acquiring the freehold with witness statement in support
- Conditions to be satisfied in the case of a missing landlord:
- (i) a tenant must be entitled to acquire the freehold under the 1987 Act
- (ii) Tenant must be unable to serve the Notice because he cannot find or identify the landlord

Acquisition Orders



Order may be made by the Court where it is satisfied -

- (i) landlord in breach of any obligation relating to repair, maintenance, insurance, or management of the premises in question;
- (ii) both at date when application to court was made and throughout the period of two years immediately preceding that date, there has been in force an appointment under Part II of the 1987 Act of a person to act as a manager in relation to the premises in question;
- (iii) In either case court considers it appropriate to make the order in the circumstances of the case

Acquisition Orders



Terms of the Vesting Order:

- The effect of the order is to put the tenant in the same position as if a notice had been served. This will enable the tenant to apply to the Tribunal to assess the price payable in the ordinary way except the order will be unopposed.
- The order will deal with subsequent steps leading to a conveyance being executed by the Court



Acquisition Orders



- The Tribunal will determine amount to be paid by the leaseholder into court
- 'Fair and reasonable value of the landlords interest' as determined by a surveyor selected by President of the Upper Tribunal
- The purchase price plus unpaid ground rent
- There could be years of unpaid ground rent – can only recover 6 years ground rent under the Limitation Act 1980

Breach of lease



- *Raja v Aviram* [2016] UKUT 0102 (LC)
- Lease contained clause against carrying out unauthorised alterations
- Essential that consent to alterations is sought in advance



Breach of lease



- **Sections 47 and 48 Landlord and Tenant Act 1987** require freeholder or immediate landlord to supply their leaseholders with a contact address before sums due under the lease become payable
- In *Raja v Aviram* - Upper Tribunal ruled that even if such details are not provided, this is not an excuse to carry out such alterations without consent

Summary



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Questions?

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Next webinar: 19 April 2016



- Case law update - 2016
 - Service charges
 - Right to manage
 - Collective enfranchisement
 - Lease extension of flats
 - Individual enfranchisement of houses
