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On the house –Introduction to the Leasehold Reform Act 1967

Nicholas Kissen November 17 2015

Statutory authority Leasehold Reform Act 1967(as amended) Leasehold Reform (Enfranchisement and Extension) Regulations 1967 SI 1967/1879 Leasehold Reform (Notices) Regulations 1997 SI 1997/640

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Statutory authority	L E A S I
 Leasehold Reform (Notices) (Amend Regulations 2002 SI 2002/1715 	ment) (England)
 Leasehold Reform(Notices)(Amendr Regulations 2002 SI 2002/3209 	nent)(No.2)(England)
• There are similar Statutory Instrui 1999	nents in Wales post

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The appropria	te Tribunal	L E A S I
 The First-tier Tribuna England 	l (Property Chamber)	
 The Leasehold Value Wales 	ation Tribunal	

What is a house? *Leasehold Reform Act 1967, Section 2 (1) *For the purposes of this Part of this Act, "house" includes any building designed or adapted for living in and reasonably so called, notwithstanding that the building is not structurally detached, or was or is not solely designed or adapted for living in, or is divided horizontally into flats or maisonettes; and *where a building is divided horizontally, the flats or other units into which it is so divided are not separate "houses", though the building as a whole may be; and *where a building is divided vertically the building as a whole is not a "house" though any of the units into which it is divided maybe

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What is a house?	L E A S
A building	
 Designed/adapted for living in 	
 Reasonably called a house 	



Building? Built structure Some degree of permanence Common sense test Boats, moveable caravans not likely to be houses

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Designed or adapted for living in?	L E A S E
What purpose was the building originally designedHas the original design been changed?	for?

Reasonably so called? • Lake v Bennett [1970] QB 663 • does not matter if it can reasonably be called something e	CONFIRENCE
 Tandon v Trustees of Spurgeons Homes [1982] At Mixed premises eg a shop or takeway with a flat above If a building is designed or adapted for living in it would ta "exceptional circumstances for it not to be a house. Magnohard Ltd [2012] EWCA Civ 594 Purpose built block of flats cannot be a house reasonably 	C 755 ke

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The Supreme Court decides...



- Day v Hosebay Ltd; Howard de Walden v Lexgorge Ltd [2012] UKSC 41
 - Self-catering rooms and solicitor's offices with a flat above
 - Definition should be read in the context of Parliament's intention that the statute concerned "houses" as places to live, instead of regarding them in terms of architecture
 - On a common sense interpretation the physical appearance of a building should not be determinative of whether it is a "house" for these purposes, and its description as a house for other purposes eg as architectural histories is irrelevant

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The latest decision



- · Jewelcraft Ltd v Pressland and another
- [2015] EWCA Civ 1111
- Court of Appeal
- Judgment dated 29th October 2015
- Ground floor shop with residential accommodation above
- It was a house within S2(1) meaning

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Does not have to be detached



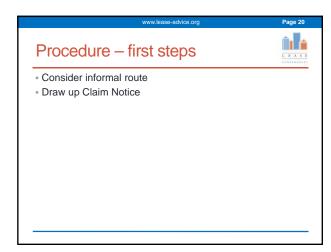
- May be divided horizontally but not vertically
- Flats/units not houses in their own right but the building as a whole could be

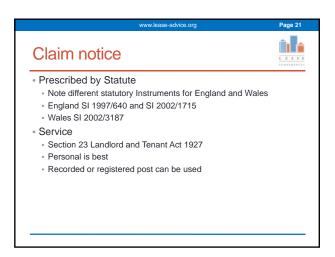
Neerhang References in this Part of this Act to a house do not apply to a house which is not structurally detached and of which a material part lies above or below a part of the structure not comprised in the house. S2(2) of the 1967 Act

Overhang • Malekshad v Howard de Walden Estates Ltd [2002] All ER 193 HL • material? – 2% unlikely to be but 10% is

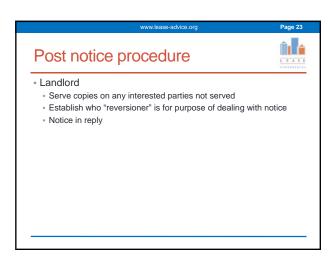
House and premises Subject to the following provisions of this section, where in relation to a house let to a tenant reference is made in this Part of this Act to the house and premises, the reference to premises is to be taken as referring to any garage, outhouse, garden, yard and appurtenances which at the relevant time are let to him with the house S2(3) of the 1967 Act

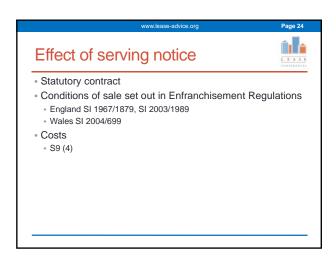
Page 19 Procedure — first steps Check that both leaseholder and building qualify long tenancy, owned 2 years Establish identity of landlord Section 1 Landlord and Tenant Act 1985



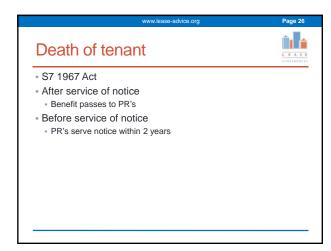


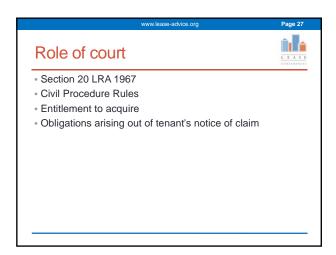
Page 22 Post notice procedure Leaseholder Register notice Unregistered and registered land Pay deposit if requested £25 or 3 x Ground Rent Deduce title if requested Assignment of notice S5 (2)



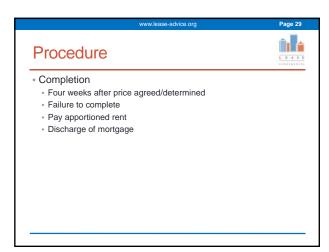


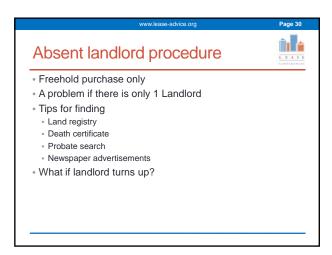
Withdrawal Up to one month after price agreed or determined Costs 12 month bar on serving fresh notice





Role of Tribunal Section 21 LRA 1967 Price payable Reasonable costs



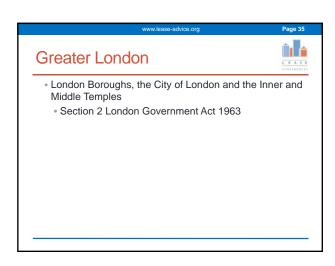


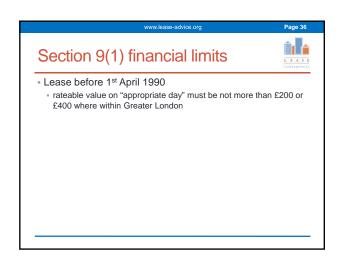
Absent landlord procedure Apply to county court CPR Part 8 Claim Form N208 Court may order further steps to trace landlord Case transferred to Tribunal Tribunal determines appropriate sum Tenant pays appropriate sum into court premium plus ground rent Conveyance

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Three bases of 1967 Act	valuation under the	L E A S E
Section 9(1) most beneficial for lease Section 9(1A) Section 9(1C) most beneficial for free Initial notice and not alleged valuation ba	eholders ice in reply should state which	is the

Tests to decide valuation basis Get to know the qualifying conditions Low rent test Rateable value or other financial limits test Further value limits test Where tenancy of house and premises extended under 1967 Act and the notice of claim given after the original term date expired Section 9(1C) Right to Buy leases under the Housing Act 1985 Section 9(1A)

The appropriate day • 23/3/1965 or if later the date on which the property was given a rateable value





Section 9(1) financial limits • Where "appropriate day" is on or after 1/4/1973 • if lease granted on or before 18/2/1966 then rateable value of the house and premises on the "appropriate day" must be not more than £750 or £1,500 where within Greater London • if lease granted after 18/2/1966 then rateable value of the house and premises on the "appropriate day" must be not more than £500 or £1,000 where within Greater London

Section 9(1) financial limits • Where "appropriate day" is • before 1/4/1973 • and lease granted on or before 18/2/1966 • In those cases where rateable value was more than £200 (£400 in Greater London) reference to "appropriate day" becomes a reference to date 1st April 1973 and the sums of £200 and £400 are replaced respectively by the sums of £750 and £1,500

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Section 9(1) low rent test



- Leases granted before 1/4/1990
 - yearly rent payable on relevant date and for the previous two years less than 2/3 of rateable value on the "appropriate day" or if later the first day of the term
- Leases granted on or after 1/4/1990
 - yearly rent payable is equal to or less than £250 or £1000 where within Greater London

Proviso

- Leases granted between 1/9/1939 and 31/3/1963
 - yearly rent at start of lease less than 2/3 of the letting value of the property (other than building leases)

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Section 9(1)final test



- Rateable value of house and premises on 31/3/1990 must be £1000 or less in Greater London or £500 outside
- If no rateable value on 31/3/1990 then R must be equal to or less than £16,333 under the above formula

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Section 9(1A) conditions



- Same rateable value or other financial limits as for Section 9(1)
- Also meets low rent test as for Section 9(1)
 - But not within the financial limits as at 31/3/1990 (final test)

Section 9(1C) conditions Section 9(1) financial limits exceeded Lease extended under the 1967 Act and notice of claim given after the "original term date" of the lease

What is a Section 9(1) valuation? Open market value subject to following assumptionsLessee and family members are not buying (marriage value excluded) Freehold sold subject to lease No-Act world Lease assumed to have been extended even if it has not been Site value Most favourable basis for leaseholder

What is a Section	on 9(1A) valuation?	L E A S I
 Lessee and family mei Freehold sold subject No-Act world Lease assumed not to Lessee not obliged to 	have been extended even if it has	included)

What is a Section 9(1C) valuation? Similar assumptions to Section 9(1A) valuation Can claim for "other loss" Section 9A

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Extension of lease under 19	967 Act
 New lease for term ending 50 years after existing lease 	er term date of
 "Modern ground rent" starts after term d review after 25 years 	ate and subject to
 To qualify existing lease must be at a low rent 	
 property must fall within certain rateable value limits 	e or other financial
 Two years ownership rule applies 	

Is it worth doing? Cannot seek another 1967 Act extension Many properties will not qualify Now has statutory protection Now has right to buy freehold but watch out for Section 9(1C) No premium to pay but modern ground rent can be high Enhance marketability of house

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What restrictive covenants in the lease can be imposed?



- The landlord cannot require the continuance of any of the covenants imposed by the lease except
 - Restrictions affecting the house and premises capable of benefiting other property and enforceable by person(s) other than the landlord
 - Restrictions affecting the house and premises capable of benefiting other property enforceable only by landlord <u>and</u> which materially enhance the value of the other property
 - Restrictions affecting other property which materially enhance the value of the house and premises
- These can be continued with suitable adaptations (Section 10(4) of the 1967 Act)

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Can the use of the house and premises be restricted?



- Yes so long as the restriction will
- Not interfere with the reasonable enjoyment of the house and premises as they have been used throughout the lease; and
- Materially enhance the value of other property in which the landlord has an interest

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Any other terms that can be imposed in the transfer?



- Restrictions which affect the house and premises, are not in the lease and enforceable for the benefit of other property
- Nothing in the 1967 Act permits the inclusion of positive covenants
- Unless there is an estate management scheme in place there is no mechanism for requiring lessee to contribute towards the costs of common facilities

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Unreasonable covenants



- Neither the lessee nor the freeholder can require the inclusion in the transfer of a covenant which is unreasonable in view of changes since the lease was created affecting its suitability or where the lease was one of a number of leases of neighbouring houses the interests of those affected in the other houses
- Section 10(5) of the 1967 Act

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What is material enhancement?



- Includes idea of maintaining a value which would otherwise deteriorate
- "Ackerman v Mooney" [2009] PLSCS 266
- The Lands Tribunal have accepted that the diminution in value need not be substantial but rather that "material enhancement itself includes the concept of maintaining a value which would otherwise deteriorate"
 - " Moreau v Howard de Walden Estates Ltd (LRA/2/2002)

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Issues to watch out for



- Shared ownership leases
- Schedule 8 of Housing Act 1974
 - Adjustment to rateable value to take account of lessee's improvements
 - Section 3(3) of the 1967 Act-successive leases
- Designated rural areas
 - low rent test

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Issues to watch out for



- Still a residency requirement where
 - Part of house is flat let to a qualifying tenant under the Leasehold Reform Housing and Urban Development Act 2002 or
 - The tenancy is a business one under Part II of the Landlord and Tenant Act 1954 and lease for a term of at least 35 years
- Residency requirement
 - Main residence for last two years or two years in the previous ten years

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Questions?

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Next webinar: 26 November 2015



- Property insurance: How to avoid changes in policy terms impacting on service charges
 - How new exclusions relating to "persons lawfully on the premises" can impact on all leaseholders
 - Escape of Water: some surprising new exclusions to avoid
 - The action insurers are taking to combat the rise of cannabis farms and the implications to property managers
 - Financial Conduct Authority: the implications of non-compliance for property managers
 - How the recent changes in Pool Re terrorism will affect costs and what alternatives are available
 - The real cost of the 50% plus increase in Insurance Premium Tax