

# LEASE CONFERENCES

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The law as stated during this webinar is up to date as of 10 February 2015

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# Collective Enfranchisement – Case Law Update (Non- Valuation)

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Leasehold Advisory Service

10 February 2015

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# Legislation

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- Leasehold Reform, Housing and Urban Development Act 1993
  - Commonhold and Leasehold Reform Act 2002
  - Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993
  - The Leasehold Reform (Collective Enfranchisement and Lease Renewal) (Amendment) (England) Regulations 2003
  - The Leasehold Reform (Collective Enfranchisement) (Counter-notice) (England) Regulations 2002
  - The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013
  - **Wales**
  - The Leasehold Reform (Collective Enfranchisement and Lease Renewal) (Amendment) (Wales) Regulations 2004
  - The Leasehold Reform (Collective Enfranchisement) (Counter-notice) (Wales) Regulations 2003
  - The Leasehold Valuation Tribunals (Fees) (Wales) Regulations 2004 (as amended)
  - [www.legislation.gov.uk](http://www.legislation.gov.uk)
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# No Further Notice – s13(9)

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- *Poets Chase Freehold Co Ltd v Sinclair Gardens Investments (Kensington) Ltd [2007] EWHC 1776*
  - S13(9) prohibits the service of a further notice within 12 months of the withdrawal
  - If the initial notice is not a valid notice then it is classed as void
  - A further notice can then be served
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# Names and addresses of qualifying tenants

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- *Natt and another v Osman and another [2014] EWCA 1520 Civ*
  - Full name and address of all qualifying tenants
  - The date the lease was entered into
  - The term
  - Date of the commencement of the term
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# Amendment of Section 13 Notice

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- *Regent Wealth Ltd v Wiggins [2014] EWCA Civ 1078*
  - Failed to register initial notice at Land Registry (s97)
  - Enabled the leaseholders to grant new head leases to each other
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# *Regent Wealth Ltd v Wiggins [2014]*

## *EWCA Civ 1078*

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- Nominee purchaser tried to amend the initial notice to claim new leases
  - An interest that has not been in existence at the date the initial notice had been served cannot be claimed
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# Deducing title

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- *Raymere Ltd v Belle Vue Gardens Ltd [2004] Ch. 29*
  - Section 20 – LH to deduce title of the qualifying tenant
  - OCEs predating relevant date by 2 months is sufficient
  - It is preferable to obtain OCEs on or after the relevant date to avoid doubt
  - If title is not deduced when asked it is deemed withdrawn
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# Qualifying Properties

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- *Henley and Another v Cohen [2013] EWCA Civ 480*
  - Unlawful conversion
  - Not a “house” for purpose of s2(1) Leasehold Reform Act 1967
  - No right to acquire the freehold
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# *Henley and Another v Cohen [2013]*

## *EWCA Civ 480*

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- On basis it was never designed for residential use
  - No connection between commercial ground floor premises and the flat
  - Not entitled to rely on unauthorised conversion works
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# Qualifying Premises Continued...

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- *Jewelcraft v Pressland [2014] PLSCS 212*
  - Similar to Henley
  - It was “designed or adopted for living in”
  - disputed that it was a house “reasonably so called”
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# *Jewelcraft v Pressland [2014]*

## *PLSCS 212*

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- Claim was dismissed
  - Having regard to:
    - history of the claimant's property,
    - its physical appearance and layout,
    - the terms of the lease and
    - the use of the premises over the years
  - the building could not reasonably be called a house
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# Section 13 notice – areas to claim

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- *Cutter V Pry Ltd [2014] UKUT 0215 (LC)*
  - Right to acquire fh to “relevant premises”
  - In addition, other property if it is:
    - Appurtenant property (garage, outhouse, yard, garden belonging to or enjoyed with the flat) or
    - it is property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises (whether those premises are contained in the relevant premises or not).
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# *Cutter V Pry Ltd [2014] UKUT 0215 (LC)*

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- Sought to acquire the freehold of the access ways, parking spaces and other appurtenant land
  - The LL challenged the LHs' rights to acquire these areas
  - First Tier Tribunal concluded that the enfranchisement should be limited to the specified premises only
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# *Cutter V Pry Ltd [2014] UKUT 0215 (LC)*

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- Granted leave to appeal on 3 grounds
  - Car parking
  - The garden
  - The offered terms issue
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# Car Parking

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- Did not fall within provisions of s1(3)(b) of 1993 Act
- Each allocated space not used in common with occupiers of other premises
- Spaces did not form a common pool
- Each lessee had a right to park in specifically marked space allocated by the LL



# The Garden

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- Did not fall within provisions of s1(3)(b) of 1993 Act
- Not entitled to use in common
- Express prohibition to enter under terms of lease
- Maintenance contribution is irrelevant
- “Visual amenity” does not mean used under s1(3)(b)





# Communal Accessway/Rights

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- Claim to roadway
  - LL offered rights in lieu of the fh
  - No “reasonable” provision therefore not adequate
  - Permissible for LL to amend rights offered at the hearing as FTT has statutory discretion to decide the terms of acquisition
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# Acquiring Common Parts

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- Under s2(3) LRHUDA 1993 the qualifying tenants are also entitled to acquire the interest of the tenant under any lease which demises
  - a) Any common parts of the relevant premises or
  - b) Any additional property acquired under s1(2)(a)

## *McGuckian v 29 Eaton Place Management Co Ltd Unreported 2007 Lands Tribunal*

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- Caretakers flat cannot be common parts
- Section 4 – an area of the building cannot be both residential and common



## *Panagopoulos v Earl Cadogan*[2010] EWHC 422 (Ch); [2011] Ch.177

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- McGuckian was disputed
  - Held: a flat that housed a caretaker who services the building at the relevant date constitutes a common part irrespective of whether there is an obligation under the leases to provide a caretaker to be resident
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# *Hemphurst Ltd V Durrels House Ltd* *[2011] UKUT 6(LC)*

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- LL demised roof space to itself
- LHs included acquisition of *part* of the leasehold interest
- LL said LHs should acquire the whole lease and pay premium accordingly
- UT held can only acquire parts of the lease which demised common parts under s2(3)





# Resident Landlord

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- *Slamon v Planchon* [2004] EWCA Civ 799
  - LL was the freeholder
  - Her mother was occupier
  - LL relied on resident LL exception set out in sections 4(4) and 10 of the Act
  - Premises are excluded under the Act if there is a resident landlord and they do not contain more than four units  
s4(4)
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# *Slamon v Planchon [2004] EWCA Civ 799*

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- Section 10 as amended by the 2002 Act states
    - 1) "For the purposes of this Chapter any premises falling within section 3(1) are premises with a resident landlord at any time if
      - a) The premises are not, and do not form part of, a purpose-built block of flats
      - b) The same person has owned the freehold of the premises since before the conversion of the premises into two or more flats or other units; and
      - c) He, or an adult member of his family, has occupied a flat or other unit contained in the premises as his only or principal home throughout the period of twelve months ending with that time
    - 4) Where the freehold of any premises is held on trust, subsection (1) applies as if
      - a) The requirement in paragraph (b) were that the same person has had an interest under the trust (whether or not also a trustee) since before the conversion of the premises, and
      - b) Paragraph (c) referred to him or an adult member of his family"
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# *Slamon v Planchon [2004] EWCA Civ 799*

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- Court of Appeal held
- Resident landlord needs to have held the same interest throughout in order for the exception to apply





# Leasebacks

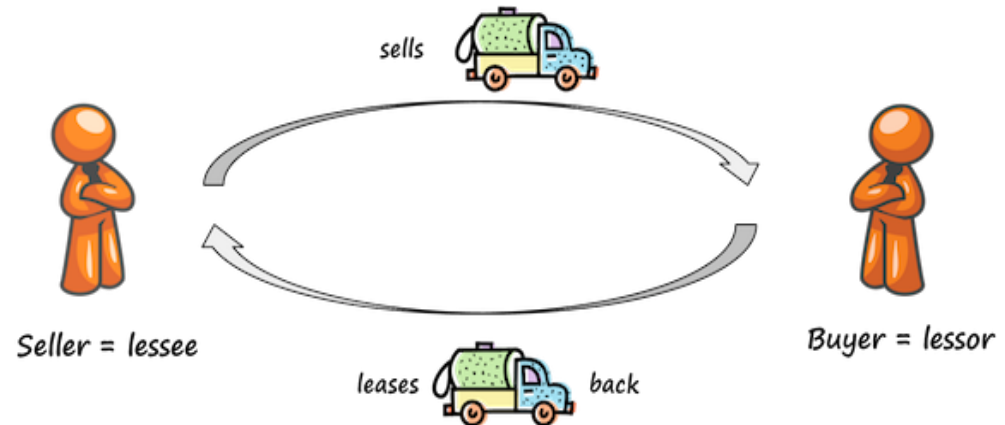
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- *Queensbridge Investment Ltd v 61 Queens Gate Freehold Ltd [2014] UKUT 437 (LC)*
  - Terms were determined by the LVT including terms of a leaseback of 3 flats
  - Nominee purchase argued that UT had no jurisdiction to decide upon effect of the new leases
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## *Queensbridge Investment Ltd v 61 Queens Gate Freehold Ltd [2014] UKUT 437 (LC)*



- UT held that it did have jurisdiction
- It would take more than a non-contractual consensus to deprive the UT of jurisdiction under s24(1)



## *Merie Bin Mahfouz Company (UK) Ltd v Barrie House (Freehold) Ltd [2014] UKUT 390 (LC)*

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- Can a LL require a leaseback of a unit that did not exist at the relevant date
  - FTT found that new apartment and office accommodation was not finished when claim was served
  - LL not entitled to seek leaseback as the apartment has to be in existence and completed at the time the claim was made
  - UT upheld this decision
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# Enfranchisement and bankruptcy

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- *Helman v John Lyon's Charity* [2014] EWCA Civ 17
  - Court of Appeal judgment dated 22 January 2014
  - Two years ownership qualification for enfranchisement of a house
  - Time will run from date of vesting of estate in trustee in bankruptcy
  - Receivers of sub-charge could not serve 1967 Act notice in the bankrupt's name to buy freehold
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# Powers of competent landlord

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- *Howard de Walden Estates Limited v Accordway Limited and Kateb [2014] UKUT 0486 (LC)*
- Decision of the Upper Tribunal (Lands Chamber) dated 28 October 2014



# Accordway/Kateb case

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- New lease claim
  - Freeholder as competent landlord can agree all terms of acquisition even after a notice of separate representation served by intermediate lessee
  - Intermediate lessee's remedy is to claim for breach of statutory duty by competent landlord
  - Competent landlord can advance defence if acted in good faith and with reasonable care and diligence
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## *Westbrook Dolphin Square Limited -v- Friends Life Limited [2014] EWHC 2433 (Ch)*

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- The use of company schemes (special purpose vehicles – SPVs) in the enfranchisement context
  - The price in the s13 notice
  - Can the landlord bring up a new argument against the claim that was not in the landlord's counter notice
  - Extent of the non-residential floor areas
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# SPVs as qualifying tenants

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- 612 Jersey registered companies
- Each holding long sub-underleases of two flats
- Voting rights in the SPVs



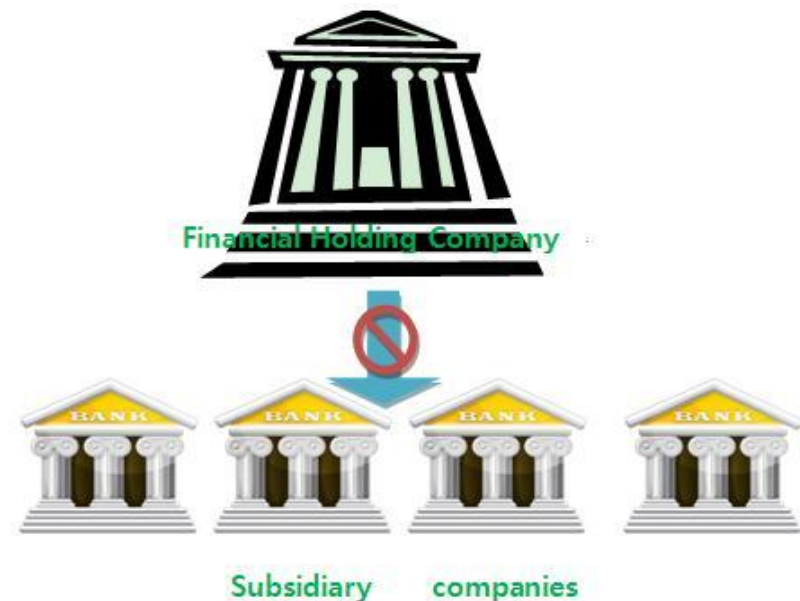
# SPVs as qualifying tenants

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- Sections 5(5) and (6) of the LRHUDA 1993
- Associated companies as per section 1159 of the Companies Act 2006 cannot own three or more flats and be regarded as qualifying tenants of any of them

# SPVs as qualifying tenants

- Court decided they were not associated companies
- Test depended on whether legal rights of control, and on underlying facts about the relationship
- SPVs not subsidiary companies





# The Price in the Notice

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- Genuine opening offer
  - Need not be within range of reasonably justifiable valuations
  - Lessee does not have to believe it would be accepted
  - Bona fide
    - Reasonable LL would see it as a real offer
    - Objective test – within a range of figures that could be the price
    - Subjective test – is it a figure the LHs genuinely believe could be the price
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# Going Beyond the Counter-Notice

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- Freeholder can take a point concerning extent of floor area of building occupied for non-residential purposes even though not raised in the counter-notice

# Extent of the Non-Residential Floor Areas

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- Short-term residence
  - 142 flats let for periods of 89 days or less
  - 5 flats let for periods of 90 days or more
  - 17 designated as guest rooms



# Guidance on Residential Purposes

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- Possible to use for residential purposes without being anyone's home
  - No degree of permanence necessary
    - Not tied to a specific occupier
  - No fixed or minimum time
  - Residence indicates usual activities of living
    - Sleeping
    - Eating
    - Washing
    - Living in
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# Common parts

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- The definition of “common parts” assumed an ordinary meaning of those words
  - It was not necessary that common parts should be devoted to purposes as a matter of obligation in the leases
  - Residents did not have access to them
  - Parts used by commercial occupants could be common parts
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# Extent of non-residential floor area

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- The court decided less than 25% was used for non residential purposes
  - Argument was based on statutory interpretation, not public policy
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# Upcoming LEASE training

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## **Classroom training**

**12 February 2015 – Manchester**

**26 February 2015 - London**

### **The basic of residential leasehold law**

This course is aimed at local housing authorities, housing associations, managing agents, solicitors, freeholders and leaseholders. A working knowledge of the basic law governing residential leasehold property is vital for anybody managing blocks of flats and those living in them

**17 March 2015 – Manchester**

**25 March 2015 - London**

### **Right to Manage**

The Right to Manage is a very popular option for leaseholders who want to take over the management of their building. This right contains pitfalls for the unwary, which can cause substantial problems. This full day training course will detail these problems, and provide you with the knowledge to take your clients through these procedures with confidence

## **Webinar**

**25 February 2015**

### **Site Rules – Park Homes**

New laws have introduced a procedure for making, varying and deleting park home site rules for fully residential park home sites. Site owners will be required to consult with residents if they wish to retain existing rules or make new park home site rules. This webinar explains the process, including any potential Tribunal action that could be taken

**10 March 2015**

### **Collective Enfranchisement case law non-valuation**

Everyone practising in the field of residential leasehold property understands how important it is to be up to date with the latest legal decisions. You and your practice will benefit from this seminar summarising the key Court of Appeal and Upper Tribunal decisions affecting collective enfranchisement



# Questions?

The Leasehold Advisory Service

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