

LEASEHOLD TERMS EXPLAINED

Confused by jargon? If so, here is SLC Solicitor's A-Z (less a few letters) of legal terms

LEASEHOLD JARGON A-Z

A ASSIGNMENT

Another word for the sale or transfer of a lease. Often assignments require the consent of the RMC/landlord before they can go ahead.

B BREACH

Used in the sense of a failure to comply with an obligation in a lease or document. Breach has repercussions as it will allow the RMC/landlord to take action to remedy. The most common breach is failure to pay rent or service charge in lease.

C COVENANT

A promise or an obligation to either perform an action (positive covenant) or desist from performance of an action (restrictive covenant). Usually found in leases and deeds. These obligations are on the part of the landlord and also the tenant. If broken (breach – see above) then there are legal repercussions.

D DEMAND FOR PAYMENT

In order to secure payment of rents or service charges under leases then a written demand for payment must be sent to each tenant; it must be compliant with statute and include specific information such as landlord's address for service in England and Wales AND have prescribed schedules of tenants' rights and obligations attached. If not accurate in these respects then the demand is not valid and the tenant is not obliged to pay until it receives a valid demand.

E ESTATE CHARGE

Akin to a service charge but applies to freehold houses (as opposed to flats) on an estate where there are common amenities to be maintained such as private roads, landscaped areas etc.

F FORFEITURE

The RMC/landlord's ultimate sanction for breach of a tenant's covenant i.e. the right to re-enter and repossess the property and bring lease to end. Threat of this will often prompt payment of arrears of service charge and ground rent.

G GROUND RENT

An annual rent payable by a tenant of a long lease (a lease with a term greater than 21 years) to the landlord. Can be a nominal amount but most modern leases contain ground rents of a few hundred pounds which are increased every 20 or so years (usually doubling in amount). Failure to pay can trigger forfeiture proceedings.

H HEARING [IN LVT]

The Leasehold Valuation Tribunal is the venue for disputes about residential service charges – an alternative to the county court – a low cost and relatively informal method of resolving service charge issues. Hearings at LVT will occur if disputes cannot be resolved. The LVT has jurisdiction to hear disputes on liability to pay and the 'reasonableness' of service charges.

I INTERIM PAYMENTS OF SERVICE CHARGE

RMCs/landlords can prepare budgets for the year ahead based on anticipated costs of expenditure and ask tenants to pay interim sums on account of service charge. At financial year end then the accounts can be prepared of actual expenditure and balancing payments can then be demanded from the tenants if the interim payments were lower than actual costs incurred. If higher, then any overpayments by tenants are usually 'rolled over' to the tenants' credit in the following year's accounts.

J JOINT AND SEVERALLY LIABLE

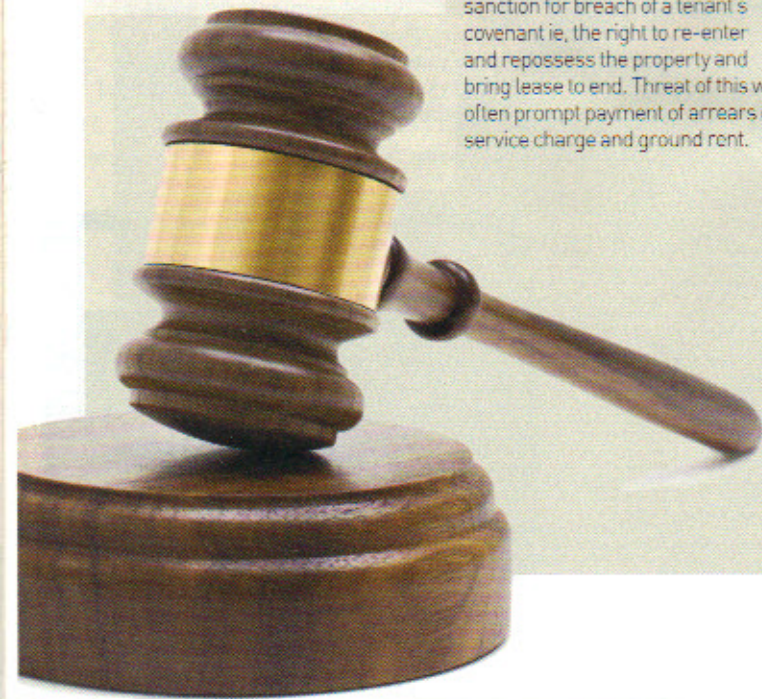
If one flat is owned by more than one individual, those individuals are liable jointly for all payments due under the lease – but also each one is individually liable for the collective amount. Say, for example, if one of them moved out and was untraceable – the whole amount of the sum demanded is due from the remaining tenant.

L LEASEHOLDER/LESSEE

Other names for a tenant of a lease.

M MORTGAGE LENDER [TENANTS]

If the tenant is in arrears with service charge and/or ground rent – very often the mortgage lender will pay those if notified of the arrears and advised that forfeiture proceedings will be commenced.





N NOTICE OF INTENTION

RMC landlords must give Notice of Intention to all tenants before carrying out major works [also known as 'qualifying works'] which will cost each tenant more than £250 – this is the first requirement of the consultation procedures required by statute. If the complete consultation procedure is not strictly adhered to then despite the actual cost of the works carried out the tenants will each only be liable for £250.

R RIGHT TO MANAGE

Tenants can band together and collectively acquire a right to perform most management functions. There are stringent conditions to be satisfied before RTM can be acquired and an exacting statutory process to be adhered to but if the tenants are successful then they will perform management services. The RMC/landlord is left with only the right to forfeit as the tenants cannot acquire that right.

U UNDERLETTING

Alternatively known as subletting, this is where a tenant grants an underlease/sublease of the flat to a third party. Most leases impose an obligation on the tenant to seek RMC'S/landlord's consent before granting such an underlease and to let the landlord have details of the undertenant. This is more common since the spate of 'buy to let' a few years ago.

P PRE-ACTION PROTOCOL

A set of rules and guidance which must be observed before claims are issued at court or LVT – although strictly speaking there is no specific protocol for service charge disputes. However, the court will expect parties to act reasonably in exchanging information and documents relevant to the claim and generally to avoid the necessity for proceedings to be started at all.

S STATUTORY TRUST

All service charge monies must be held on the statutory trust imposed by S42 of the Landlord and Tenant Act 1987. The service charge funds must be held in a designated account which is to safeguard against bad accounting practices and insolvency of RMC/landlord.

V VARIATION OF LEASE

Sometimes if the terms of leases are unworkable then they may be varied so that the terms are adjusted to suit the parties. The variation must be with the consent of both landlord and tenant and ought to be contained in a deed. There is also a right to apply to the LVT for variation of specific provisions in leases if they are completely unworkable.

Q QUALIFYING LONG TERM AGREEMENT

A 'QLTA' is an agreement entered into by the landlord for a term of more than 12 months. As such the landlord must give tenants Notice of Intention [see N above] before entering into a QLTA and must observe the consultation procedure strictly. Failure to do so will mean that reimbursement for any works carried out as a result of the QLTA will be limited to £100 per tenant – irrespective of the actual cost. RMCs should exercise caution before appointing managing agents for contracts of more than 12 months unless they have carried out the consultation procedure.

T TENANT

Another word for 'lessee' or 'leaseholder'.

W WAIVER OF RIGHT TO FORFEIT

If tenants are in arrears of service charge or ground rent and the RMC/landlord wants to exercise its right to forfeit it is vital that no payments are accepted from the tenant or other steps taken to infer any continuation of the lease as this may waive [or prevent] the right to forfeit.



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SLC solicitors is an award-winning commercial law firm that works in partnership with its clients within the litigation, debt recovery and property management sectors. We offer a wide range of practical and wide-ranging legal support on a cross-section of leasehold and management issues such as debt recovery in relation to arrears of service charges and ground rents (no recovery no fee and no upfront charges), nuisance, leasehold enfranchisement, right to manage incorporations, lease extensions and variations and licences for alterations. We can also supply RMC directors with guidance notes and e-bulletins that cover wide-ranging topics relating to property management, health and safety, insurance, credit control and many other topics. We provide our services nationwide and regularly conduct training seminars and surgeries at our clients' premises all around the country so that our clients can easily gauge our people and our expertise in the areas in which we offer our niche services.

For more information
tel 0845 1700 700
Email: info@slcsolicitors.com
www.slcsolicitors.com



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