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## **Buying, Selling and Losing a Leasehold Flat**

## Section 2

# Buying, Selling and Managing a Leasehold Flat

### Buying a Leasehold flat and becoming a Leaseholder

There are two ways in which you can buy the Lease of a council flat

- Under the Right to Buy in accordance with the Housing Act 1985, if you are a council tenant and you are already living in the flat (subject to certain conditions);
- By purchasing the Lease from the current leaseholder (if the flat has previously been bought under the Right to Buy and is being sold again).

In both cases you should get a solicitor to act for you, or at least someone who is qualified to protect your interests in buying the Lease. It is important to know what charges are due on the property in order to ensure they are dealt with before the sale. Unless you are the first Leaseholder, you may have to pay some charges incurred by the previous Leaseholder, if they are not cleared before the sale.

If you purchase the Lease from the previous Leaseholder you must tell us straight away. As Landlord we have the right to know who is responsible for the flat.

You have the right to mortgage your flat to a mortgage lender.

### Principal Right to Buy Regulations affecting the purchase of a flat

If you are a Council Tenant and are exercising the Right to Buy on a flat, you are entitled to receive a discount on its value, which will be based upon the number of years that you have been the Tenant of a Council or other selected public sector bodies.

For the first three or five years after you buy the flat (dependant upon the purchase date) the amount of the discount is recorded as a Legal Charge. If within that period, you re-sell the flat, the discount or a proportion of it must be repaid to the Council. You should seek advice from your solicitor if you are considering selling your flat within the first three/five years after you have bought it under the Right to Buy.

Further information on the Right to Buy can be found in a booklet called “Your Right to Buy Your Home” available from South Essex Homes, which is sent out when a request for an application form for the Right to Buy is made.

### Selling your Lease or leaving it in your Will

#### Selling your flat

You have the right to sell your Lease to anyone you want, or alternatively, leave it to someone in your Will or give it as a gift, but you should get a solicitor to help you, to make sure everything is done legally. When you sell your flat, or ownership passes to another person, you must tell us in writing within 21 days of the sale, and the transaction should be properly carried out.

Your solicitor should check details of all ground rent, service charges and insurance policies, so that these can be taken into account when the transfer is completed. We charge fees to register a transfer

and to record the interest of the bank or building society that has granted a mortgage against a lease; these are £10 each as at 1<sup>st</sup> April 2004, but are subject to review.

If you sell your Lease or leave it to someone, you must make sure that it is all done legally to protect your interests and the interests of the person to whom you are selling or leaving the lease.

**Unless there is a proper legal document to show that someone else is now the Leaseholder, you will still be liable in law for any charges on the property.**

If you die, and you have not left the Lease to anyone in your Will, your executors will have to decide what to do with your Lease. Any service charges still unpaid will be charged against your estate. If you have anyone to whom you would wish to leave your flat, such as your partner or children, you should seriously consider making provision in your Will.

If you sell your property, the Council would ask you to let us have a forwarding address in case we need to contact you – we may want to give you a refund for overpaid Service Charges (See Section 5 Services Charges for more information).

## **Losing your home by forfeiture or repossession**

You should be aware that there are some circumstances where the Council or your mortgage lender could apply to the courts for possession of your home.

### **Forfeiture**

Forfeiture is where the Council applies to the Court to end your Lease because you have broken the Lease conditions. This could happen if

- You do not pay your service charges and the amount concerned is more than £350 or a smaller amount that has been outstanding for more than 3 years;
- You cause nuisance and/or harassment to your neighbours.

If the Court decides that you have committed a serious breach of the terms of your Lease, it may terminate the Lease and grant us possession of your flat. In such a case, you would lose your home and would not normally be entitled to any payment or compensation. Also you could be responsible for reimbursing all the Council's expenses, legal costs and surveyor's fees involved in the action, regardless of whether the Lease is terminated.

Forfeiture is a severe remedy and, as a responsible landlord, we only use it where it is necessary to protect the interests of the Council, its tenants and other leaseholders. In the case of service charges, we will always try to help people who have genuine financial problems. Before applying for forfeiture for unpaid service charges, we would have to satisfy a Leasehold Valuation Tribunal that the charges were reasonable and the leaseholder had made no attempt to pay them.

### **Repossession by a mortgage lender**

If you have taken out a mortgage to buy your lease, your mortgage lender has a 'legal charge' on your home. This means they can apply to the courts for repossession if you do not pay your mortgage. If the court grants them possession, they have the right to evict you and sell your lease and take what you owe them out of the proceeds. They must give you any proceeds left over, except where someone else, such as the Council as your landlord, also has a legal charge on the property for money which is owed to them.

If you have problems paying your mortgage or service charges, do ask someone for help. The Citizens Advice Bureau and the Council have trained Money Advice Counsellors. Do not leave it until you are about to be evicted. We will always try to make an arrangement over service charges, and mortgage lenders will always discuss terms for making mortgage payments.

## **Buying the freehold of your block**

If at least two-thirds of the residents in your block are leaseholders, you can apply jointly to buy the freehold of your block and manage it yourselves. This is called 'enfranchisement'. If you and your neighbours qualify under the enfranchisement rules, we cannot refuse to sell you the freehold.

- You, as a group, would effectively become the owners of the building and the ground on which it stands, and would need to form a management committee for your block.
- As the Council would no longer be your landlord, you would all be jointly responsible for the maintenance and management of the block.
- You would however, no longer be able to call on South Essex Homes if you had problems with your neighbours.

If the Council still had any rented properties in the block, we would be represented on your management committee. You would charge us our share of management and maintenance costs in the same way as we now charge you Service Charges.

## **Sub-letting your home**

### ***Lodgers and sub-tenants***

You have a right to take in lodgers or rent your flat to anyone you want. You do not have to ask our permission, but you must tell us and your mortgage company. It is important that, when taking in lodgers, you do not become overcrowded. A lodger is someone who shares your home with you, as if they were a member of your family. A sub-tenant is someone who rents your flat when you are not living there and you must tell your mortgage lender if you wish to sub-let, as some mortgage companies do not permit this. Lodgers and sub-tenants do not have the same rights as you and, in the event of your flat being repossessed by your mortgage lender or landlord; they would be evicted.

You should be aware, however, that if you let someone else rent all or part of your home, you become their landlord and you will be creating a tenancy, which could be difficult for you to end. You could have considerable difficulty making them leave if you wanted your flat back, you could also have problems selling your lease if you have a 'sitting tenant'. You are also responsible for ensuring that the sub-tenant complies with all obligations laid out in the terms of your lease. It is important that you have a clear and concise written agreement in place when you sub-let, in order to give you appropriate recourse through the courts.

To comply with the provisions of the Council's insurance policy, any sub-letting must be in the form of a legally binding shorthold tenancy agreement. South Essex Homes should be notified of this and be made aware of your address, as you would still be the person to whom all correspondence is sent regarding the flat.

**Failure to provide proof of a tenancy agreement could increase the Insurance Premium you have to pay by as much as 35%.**

Before you agree to rent your flat to someone else, you should look into it thoroughly. Before entering into any agreement with a third party, please contact the Council's Housing Advice Team or the Citizens Advice Bureau as to what you should do, to ensure that you are legally protected.

