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URBAN OWNERS

We are a managing agent specialising in leaseholder led properties, where we put the leaseholders in control. We manage approx. 4,000 units across the country ranging from 3 flat Victorian conversions to an estate of just under 500 units. We also have a Right To Manage practice and currently process between 5 & 6 RTM applications a month.

THE GOOD

Right To Manage - Acquisition Process & Constitution

We personally find it works well and seems to be robust in dealing with issues.

The Tribunal

Factually driven on the whole. Balance of process and cost is good - though Barristers should be forbidden.

THE BAD

Right To Manage - Qualifying Buildings

Leaseholders being deprived/hindered of the ability to acquire: Lack of Multi-block RTM, 25% rule for non-residential. Lack of Estate RTM.

Could we allow multi block if on the same freehold title(a start), Could we increase the % of non-residential to 33%, could we include Estates under the same freehold title.

Hidden Sales Commissions - especially insurance

Disclosure is key - CMA study recommended disclosure of such on the annual service charge accounts.

Could we look to include in the next version of TECH/03 | RICS Management guide.(though no reporting of funds as corporate funds)

THE UGLY

Right To Manage - Repeated Challenges on the same issue

Freeholders' Solicitors wasting money and effort of Tribunal on the same challenges: single signature, definition of premises, reasonable costs

Potentially have a list of precedents maintained by the Tribunal such that if a freeholder uses such a reason in a counter claim and takes it to tribunal, the freeholder will be penalised with extra costs.

Older Leases - Lack of/inconsistent key clauses

Older leases especially hinder effective management especially as properties move away from freeholder control. E.g. Lack of Reserve Funds, lack of collection in advance, lack of recovery of costs for chasing late payers.

Potentially have new legislation that allows 'override' clauses to be defined in statutory instruments, that override clauses in a lease… slowly move lease management to a set structure like commonhold by incrementally adding to the 'override' clauses in the statutory instrument.

Meeting: LKP / DGLA Meeting

Date: 3, May 2016

Leasehold Points

Failings

1. Leases continue to be written with clauses empowering freehold landlords with the ability to make decisions that financially reward the Freeholder but are paid for by leaseholders through a service without the leaseholders having the ability to contest those charges

2. Freeholders are able to earn insurance commissions on the placing of insurance without providing any services at all (e.g. work related to underwriting information, premium collection or claims management).

3. No qualification or accreditation is required to practice as a managing agents (who hold - sometimes significant amounts of- client monies in trust). This is an uncompetitive environment for those managing agents who pay for the control infrastructure to protect their clients' interests – versus unregulated managing agents who do not abide by any professional code of practice.

Working

1. The Right to Manage facility requires a simple majority without cause, however it is rarely successful in large blocks where a majority vote cannot be easily achieved. Quite often because too many of them are buy to let or overseas owners.

2. ARMA Q's new standards are to some extent, publicising the need for professional conduct in the leasehold market.

HOME FROM HOME

PROPERTY MANAGEMENT

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Our company has been providing block management for over 30 years. We manage blocks across the south of England from Cardiff to Essex. Approximately 2,500.00 units in total. We work at the lower end of the private residential market where leaseholders are often least able to represent their own interests.

The majority of sites which come to us are RMC sites wanting to escape their developer or appointed agent, or those sites with no RMC wanting to form an RTM where they are also dissatisfied with their previous freeholders appointed agent.

We often find the leaseholders are faced with poorly drafted leases which on occasions may not even allow for the collection of 100% of the service charge. Very often these sites have also been run down with the landlords appointed managing agent not dealing properly with building, plant or warranty issues, not accumulating adequate reserve funds and not allowing the leaseholders to become involved in the management and not providing them with adequate accounts.

As a result when leaseholders take over RTM's and RMC they often face shortfalls in the monies needed to run the site and take on the responsibility of bringing the site back to an acceptable standard.

RMC's

It seems clear to us over the last 30 years that many leases are designed for no other reason than to benefit the developer and freeholder working with a complicit agent. The lack of regulation seems to have allowed many aspects of the lease to become systematically oriented to expanding the profits through increased ground rents, limiting, and more importantly delaying, the rights to take over the RMC.

Our most difficult experience has involved needing help from both my local MP's Justin Tomlinson and Robert Buckland and the intervention of the Housing Secretary and a number of others. The developer, Bovis, supported by the managing agent, Countrywide, were using long term commitments in Section 106 agreements to prevent transfer of control of the RMC to the leaseholders years after the last flat had been sold. Some of the 106 Agreements could have run for 20 years.

Justin Tomlinson eventually organised a meeting with Bovis directors, where they agreed to sack the present agent and install another (Gateway) who again delayed transfer of the RMC. In the meantime Bovis went on to sell some of those freeholds to Gateway. While some of the sites have now rested control of the RMC and taken on our firm a number of other sites still have no leaseholder control and now sit with a freeholder who is also the managing agent.

RTM's

The second main source of customers who come to us are lessees wanting to take RTM on those sites where there is no RMC in the lease. We often find this option is thwarted because the buildings are now being designed to include just over 25% commercial element.

We do not understand the purpose of the legislation as drafted. No matter what percentage the commercial element constitutes the RTM has no right to take it over. Why does it matter what percentage the commercial element represents when the RTM is only entitled to run the residential element anyway? We fail to follow the logic of the Triplerose case.

For large sites it is entirely illogical and impractical to have an RTM Company for every block and for them to still have no right to manage the "estate".

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RTM legislation now seems to sit in direct conflict with the legislation which applies to enfranchisement or other types of leaseholder control under various Acts.

The other major failing of RTM legislation is the prescriptive form of the application which gives so many loopholes to freeholders to resist on the most flimsy of grounds. Tiny mistakes by a solicitor can invalidate an application despite clear evidence of an overwhelming desire by the majority of leaseholders to go ahead.

We seem to have spawned an industry of landlord's lawyers seeking to resist RTM on the most tenuis grounds. This adds costs delays and discourages leaseholders from taking up what parliament intended was a no fault right. With the way these rules work it is perhaps no surprise there are so few RTM sites. We suspect in many cases landlords put up spurious opposition to an RTM which is dropped before a hearing just to add to the leaseholders costs and perhaps put them off the process.

Industry Regulation

To date we have refused to join ARMA as we do not accept they have had the desire or ability to self-regulate the sector. We are also of the view that ARMA is mostly funded by the very large agents who make their money from working very closely with the developers often to the detriment of the leaseholders.

The sector has long known it has major problems with void charges not being paid by developers, of warranty costs being passed to service charge holders, of suppressed service charge levels being set at the initial sale, of developers pressurising purchasers with no refundable deposits way before site of a lease and of developers recommended solicitors entirely failing to advise their clients of the potentially onerous terms in the lease. The sector seems to have no desire to address these problems.

As a small company we regularly see our larger competitors make offers to buy us out and we regularly see them buy out the competition. These purchased companies may keep their original trading name to give the illusion of customer choice. Because leasehold law is so complex and provides so many opportunities to impose fees and costs on leaseholders which it is simply not economic to challenge the incentive to remain an honest agent gets less with each passing year.

Our experience of working with leaseholders is generally a very positive one. We do not support the sector view that they are the problem or that it's all about them not knowing enough. Too many managing agents actively work to ensure their leaseholders do not know enough. Perhaps this is because if they did, the leaseholders might become more aware of the questionable relationship between many managing agents and developers and freeholders.

The introduction in recent years of large ground rents now seems to ensure better profits from freehold reversion sales and also limits any potential of leaseholder enfranchisement due to cost. Under such circumstances the developer seems to create a virtuous circle for predator freehold buyers looking to control leasehold sites from their additional income potentials with no chance of the leaseholders taking control especially if the site happens to have 26% commercial space.

We would argue there is an urgent need to evaluate the wide range of leasehold legislation and limit the many incentives that make unfair profits from the leasehold sector.

Cherry Jones

hmlandertons
Property & Estate Management

Meeting: LKP / DGLA Meeting

Date: 5th May 2016

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1. Complexity of leasehold law generally and combined with lease structures which not designed for the average owners to understand the conveyance process needs to increase leasehold knowledge of each purchaser.
2. No concept of lease being a wasting asset generally and no grasp that 80 years remaining on the term is the trigger date in the higher calculation purposes for lease extensions.
3. When needed it is the changes of old lease terms generally that is problematic through the FTT or conventionally with deeds of variation with high combined costs and achievement of any simple agreement with all parties.
4. Property managers who have no regulation control, with this who do not have compliance in their processes and that will also include some self-managed groups. There is also a clear conflict of interest with differing agendas for remote property owners who are also managing.
5. Three party leases where there is no clear and simple removal of manager clause.
6. No law similar to the leasehold protection for amenity service change management for freehold house on sites even where there are shared services to the leasehold laws (however flawed).
7. Data on handover of accounting information and moneys held especially where RTM companies are involved in the take over
8. Cost level and the time taken for section 20 processes especially in blocks with often older difficult leases.