

Feudalism revisited England's archaic leasehold laws get an overhaul

[economist.com/britain/2018/10/18/englands-archaic-leasehold-laws-get-an-overhaul](https://www.economist.com/britain/2018/10/18/englands-archaic-leasehold-laws-get-an-overhaul)

Rules that helped aristocrats fund the Crusades have made tenants' lives a misery



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ANIS KASMANI is trying to buy the right to own a home he already bought. This odd situation has come about because Mr Kasmani bought his four-bedroom house in London's suburbs on a 999-year lease. England is one of the few countries that still allows property owners, called freeholders, to extend "leaseholders" residential tenures that can last a millennium. The practice is feudal, but still applies to nearly one in five English properties. Now the quirks of a scheme that helped aristocrats to finance the Crusades have got modern leaseholders up in arms, and ministers promising reforms.

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Leaseholders buy the right to live in a property for a set period, usually several decades or more. They face ongoing annual charges for upkeep and "ground rent". The latter has historically been a small "peppercorn" fee, which once functioned as "a signal that the ultimate claim to the land still lies with the duke," says Joshua Getzler of Oxford University.

The government now says the leasehold system has enabled "unscrupulous practices". The average ground rent is more than £300 (\$395) a year. Some developers have sold homes with rents that double each decade. Mr Kasmani says he was told his home's long lease meant it was a "virtual freehold" and that it might cost a few thousand pounds to convert to freehold later. He has since learned that to buy the freehold—which would let him make

alterations to the house without permission, and perhaps make it easier to sell—he would have to pay the solicitor’s and surveyor’s fees of his landlord, which could bring the total to £15,000.

Other leaseholders have found that the freehold on their home has been sold to an offshore investment firm that ups the asking price. Valuing a freehold is tricky, involving thought experiments that delve into parallel universes and hypothetical futures. Soon-to-expire leases are subject to “marriage value” calculations. A leasehold and freehold are worth more when they are “married”, or held by one person. The calculation requires consideration of the property’s value in a world in which a 1993 act that allowed leaseholders to force freeholders to sell never existed. Other buyers must calculate the “hope value”, or how much they might receive if their neighbours buy their freeholds in future.

This week James Brokenshire, the housing secretary, promised to end the leasehold “nightmare”. He plans to cap new ground rents at £10 a year, in line with their historical “peppercorn” role. He said the majority of new-build houses would be sold as freehold. But this does not cover flats, which make up more than two-thirds of England’s leasehold properties. And the £10 ground-rent cap differs from the £0 that the government previously suggested. Ground rents—even if small—matter because they can be used to value a freehold.

Many therefore want the government to go further. A parliamentary inquiry is considering whether the state should intervene on behalf of leaseholders with onerous contracts. The Law Commission, which advises Parliament, last month suggested simplifying the valuation process, ending the requirement that leaseholders live in their homes for two years before they can buy their freeholds, and re-evaluating the obligation on leaseholders to pay their landlord’s legal fees. “Sticking plasters have been put over an area of law... eventually somebody looks at it and realises those sticking plasters are falling off and there’s now a need to do something fundamental,” says Nicholas Hopkins of the Law Commission.

Some would prefer to blow up the system altogether. Sebastian O’Kelly, who campaigns against leaseholds, has called for the adoption of an American or Australian model, in which freehold is the prevailing form of ownership for houses and flats. The government says it wants more people to buy their home. That would be easier if buyers could reckon with market prices, not feudal ones.