
ARMA
ADVICE NOTE
FREEHOLD HOUSES
ON PRIVATE ESTATES
A guide for freehold homeowners paying service charges
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Note:
As the leading trade body for residential leasehold management, ARMA is also an important resource for leaseholders. Our Advice Notes cover a range of topics on the leasehold system to help leaseholders understand their rights and responsibilities and ultimately get the most out of living in their flat.

SUMMARY

Some private estates have both freehold houses and blocks of leasehold flats. All homeowners will be expected to pay for the upkeep of the communal areas on the estate.

The communal areas may simply be private roads; but they can also include landscaped gardens, electric gates, street lighting, refuse areas, sewage pumps and TV aerial systems.

This Advice Note looks at the rights of **freeholders** who pay service charges and rentcharges on private estates. Unfortunately, they do not share the same protections as leaseholders.

PAYING FOR THE UPKEEP OF COMMUNAL AREAS

Freeholders buy their house with a legal document called a deed of transfer. This will contain a clause requiring them to pay a contribution towards the cost of maintaining the communal areas.

A well written deed will also set out exactly what items the freeholder must pay for; what proportion of the total costs they should pay; the dates the payments should be made on; and whether annual statements of account will be provided.

If you don't have a copy of your deed of transfer to check on your obligation to pay charges, you can get a copy from the Land Registry for a small fee.

RESIDENTS' MANAGEMENT COMPANIES

The usual arrangement on private estates is for a small company to be set up that owns the communal areas. Each freeholder (and leaseholder on mixed estates) becomes a member of that company.

These companies are called Residents' Management Companies (RMCs) and they have the benefit of giving freeholders a say on how the communal areas are kept. But the freeholders will need to volunteer to become company directors.

Some private estates have companies which own and maintain the communal areas, but aren't related in any way to the freehold homeowners.

MANAGING AGENTS

It's common for companies that own the communal areas of private estates (including RMCs) to employ managing agents to carry out the maintenance and other services.

The managing agent will sign a contract with and be accountable to the company's directors; it has no legal contract with the individual freeholders.

The agent will normally prepare a budget to be approved by the directors; send out invoices; organise contracts (gardening for example); deal with repairs; and prepare accounts for the directors at the end of each financial year.

RESTRICTIONS ON FREEHOLDERS

A freeholder's home may be their castle. But on some estates, the deeds may impose certain restrictions on what they can and can't do to their home. Here are some of the most common:

External decorations

Some estates require paintwork to follow a certain colour scheme. This may have been a requirement of the original planning permission.

External alterations

You may have to seek permission from the management company before you make any alterations to the external appearance of your home. Again, such clauses are often required as part of the original planning permission.

TV aerials and satellite dishes

Adding an external aerial or satellite would be viewed as an external alteration, and once again you may be required to seek permission from the management company.

Parking

Some roads on private estates are quite narrow and aren't built to the same standard as public highways. In these cases, parking in the road is often banned under the deeds of the houses.

SERVICE CHARGES, ESTATE CHARGES AND MAINTENANCE CHARGES

Confusingly, lawyers and managing agents use different names for the charges paid by freeholders. The most common term is “service charge”; the same as payments made by leaseholders of flats.

Although freeholders may be paying for exactly the same services as leaseholders, there’s an important legal distinction between the two payments. The Government has passed a number of Acts of Parliament giving rights and protection to leasehold flat owners, which unfortunately don’t apply to freeholders.

RENTCHARGES

Rentcharges provide a regular income for landowners who release thier land for development. Sometimes the land is released without a capital sum, so the rentcharge becomes the only payment.

Once imposed, a rentcharge continues to bind the land even when it's later divided and sold off in plots. In these cases, one householder can be responsible for paying the whole rent. That person is then left to collect the appropriate portion from the other householders whose land is also subject to the rentcharge.

There are two main types of rentcharge: an individual rentcharge (which could be redeemed); and an estate rentcharge (which can't be redeemed). Rentcharges can also be apportioned where one householder is liable to pay the whole rent for several properties.

An estate rentcharge is created to either make a homeowner's personal covenants enforceable; or to secure payment for the provision of services, repairs, insurance or other benefits to the land.

Estate rentcharges are only legal if they're accompanied by covenants in the transfer which set out the obligations to provide the services, repairs, insurance etc.

There's no implied test of reasonableness for rentcharges, like there is for service charges paid by leaseholders. Nor do freeholders have the right to go to a Tribunal to dispute their rentcharges.

Redemption of individual rentcharges

If you're a freehold homeowner paying a rentcharge, which is not an estate rentcharge, you may be able to redeem it by paying a single lump sum under the provisions of the Rentcharges Act 1977.

You should check up on your position by vising the Department for Communities and Local Government's website: www.gov.uk

ANNUAL STATEMENTS OF ACCOUNT

Depending on your deeds and the approach of your management company, you may be able to expect an annual statement of account for the rentcharges you pay.

Also, if you're a member or shareholder of an RMC, the annual company accounts will often contain a summary of the service charges paid and expenditure. As a member of the company, the annual accounts should be sent to you.

WHAT TO DO IF YOU'RE UNHAPPY WITH THE ESTATE RENTCHARGES OR THE SERVICES PROVIDED

You should complain to the managing agent in the first instance, if one's been appointed. If the agent is a member of ARMA you will have the right to complain to an independent ombudsman — all ARMA members must be signed up to an independent ombudsman scheme.

But remember that the managing agent reports to, and takes instructions from, the directors of the management company. If the agent is following lawful instructions then they might not be at fault.

If you're unhappy with what an RMC is doing, then you should make a complaint to the directors in the first instance. If you're still not happy, you should seek to remove the directors or raise a motion to change matters at the company's annual general meeting, if you're a member.

If you're unhappy with a management company that's not made up of the residents, then you and your neighbours can collectively approach the company and ask them to sell you the freehold of the communal areas.

This will allow you to take over responsibility, but there's no right in law for freeholders to do this; it's a matter of negotiation between both parties.

TRIBUNALS — NOT AN OPTION

Leaseholders can challenge their service charges by taking the matter to a Tribunal. Tribunals have the power to take an independent view and decide what constitutes a reasonable charge.

Unfortunately this course of action is not open to freeholders. Even though you may be asked to pay a service charge, and even pay into the same pool as the leaseholders on your estate, the same rights and protections from unreasonable service charges don't apply to freeholders.

Estate management schemes

There is one important right that freeholders can exercise, however.

The 1967 Leasehold Reform Act and the 1993 Leasehold Reform, Housing and Urban Development Act made it possible for leaseholders to set up estate management schemes; this involves them buying the freehold of their blocks of flats or houses in areas which are predominantly leasehold.

When this happens, freehold houses on the same development will end up paying service charges to the estate management scheme. And under S159(2) of the Commonhold and Leasehold Reform Act 2002, such service charges are subject to a test of reasonableness, and can be challenged at a Tribunal. So the freeholders will share this right with the leaseholders.

Estate management schemes aren't that common and mostly exist in London where they are made up of properties owned by the large landed estates. The 1996 Housing Act limited the formation of estate management schemes to two years.

Health and safety and insurance

Communal areas of freehold estates (such as private roadways) must comply with health and safety law. So a general risk assessment should be carried out. If there's just a private road and footpaths, then this doesn't have to be a complex exercise, or require professional advice. But the types of risks that may exist need to be covered and should be recorded.

The management company of the communal parts needs to take out third party liability insurance. This will cover claims for damage from users of the roads, footpaths and gardens etc. Freehold houses will not be included under this insurance.

FINAL WORD

If you're a freehold homeowner living on a private estate, you may be expected to pay service charges for the upkeep of the communal areas. Even though you might share the estate with leaseholders, you unfortunately don't share the same rights when it comes to what you pay. But it's important to know where you stand and what options are open to you in case you run into problems in the future.

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