

leaseholder

DEACON
the blocks of flats specialists

welcome...

to Leaseholder's first 2006 issue. This year we expect no surprises from the Government. The 2002 Commonhold and Leasehold Reform Act is all but implemented and we can now look forward to leaseholders reaping the benefits.

Although our popular legal updates will remain regular feature of Leaseholder, our aim for 2006 is to focus upon the practical issues of managing your building and ensuring that you and your neighbours can get the maximum return from your investment in your flats.

price conscious

We live in an age where price is everything, an age where others may offer you what seems like a better deal. Deacon will always shop around for you using our insurer panel to provide you with the best quote available, let us do all the hard work for you!

We differ from other intermediaries because we take the time to recommend which quote is best value for money for you. We work with our panel of insurers to ensure you get the most comprehensive cover for your specific needs.

Some insurers may provide you with reduced premiums, however, they can rarely maintain low prices for long and premiums may increase substantially 12 months later. We at Deacon do not claim to provide the cheapest insurance but we can offer competitive prices year after year, providing you with excellent all round levels of customer service.

With an in house claims team we have delegated authority to pay the claims for the majority of our policies which will reduce delays normally incurred by submitting to the insurer. We are not a call centre and therefore deal directly with our customers this means we are usually able to be more flexible in our approach.

So, how much extra will all this cost you? ...nothing. Our income will be the same as competitors – but we will share them with you by providing superior service levels.

For more information call 08000 92 93 94 or log on to our website www.deacon.co.uk

enforcing covenants

Regular Leaseholder contributor Brian Jones offers advice on the thorny subject of dealing with neighbours who never seem to have read their lease!

With spring on the way, a management company director's thoughts turn lightly to service charge accounts. As the evenings get lighter, distractions from looking at the arrears can come from the noisy parties in the ground floor flat. All in all, yuletide goodwill for fellow residents has long since evaporated and the principal business for the next board meeting is: how to bring everyone together and agree common aims.

How to enforce leaseholders' covenants is a big subject – I could write a book about it. In fact, I already have. *Enforcing Covenants* can be obtained from www.EGBooks.co.uk (£28 + £3 p&p) or call 44 (0) 1444 445 335 to order a copy.

There are a few brief tips and reminders, however, which can help directors' without them having to study the subject in depth:

- The lease is a contract, and a contract can only be enforced on the basis of what it says. A lease is not always easy to understand, so check that it says what you think it should.
- The traditional way to enforce covenants in a lease is to threaten to forfeit it. Forfeiture still exists but it is now much more complicated and expensive, so it must be a last resort. In extreme cases however, it may be the only answer.
- Obtaining default judgments for arrears can be relatively easy, but the most important point is to bring in the cash. Always think creatively about the most suitable enforcement option in your particular case.

- Nuisance or repair cases (or any of the myriad types of enforcement action which might arise in a long leasehold situation) are never easy or straightforward. Ensure that evidence is available, which will stand up in court, and avoid becoming embroiled in what is really a dispute between neighbours.
- It is becoming increasingly difficult to recover legal costs in the county court or the LVT (Leasehold Valuation Tribunal). Keep costs to a minimum by self-help or talk to your managing agents about the services they can provide.
- In some cases, legal advice will be essential. Select the best lawyer for the specific task. Not all solicitors' firms have specialist skills in leasehold matters.



Most importantly, remember that leaseholders are neighbours (in one sense or another) and that relationships can be badly soured by litigation. Keep personalities and "points of principle" out of it as far as possible. A quick, clean thrust is the easiest to mend (or so my doctor tells me).

Brian Jones is a well known lawyer in the field of residential property management and has specialised in leasehold law since 1988. Before setting up in practice on his own account in January 2003, Brian was head of the landlord and tenant litigation unit at Shoosmiths solicitors.

In 2003 he was elected as a Governor of Institute of Residential Property Management and he sits their Syllabus and Examinations working group.

ask us for a quote and win a case of wine...

If you would like to win a case of wine register with us for a quote, for any renewal date during 2006, and we'll enter you in our monthly prize draw. (Please make sure you register with us by 31 March or at least 6 weeks before your renewal date).

Just complete the quote form included with this newsletter and return to Deacon or call 08000 92 93 94 and speak to either David Fitzgerald or Sue Derbyshire.

Congratulations to the winners from the Autumn/Winter issue:

Ms Debbie Neal, 32 Clifton Road Freehold Limited

Mrs Reader, Dalwood Court Limited

Mr N T Powell, GroundRapid Property Management Limited

Ms P Elis, Howard Park House Residents Association Limited

Ms Sarah Robinson, United Hurst House Limited



understanding the valuation debate

These days excitement from apartment owners about the newly-won right to buy the freehold of their buildings, is often replaced with dismay, as landlords dig in their heels and present fierce resistance to these compulsory sales.

Homeowners were initially delighted by the new law in 2002, the Commonhold and Leasehold Reform Act. The act stipulated that leaseholders were able to request that landlords sell them the freehold of their building, at an independently-established price, providing a minimum of 50% of flats in the building were in agreement. Many flat owners say this right has become meaningless as large landlords use deep pockets and corporate clout to drag out the process, thus increasing leaseholders' costs and the risk of project failure.

Several chartered surveyors who represent enfranchisers (the flat owners who are wishing to buy their freehold) stated that a recent decision made by the Lands Tribunal spells disaster for leaseholders. In September 2005, a ruling covered five cases in central London, in which leaseholders sought to buy the freehold of a house, block of flats or a lease extension.

The judge concluded that the enfranchisers had been mistaken in assuming that the discount rate, (a key parameter for calculating freehold value) was written in stone. The discount rate, which is the equivalent of a compound interest rate, can be used to calculate two key components of the freehold value. The lower the discount rate used, the higher the freehold value.

For years on the prestigious Cadogan Estate, a discount rate of 6% had been used, so enfranchisers argued that this rate should continue to apply. The Judge stated, however,

that changes in the economy justified a lower discount rate for these specific properties, a 4 1/2 % rate for Cadogan houses and 4 3/4 % for flats. His decision is believed to have added millions of pounds to many landlords' portfolios.

Our message to leaseholders is to become educated about freehold valuations in enfranchisements, the formula for which is set down in law. A main cost element in many enfranchising blocks of flats is the marriage value, which is the expected appreciation in the value of flats once leaseholders buy the freehold. By marrying the leasehold and freehold interests in this way, enfranchisers increase the value of flats since they can now grant themselves 999-year lease extensions. A flat with 70 years on the lease that is valued at £500,000 and that is expected to rise in value to £550,000 with this longer lease has a marriage value of £50,000. By law, enfranchisers must pay half of this, in this case £25,000, to the landlord as part of the freehold cost. Marriage value is only counted regarding participating flats and only those with less than 80 years on the lease.

The discount rate is relevant regarding another key valuation component, the reversion. The reversion is the estimated value today of when the lease expires in the future and full ownership of the flat reverts to the freeholder. For example, for a flat worth £500,000 that has 70 years left on the lease, the discount rate is used to calculate the amount of money which one would need to invest today in order to accumulate £500,000 in 70 years' time.

The discount rate is also applied when calculating a valuation component that concerns the ground rent. Since the landlord is being forced to sell the freehold and will thus be denied ground rent,

enfranchisers must compensate him. A discount rate is applied, in a similar manner as a compound interest rate, to calculate the amount to be paid today that will make up for income stream that the landlord will lose over the number of years that are left in the term of the lease.

It is understandable why some enfranchisers fight to apply a higher discount rate while landlords battle for a lower rate, as differing discount rates can result in enormous variations in the valuation of a building.

Apartment owners should not be discouraged by last September's Lands Tribunal decision, since several of the homes concerned were unusually expensive and not representative of property across the country. Instead, apartment owners should be encouraged by Judge Rich highlighting that enfranchisers and landlords must each justify their valuations, backing up with market evidence, any claim that a property represents a high-risk or low-risk investment and thus accordingly carry a low or high discount rate. Leaseholders can still argue compellingly, for instance, that a poorly-managed block of flats outside central London should carry a discount rate of 9% or higher and thus a lower freehold price tag because of the financial risks involved in taking ownership of such a building. In conclusion, apartment owners must understand the basic valuation issues, do your homework and preferably hire experienced advisors.

Kat Callo, author of this article and the recent book *Making Sense of Leasehold Property*, advises leaseholders on buying their freehold, extending leases and securing the right to manage.

Leaseholder readers can obtain the book for £11.99 by calling the publishers, Lawpack direct on 020 7394 4040. Quote 'Deacon' to gain free postage and packaging!

digital world

Last September, the Government confirmed the 'digital switchover' schedule for the UK. The switch-off of analogue TV transmissions will be phased across the country between 2008 and 2011.

If you do not have or want an expensive integrated reception system in the building, you may be wondering whether the only other option is myriad satellite dishes or badly-run cable to each flat? An alternative is a free shared Sky dish which is on offer to any building with between four and 25 flats, as long as 25% of flats in the building then subscribe to Sky, subject to a minimum of four flats. If you want to stop the satellite dishes sprouting, now may be the time to consider such an option.

The switchover timetable:

2008	Border
2009	West Country, Wales, Granada
2010	Grampian, HTV West, Scottish
2011	Central, Yorkshire, Anglia
2012	Meridian, Carlton/LWT, Tyne Tees, Ulster
2013	Channel Islands

For more information, visit www.digitaltelevision.gov.uk

checking out contractors

Amazing – you have agreement all round to proceed with major works on the building. Now all you must do is find suitable contractors, ensure that their estimates are in line with Section 20 obligations and will not meet with any objections from leaseholders. Leaseholder asked Steve Thorpe, Managing Director of London-based DML Contracting what he would do in your shoes.

Section 20 consultation – a reminder:

Remember that the 'Section 20' provisions of the Commonhold & Leasehold Reform Act requires you to consult residents regarding any works that will cost one or more flat owners more than £250, or service contracts that will cost any one of them over £100.

We advise that you listen to leaseholders' suggestions as to who the best contractors and suppliers are and give them an opportunity to quote for the work.

Is it even worth asking them to quote?

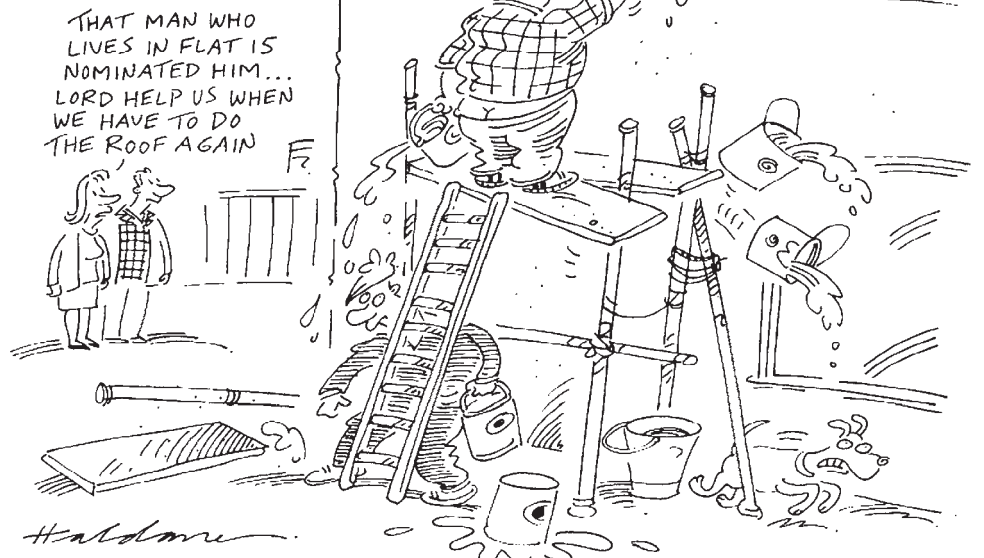
Firstly make basic checks on the company, most of these can be done by referring to their letterhead or by calling the contractor, before you spend hours showing them round the building and briefing the job.

Questions you may want to ask:

- How long has the company been established? Ask to see a copy of the Company registration certificate.
- Do they belong to the Painting and Decorating Association (formerly known as the British Decorators Association)? You'll find that firms of all sizes, from family businesses to the big-name contractors, are members. Check the website for member companies at www.paintingdecoratingassociation.co.uk or phone them on 024 7635 3776.
- If structural work is involved, perhaps ask whether they are one of the 13,000+ members of the Federation of Master Builders? Check the web site at www.fmb.org.uk or call 020 7242 7583.
- Do they offer a recognised insurance backed warranty or guarantee? Request a copy of the certificate.
- For larger jobs, ask if they are accredited by Constructionline, the largest register of qualified construction contractors and consultants in the UK, or Sinclair, the largest privately run registers of quality construction practitioners in the UK. Visit www.constructionline.co.uk and www.exorgroup.co.uk for more information.
- Are they accredited by CHAS (Construction Health and Safety Forum)? This will not necessarily prove that they are a good contractor but it will show they have made a substantial investment in health and safety training, reaching a very high standard.
- Can they supply copies of testimonials and references?
- Do they hold proper insurances? They should have at least £2 million of public liability proof; ask to see a copy of the certificate.

Getting the specification right

For any job large enough to warrant Section 20 Consultation, I would strongly recommend employing a professional agent to act as the contract manager – if your building has managing agents then they will usually fulfil this role.



The contract manager would normally be a surveyor, and should be a member of the RICS (Royal Institution of Chartered Surveyors). He or she can prepare the specification that can be sent to tender, thus ensuring that all the quotations will be on the same basis. You can download free building contracts at the Federation of Master Builders web site, but for any job costing £20,000 or more, I'd suggest that you should use a formal contract such as a Joint Contracts Tribunal standard form.

For smaller jobs, it should be possible to obtain quotations directly from the builder/decorator. Any reputable builder will be able to advise on a reasonable specification, give you an idea of what is involved and how long the job should take.

Preparation & planning

The work required will vary enormously depending on the condition of the existing coatings, the type of substrate, the intended new coatings, the condition of the surface etc. Manufacturers state that in normal circumstances, recoat times should be approximately 3-5 years for standard paints, and adhering to this should provide you with a good 'canvas' to work on. The recoat time can be increased to up to 10 years for highly specialised coatings, although these invariably cost much more and require additional preparation, meaning you can soon lose the apparent cost advantage of not having to decorate so often.

Old paintwork should be washed down to remove any dirt and grease, all loose paintwork should be removed by stripping, the edges should be rubbed down to a smooth surface, bare areas primed with suitable primer, and either one or two undercoats should be applied followed by either one or two top coats of paint. Be aware that, in some circumstances, 3 coats may be required for masonry work. If a contractor suggests cutting corners – I'd suggest cutting him off your tender list!

Any professional surveyor should be able to provide you with an approximate contract period, however it would be foolhardy to dictate too precise a time limit for a job unless it really is critical. Far better that the contractor calculates the most efficient and cost effective method of working, given the resources at his disposal,

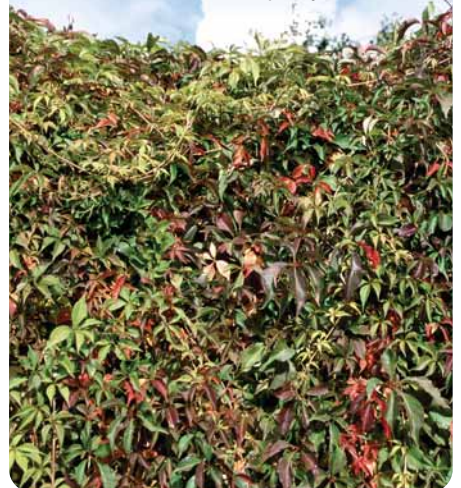
and submits a programme based on that. In simple terms, one coat needs to dry before the next is applied!

Security!

Leaseholder is published by Deacon Insurance, who has naturally brought up the issue of security. Access ladders are easy to remove and secure at night. Scaffolding can provide security to the building, for example by erecting hoardings around the scaffolding, closing in the scaffolding by using netting or Monarflex sheeting, external lighting of the scaffolding and the use of a proprietary scaffold alarm system of which there are many on the market. Quiz any contractor about how he plans to preserve your security.

get the shears out for enhanced security

Beautiful hedges may provide privacy for your building – but would they also shelter an intruder? It may be worth compromising, to ensure that the entrance doorway and any ground floor windows are kept clear of vegetation. Now may be the best time to take to the pruning shears – before they start to flower and become too pretty to cut back!



listed buildings - a guide

Introduction

This advice is for people who are considering buying a Listed Building and for those who already own one. I would like to briefly outline the responsibilities of owning a Listed Building and explain when the Council is required to give listed building consent and the procedures as to how to apply for it.

What Is A Listed Building?

There are some 500,000 Listed Buildings nationally, representing 4% of the building stock. These buildings are considered to be of sufficient historic or architectural interest to merit special protection, which places responsibilities on the owners.

The list is drawn up by the Department of National Heritage, on the advice of English Heritage. Listed Buildings are divided into three categories (most important first); Grade I, II* and II. Grades I and II* represent about 6% of all Listed Buildings and are of national importance. Grade II buildings are of local importance and still warrant preservation. The list includes all buildings constructed before 1700 which survive bearing resemblance to their original condition, and most buildings built between 1700 and 1840, although selection is necessary. Later buildings may be listed but they must be of very special quality.

If you are in any doubt as to whether your property is a Listed Building, contact the Planning Section of your local authority, who will check the copies of list entries for the District Council area.

When is listed building consent required?

No action is called for, unless an owner wants to make alterations to a Listed Building. Carrying out prudent maintenance and general repairs, does not present an issue. Listed Building Consent is required from the Council to demolish, extend or alter the building, either interior or exterior, where the proposed works would affect the character of the Listed Building.

Examples of work requiring consent:

- changing roof materials
- alterations to interior walls
- painting or other types of cladding over stone or brickwork
- adding structures or fixing objects to a Listed Building
- repairs not carried out using matching materials
- fitting of new ovens and stoves, which require new flues

Examples of works that would not normally require consent:

- Internal works, such as redecorating
- installing bathrooms and kitchen fittings
- central heating installations

It is worth noting that if works interfere with important internal features such as panelling or mouldings, consent may be required. Be advised that this is not a comprehensive list, therefore if you are in any doubt as to whether you need Listed Building consent, do contact the Planning Section before you start work.

Many councils provide free advice to owners of Listed Buildings. It is usually possible to arrange a site visit from the Council's Conservation Officer in order to discuss particular problems, prior to work being carried out.

The FPRA provides information and advice to its member organisations on legal, insurance, management and building issues and if you mention Deacon or Leaseholder, you are entitled to a reduced FPRA joining fee.

Visit the web site www.fpra.org.uk or call 0871 200 3324.

why do you need employers' liability cover?

If you read through your insurance policy, you will see that employers' liability is covered as standard, and you may well wonder why you need it.

As standard, this cover does not add to your premiums. It covers any injury to persons. Consequential damage to property comes under the main section of your buildings policy.

In practice, an employee only applies to someone who's contract of employment is directly with the residents management company. Contractors can expect to be covered by their direct employer or by their own insurance as self-employees.

Injury to visitors in the common areas of the property is covered by your property owners' liability – again, a standard section of any policy. Injury within individual flats would be covered by the leaseholder's occupier's liability – which is another reason to advise all neighbours to ensure they have good contents insurance, as it should include this cover.

Don't forget, we offer 20% discount on contents cover to leaseholders living in Deacon-insured buildings.

For more information call free on 08000 92 93 94.

directors' & officers' liability cover

- YES - a Director really can be held personally liable for any financial loss incurred as a result of their failure to act correctly.
- YES - Simply forgetting to do something is sufficient if it causes financial loss to another person.
- NO - Directors' & Officers' Liability cover is not expensive for leaseholders

Typical Directors' & Officers' premiums (including IPT):

Amount of cover	No. of flats in block		
	1-25	26-50	51-75
£100,000	162.00	199.50	262.50
£250,000	220.50	294.00	299.25
£500,000	341.25	388.50	399.00
£1,000,000	446.25	551.25	630.00

For further information please contact Robert McDonnell on 08000 92 93 94 or visit our website www.deacon.co.uk