

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

EXPLANATORY NOTES

SUMMARY

Part 1 - Commonhold

Background

Problem

4. In England and Wales, there are two ways to own land, freehold and leasehold. Each has its advantages and disadvantages in particular circumstances. Freehold comes closer to absolute ownership. Leasehold confers ownership for a temporary period, subject to terms and conditions contained in the contract, or lease.
5. A covenant is a promise contained in a deed, such as a deed passing ownership of property from one person to another. There are two types of covenant: the positive covenant, which is a promise to do something, such as to pay rent or to keep the property in repair, and the restrictive covenant, which is a promise not to do something, such as cause a nuisance to neighbours. For historical reasons, positive covenants cannot apply to freehold land once the first buyer of the property has sold it. However, both positive and restrictive covenants apply to leasehold property.
6. The problems with covenants are accentuated in the case of blocks of flats, where each flat will often depend on its neighbour for support and shelter, and the very stability of the building depends on the proper maintenance and repair both of the individual flats and the common parts. This means that, where it is desired to set up a scheme to allow for ownership of interdependent properties and for the management of the common parts and facilities, the scheme must, today, be based on leasehold ownership. There is no satisfactory scheme at present which would allow for freehold ownership in such circumstances.
7. As long term residential leasehold has become more and more widely criticised, pressure has grown for the Government to bring forward a scheme which would combine the security of freehold ownership with the management potential of positive covenants which could be made to apply to each owner of an interdependent property. That scheme is commonhold.

Brief outline of the proposed solution

The nature and creation of a commonhold development

8. Each separate property in the commonhold development will be called a unit. It might be a flat, or a house, a shop or a light industrial unit. The owner will be called a unit-holder. The body which will own and manage the common parts and facilities of the development will be called the commonhold association. The commonhold association will be a private company limited by guarantee, whose membership will be

restricted to all the unit-holders within the development. The commonhold association will be registered at Companies House in the usual way and will have a standard set of memorandum and articles of association of the commonhold association which will be prescribed by the Lord Chancellor from time to time. This means that all the unit-holders in a development will have two interests in the property of the commonhold; a direct interest in the unit or units that they own and membership of the commonhold association which owns the common parts.

9. The commonhold association with its common parts and the associated units will be registered at HM Land Registry. In order to register, the developer of the commonhold development or the sponsor of a converting development will be required to present to HM Land Registry the memorandums and articles of association, and the commonhold community statement, which will contain the rules of the particular commonhold. There will need to be a degree of flexibility to allow for unique features of a particular development, for example to provide for the upkeep of a site of special scientific interest, or to make special arrangements for a sheltered housing component in the development. Allowance for this is to be made in the commonhold community statement where in addition to the prescribed matters, those relating to the individual attributes of the commonhold development can be set out. These discretionary elements will be registered and form part of the documentation maintained by HM Land Registry.
10. If it is necessary to obtain the consent of anyone with an interest in the land, those consents must be supplied at this stage and finally, a certificate will be required to confirm that the memorandum and articles of association and the commonhold community statement comply with the relevant Regulations. Once the required documents have been processed by HM Land Registry, the commonhold will be registered.
11. It will be possible for a unit to consist of two or more separate areas of land, for instance a flat with a garage in a detached block, or perhaps a shop with a separate storage unit. Units may be divided from each other vertically, as are terraced houses, horizontally, as are flats in a block, or may be free standing, as are detached houses or, often, light industrial units. However, where the divisions are horizontal, no part of the commonhold may be over any part of a building which is not part of the same or an associated commonhold development.

Conversion

12. It will be possible to convert from leasehold to commonhold but only if certain criteria are met. Details will be contained in Regulations, but it will be necessary to obtain the consent to conversion of 100% of the existing leaseholders and /or other owners of what would become units in the commonhold.
13. It is not intended that any scheme of conversion to commonhold should give rights to commercial leaseholders or rack rented commercial occupiers which would go beyond the scheme developed by the DTLR for collective leasehold enfranchisement. DTLR's scheme relating to qualifying buildings and tenants and rules relating to payments to existing landlords, where applicable, will be adopted so far as is possible, with the exception that to convert to commonhold will require 100% consents. Thus rules will be substantially the same for both types of conversion. Details will be contained in Regulations.
14. At the time of conversion all leasehold interests will cease to apply as will all terms of all leases and the units will be governed by the memorandum and articles of association and the commonhold community statement of the commonhold association.

Management of a commonhold development

15. It will be possible to add to and to diminish the size of the development by the purchase or sale of common parts provided that the specified majority of the members of the commonhold association is achieved at an appropriate meeting. There will be rules to govern the distribution of capital receipts arising from such a sale.

These notes refer to the Commonhold and Leasehold Reform Act 2002 (c.15) which received Royal Assent on 1st May 2002

16. The voting rights of unit-holders in the commonhold association, the size of the various types of majority required for particular purposes, the minimum requirements for the maintenance of accounts and the machinery for the setting and for the payment of the commonhold assessment, which will be substantially similar to service charges, will all be set out in the standard memorandum and articles of association or the commonhold community statement.
17. The memorandum and articles of association or the commonhold community statement will set out the procedure for dealing with disputes arising within a commonhold. These are to be dealt with initially by use of internal procedures. Should these fail to settle matters, alternative dispute resolution (ADR) will be provided for. However, it is not intended to refuse access to the courts and tribunals as necessary. The Act will make provision for the making of Regulations which will provide for this.
18. The Act will make provision for the commonhold community statement to set out the rules governing rights of entry of the commonhold association for inspection and its right to carry out works and to recover costs of such works in cases of emergency or to facilitate its obligations to maintain and repair.

Winding up of a commonhold association

19. The detailed rules governing the winding up of a commonhold association will be contained in Regulations, though the scheme is set out substantially in the Act. The Regulations will require that the commonhold community statement sets out the rules governing the distribution of any profit arising on a voluntary winding up and other matters relating to the process. The winding up of an insolvent commonhold association will be carried out, so far as possible, under the standard insolvency rules. Any deviation from those Rules will be laid down in Regulations.