

# COMMONHOLD AND LEASEHOLD REFORM ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS: PART 1

#### *Termination: voluntary winding-up*

95. Sections 43-49 deal with the termination of a commonhold following from a voluntary winding up of the commonhold association, which might arise, for instance, from the decision to recognise the eventual demise of a building through old age, or from a particularly advantageous offer by a developer to buy the land. The sections differentiate between terminations which are the result of unanimous resolutions (section 44) and those which are the result of majority votes (section 45).

#### *Section 43: Winding-up resolution*

96. Section 43 provides that, for any winding-up resolution to be effective, there must have been a declaration of solvency by the directors in a specified form (so that the winding up will be commenced as a members' voluntary winding up rather than a creditors' voluntary winding up) and that a termination statement resolution (agreeing the details of the termination and disposition of assets) should have been passed, with at least 80% of the members voting in favour.

#### *Section 44: 100 per cent agreement*

97. Section 44 provides that the liquidator of a commonhold association shall make an application for termination within six months of the association's having achieved a 100% vote in favour of winding-up and termination-statement resolutions from the members. Should the liquidator fail to do so, the application may be made by a unit-holder or some other prescribed person.

#### *Section 45: 80 per cent agreement*

98. Section 45 provides for the liquidator to make an application to a court to determine the terms upon which a termination application may be made and also the terms of the termination statement which must accompany the application, in the event that a vote of between 80% and 100% is achieved in favour of winding-up and termination statement resolutions. The liquidator must make the application to the court within a period, prescribed by regulations, from the date of the passing of the winding-up resolution, and must make the termination application within 3 months of the court order. Should the liquidator fail to do so, the application may be made by a unit-holder or some other prescribed person.

#### *Section 46: Termination application*

99. Section 46(1) defines the termination application as the application to the Registrar to achieve the result of the termination resolution that all the commonhold land for

which the commonhold association acts should cease to be commonhold. *Subsection (2)* requires that such an application should be accompanied by a termination statement (see section 47) and *subsection (3)* requires the Registrar to note the application on the register on receipt.

#### **Section 47: Termination statement**

100. *Section 47(1)* requires the termination statement to specify what is to be done with the land which had been the commonhold land, when the commonhold association has acquired the freehold estate in all the units under section 49(3), and how any assets of the commonhold association will be distributed amongst the members. *Subsection (2)* provides that a commonhold community statement may make provisions as to how the termination statement will make arrangements “of a specific kind”, or how it will determine in a specific manner about the rights of unit-holders in the event of termination. *Subsection (3)* requires any termination produced for the purposes of a termination application to comply with the terms of the commonhold community statement. *Subsection (4)* allows for a court to disapply subsection (3) as to all the terms of the statement or in respect of specific matters or for a specific purpose, and an application to the court for this purpose may be made by any unit-holder. This gives the court the power to take into account changed circumstances since the current statement reached its final state. It also allows challenges to the fairness of the statement in this respect which otherwise would not have given rise to a challenge.

#### **Section 48: The liquidator**

101. This section deals specifically with the position of a liquidator in a members’ voluntary winding up and specifically his position *vis-à-vis* the termination application. Section 48 applies where a termination application has been made and a liquidator has been appointed (*subsection (1)*). *Subsection (2)* requires the liquidator to inform the Registrar of his appointment and *subsection (3)* requires him either to notify the Registrar that he is content with the termination statement or to make an application to the court under the Insolvency Act 1986 for an order determining the terms. *Subsection (4)* requires the liquidator to inform the Registrar of the outcome of any application to the court under *subsection (3)(b)*, *subsection (5)* specifies that the requirement under subsection (4) is to be satisfied in addition to anything which is required to be done under the terms of section 112(3) of the Insolvency Act 1986, and *subsection (6)* specifies that any duty placed on a liquidator by this section must be done as soon as possible (the term used by the parent Act being ‘forthwith’). *Subsection (7)* explains that references to the liquidator encompass not only the person appointed in the members’ voluntary winding up, but also, in the rare case where the members’ voluntary winding up becomes a creditors’ voluntary winding up, the person who thereupon acts as liquidator (who may be the same person).

#### **Section 49: Termination**

102. *Section 49* provides that, where the Registrar receives notice from the liquidator that he is satisfied with the statement, or receives a copy order from the court in accordance with section 48(4), or an application is made under section 45, the commonhold association will become entitled to be registered as the owner of the freehold interests in all the units (*subsection (3)*). *Subsection (4)* then requires the Registrar to take the appropriate action to give effect to the termination statement.