

## FREEHOLDERS AND PRIVATE ESTATES

Freehold houses may be built as part of a private estate and sometimes that estate also contains blocks of leasehold flats. For these private estates there are common areas which require those who live there to contribute to their upkeep. The common areas may simply be a private road; but can also include for example extensive landscaped areas, electric gates, street lighting, refuse areas, sewage pumps and communal TV aerial systems.

## THE CONTRACT TO PAY FOR THE UPKEEP OF COMMON PARTS

Every freeholder will buy their house with a legal document which lawyers call a deed of transfer. In that deed will be a clause or clauses which require the freeholder to pay a contribution towards the cost of the upkeep of the common areas. A well-written deed will also set out exactly what items of costs a freeholder should pay for, what proportion of the total costs that freeholder should pay, on what dates the payments should be made, and whether annual statements of accounts will be drawn up and provided to the contributing freeholders.

You may not currently hold a copy of your deed of transfer available to check on your obligation to pay charges. A copy can be obtained from the Land Registry for a small fee.

## RESIDENT MANAGEMENT COMPANIES

The usual arrangement for private estates is that a small company is formed that owns the common areas and each freeholder (and leaseholders on mixed estates) becomes a member of that company. ARMA calls these companies resident management companies. These companies have the benefit of giving freeholders representation on how the common areas are kept but they also require freeholders to participate and volunteers to become company directors.

## A MANAGEMENT COMPANY

Some private estates have a company which owns and maintains the common parts membership of which is not related in any way to the freehold owners of the houses on the estates.

## THE ROLE OF MANAGING AGENTS

ARMA represents firms of managing agents. Some of the companies that own the common parts of private estates, including resident management companies, engage managing agents to carry out the organisation of the services to maintain the common areas. The managing agent will sign a contract with the company and take directions and be accountable to the directors of that company; it has no legal contract with the freeholders.

The agent will normally prepare a budget for approval by the directors, send out invoices, organise and let contracts (for example gardening), deal with reports of repairs required, place orders for work and prepare accounts at the end of each financial year for the directors of the company.

## POSSIBLE RESTRICTIONS ON FREEHOLDERS

A freeholder's home is his/her castle. Yes but on private estates the deeds as well as requiring a payment of a charge for common areas may impose other restrictions. Here are some of the most common.

## EXTERNAL DECORATIONS

Some estates require that the colour of paintwork must follow a certain scheme often a requirement of the original planning permission.

## EXTERNAL ALTERATIONS

You may be required to seek the permission of the management company before you make any alterations to the external appearance of your home. Often such clauses are a requirement of the original planning permission.

## TV AERIALS AND SATELLITE DISHES

The addition of an external aerial or dish would be an external alteration and you may be required to seek permission from the management company.

## PARKING

Sometimes the roads on private estates are quite narrow and not built to the standard of a public highway. In these cases it is often a requirement in your deeds that no one shall park in the road.

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## SERVICE CHARGES, ESTATE OR MAINTENANCE CHARGES

The charges paid by freeholders are given different names by lawyers and managing agents. The most common term used is service charge, the same as that used for the payments made by leaseholders of flats.

Although freeholders may be paying for exactly the same services as leaseholders of flats, there is an important legal distinction between leaseholders' and freeholders' payments of service charges.

Government has passed a number of Acts of Parliament which have given rights and added protection to leaseholders of flats that pay service charges; these Acts do NOT apply to freeholders who pay service charges.-

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## RENTCHARGES

A rentcharge (sometimes known as a chief rent or ground rent) is a periodic sum paid by freeholders to a management company. These are similar to, but not the same as, ground rent paid on a leasehold property.

Rentcharges provided a regular income for owners of land who were prepared to release land for development. Sometimes the land was released without a capital sum being paid with the rentcharge being the only payment. Once imposed, a rentcharge continues to bind all the land even when the land is later divided and sold off in plots. In such cases one householder can be made responsible for paying the whole rent. That person is then left to collect the appropriate portion from the other householders whose land is subject to the rentcharge.

There are two main types of rentcharge. An individual rentcharge (which may be able to be redeemed), and an estate rentcharge (which cannot be redeemed). Rentcharges can also be apportioned where one householder is liable to pay the whole rent for several properties.

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

The estate rentcharge is only legal if it is accompanied by corresponding covenants in the transfer setting out the obligations to provide the services, repairs, insurance etc.

There is no implied test of reasonableness for any payments made by the rent payer for the provision of services deriving out of a rentcharge which would mirror the reasonableness test for service charges to leaseholders, nor any right for freeholders or rentcharge payers to go to a tribunal such as the Leasehold Valuation Tribunal.

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## REDEMPTION OF INDIVIDUAL RENTCHARGES

If you are an owner of a freehold house paying a rentcharge which is not an estate rentcharge, you may be able to redeem your rentcharge by paying a single lump sum if it is a type that is redeemable under the provisions of the Rentcharges Act 1977.

Further information about rentcharges can be found at

<http://www.communities.gov.uk/housing/homeownershi p/rentcharges/>

The application forms (with associated guidance notes) to be used when seeking to redeem or apportion a rentcharge payable on a freehold house are available to download below.

<http://www.communities.gov.uk/documents/housing/doc/1954002.doc>

<http://www.communities.gov.uk/documents/housing/doc/1954017.doc>

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## CAN I EXPECT AN ANNUAL STATEMENT OF ACCOUNT FOR THE ESTATE RENTCHARGES I PAY?

This depends on your deeds and the approach of your management company. If your deeds say that freeholders should receive an annual statement for the service charge paid then that is what the management company should do.

Also if you are a member or shareholder in a resident management company, very often the annual company accounts for that company will contain a summary of the service charges paid and expenditure arising. As a member of the company you should be sent the annual accounts.

### WHAT IF I AM NOT HAPPY WITH THE ESTATE RENTCHARGES OR THE SERVICES PROVIDED?

If your management company appoints a managing agent, you should complain to the agent in the first instance. If the agent is a member of ARMA and you are not satisfied with the response of the agent, then you will have the right to complain to an independent ombudsman. All ARMA members are members of 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 the lawful instructions of that company then the agent cannot be at fault.

If you are unhappy with what a resident management company is doing then you should make a complaint to the directors in the first instance. If you are still not happy your option is to seek to change the directors of the company or raise a motion to change matters at the annual general meeting if you are a member.

If you are unhappy with a management company that is not comprised of residents, than residents collectively could approach the company to sell the freehold of the common parts and so take over responsibility for the provision of services. However there is no right in law for freeholders to buy this freehold of common parts; it is a matter of negotiation between parties.

### WHY CAN'T I GO TO A TRIBUNAL?

You may be aware that leaseholders can challenge their service charges by taking the matter to a Tribunal. The Tribunals have the power to take an independent view and decide what should be a reasonable charge. Unfortunately this course of action is not open to freeholders. As explained above even though you may be asked to pay a service charge and even pay into the same pool of costs as leaseholders on the same private estate, the Acts of Parliament to give rights about and protection from unreasonable service charges only apply to leaseholders and tenants.

### ESTATE MANAGEMENT SCHEMES

Having said that freeholders cannot use tribunals and do not have the same legal rights as leaseholders, there is one exception.

The 1967 Leasehold Reform Act and the 1993 Leasehold Reform, Housing and Urban Development Act allowed for Estate Management Schemes to be set up where lessees buy the freehold of their blocks of flats or houses in areas which were predominantly leasehold. These Schemes are not common and are mostly in London comprising

properties owned by the large landed estates. The ability to form an Estate Management Scheme was also time limited for 2 years after the 1996 Housing Act.

So there can be freehold houses paying a service charge under an estate management scheme. By S159(2) of the C&LR Act 2002, such service charges are subject to a test of reasonableness, and variable charges can be challenged at a Leasehold Valuation Tribunal. Charges which are fixed or subject to a formula can be challenged and if found unreasonable the LVT can order a variation of the scheme.

### HEALTH AND SAFETY AND INSURANCE

Common areas of freehold estates such as private roadways still have to comply with health and safety law. So a general health and safety risk assessment should be carried out appropriate to the situation. If there is simply a private road and footpaths then this need not be a complex exercise or need professional advice. But the types of risks which may apply need to be covered and should be recorded.

It is necessary for the management company of the common parts to take out third party liability insurance. This is insurance to pay out for claims for damage from users of the road. It does not include insurance of the freehold houses on the estate. It is more expensive to take out as a stand alone policy than as an add-on to a household property.

### NEIGHBOUR DISPUTES

If you have a dispute with a neighbour on a private estate then that is a matter between you and your neighbour. ARMA has a note for leaseholders about how to handle anti-social behaviour that may also assist freeholders of houses. See the ARMA website to download a copy.

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