



Legal update — August 2018

Real estate litigation

Leasehold houses - Law Commission publishes game-changing proposals



Enfranchisement law is a complex area fraught with pitfalls and issues and has been the subject of considerable media attention recently in regard to leasehold houses and onerous ground rents.

The Law Commission has now published proposed solutions for leaseholders of houses. If the reforms become law, it will be the most significant reform of the law relating to leasehold property in 25 years.

The first aspect of the proposals is to simplify the procedure and qualification criteria for leaseholders of houses. The second aspect considers the calculations used for the premiums payable in enfranchisement claims and the recovery of costs.

Procedure and qualification criteria

The introduction of a simplified right for leaseholders of houses to purchase the freehold, removing requirements such as at least two years ownership and qualification based on financial limits will be a welcome amendment for all parties. A new right for leaseholders of houses to collectively purchase an estate will act to fill long standing gaps in legislation and address issues which have caused headaches for leaseholder and freeholders alike. The proposals also address the alternative option of claiming an extended lease of a house, which is unattractive to leaseholders under the current law, being at a market value rent for 50 years. An amended right to a lease extension at a longer term of 125 or 250 years and no ground rent is likely to prove a good alternative to purchasing the freehold.

These new and amended rights will be coupled with a simplified procedure for making enfranchisement claims, removing potential disputes over technicalities. Of particular note is to amalgamate the definition and rights of enfranchisement for houses and flats into one residential right, which will overhaul the currently confused state of the law on 'what is a house'.

Reducing the cost of the process

The new options are designed to reduce the price that a leaseholder pays for the freehold or an extended lease, which means the landlord is likely to suffer a significant reduction in the value of their current assets. The options proposed intend to simplify the current formulae in the legislation for valuing premiums by either introducing a simple multiplier (e.g ten times ground rent), a simplified valuation formula (e.g 10% of the value of the property), or by removing or re-working elements of the current valuation formulae (e.g by removing the element of "marriage value"). This creates the potential issue of premiums becoming arbitrary and under market value. Although the Law Commission recognises that any reform would need to comply with human rights legislation, there is no detail provided at this stage as to how landlords would be sufficiently compensated for any loss of value.



Source: Fotolia

An element of the intention on premium calculation is to remove the professional advice of the enfranchisement valuer, which may save costs but would require an entirely new approach to the process. Referral to an online calculator is mentioned in the proposal, which could potentially automate a whole sector of the industry.

The Law Commission also provides proposals on removing or fixing the landlord's recoverable costs in enfranchisement claims. Whilst this will provide

Published by
Trowers & Hamlin

Trowers & Hamlin LLP
3 Bunhill Row
London
EC1Y 8YZ

t +44 (0)20 7423 8000
f +44 (0)20 7423 8001

www.trowers.com

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certainty for the leaseholder and reduce overall costs, it will mean the landlord suffers potentially irrecoverable costs when responding to an enfranchisement claim. This is arguably unfair given that landlords are effectively forced to respond to a claim outside of their control at the option of the leaseholder and is therefore obliged to obtain professional services.

A game-changer

Overall the proposals will – if enacted – completely change the enfranchisement process in relation to leasehold houses. The proposals are likely to be uniformly welcomed by leaseholders as they promise a cheaper, simplified procedure. However, given the prospect of landlords suffering a very substantial reduction to the value of their ground rent portfolios, the proposals are likely to meet fierce resistance and scrutiny from freeholders and valuers regarding the reform of premium calculations and payments.

Although these proposals only relate to leasehold houses, the Law Commission intends to publish its proposals for leasehold enfranchisement reform more generally (i.e flats, not just houses) by September 2018. It seems likely that similar principles will be applied with similar major reforms proposed.

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For more information please contact

William Bethune
Senior Associate
t +44 (0)20 7423 8558
e wbethune@trowers.com