

LEASEHOLD REFORM – LOOKING BEYOND THE HEADLINES

In January's issue we reported on the government's announcement of the first measures to be implemented as part of a major reform of leasehold law – the biggest change in 40 years.

Key points are that

- Leaseholders will be given the right to extend their lease by a maximum term of 990 years at zero ground rent,
- Ground rents will be set to zero for new retirement leasehold properties, giving purchasers of these homes the same rights as other homeowners.
- Marriage value to be abolished, with valuation calculation rates set to ensure fairer, cheaper and more transparent enfranchisement in future.
- An online calculator will be introduced aimed at making it simpler for leaseholders to find out how much it will cost them to buy their freehold or extend their lease.
- Leaseholders to be able to voluntarily agree to a restriction on future development of their property to avoid paying 'development value'.
- A Commonhold Council to be established made up of leasehold groups, industry and government to prepare homeowners and the market for the widespread take-up of commonhold.



Alongside the IRPM, ARMA and a range of other industry bodies, the Association of Leasehold Enfranchisement Practitioners (ALEP) has been campaigning for leasehold reform for many years. ALEP welcomes Housing Secretary Robert Jenrick's announcement, seeing the reforms as "a commitment from government to deliver much-needed changes" but is calling for further clarity on the timescale for new legislation, ie when the first draft will be released. The organisation wants to see more detail on what the changes will actually look like in practice and is keen to work with the Government in making the reforms practical and workable.

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While supportive of reform, ALEP Director Mark Chick is quick to point out that the devil is in the detail. “The measures announced [in January] have thrown up more questions than they’ve answered for professionals working in enfranchisement,” he says.

“We would value clarification on valuation. It’s all very well to wipe out marriage value but how and when – and what’s the timeline?” says Mark. ALEP is concerned about the proposed changes to valuation calculations saying “Whilst we appreciate that an online calculator may help simplify matters, ALEP and its members have real concerns about how this will actually work in practice and wonder if this measure takes into account the complexities of calculations in the wide range of cases there exists in practice and the need to ensure that there is fairness for both leaseholders and freeholders.”

Speaking as a property lawyer, Mark also points to the fact that the proposed reforms won’t solve any of the problems being faced by leaseholders in the short term. He is aware that a few leaseholders have withdrawn their enfranchisement claims in light of January’s announcement but the reality is, that for anyone who needs to extend their lease in the near future nothing will change. The same applies to those wishing to buy their freehold, he says.

Longer term he believes any reforming legislation must be handled carefully. “The risk is there could be lobbying and claims,” he says, explaining that the state can’t unilaterally deprive someone of their assets. “If you took all the marriage value away from a freeholder without this being seen as proportionate because if adjustments in other aspects of the calculation, they might be able to challenge these proposals in the Court of Human Rights,” he explains. “It would be possible to make adjustments but not take it away completely.” Mark’s solution is for the first piece of legislation to be clear and simple, “but longer term, any changes in the valuation arena have to be fair”. Hope value is also a complex topic and there’s a conversation to be had there too, he says.

Sebastian O’Kelly from the Leasehold Knowledge Partnership (LKP) agrees with Mark that legislation must be uncomplicated. He welcomes the prospect of one short bill to ban ground rents within the next Parliamentary session - which means a 14 month timeframe: “No argument. No exclusions even for retirement developers. Just an end to ground rents”.

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It is difficult to over-state the importance of this, says Sebastian: “It means that the leasehold sector does not have a future,” He evidences this by pointing to the fact that Barratt, Taylor Wimpey, Berkeley and other leading house builders are abandoning ground rents.

Barratt is building a site in Walthamstow, in north London with 999-year leases and a residents’ management company. “It is inconceivable that it will do anything else with the freehold than hand it over to the flat buyers,” he says.

The LKP is firmly in favour of the commonhold model of tenure used in other countries. “After the reforms, we will see an end to the anonymous, offshore private equity punters owning an investment asset in ordinary families’ homes. Flat owners will have freedom and autonomy. And responsibility... A vastly improved way of organising communal living is in the offing. We should all welcome it,” he says

However, despite his enthusiasm for residents taking responsibility for their own blocks, he is well aware of the pitfalls, accepting that commonhold isn’t perfect. “With 4.3 million leaseholds out there, the changes will take time – like a couple of decades – to work through,” he adds.

Richard Silva, Executive Director at Long Harbour has a very different view, regarding the government’s proposals as a removal of consumer choice. “Abolishing leasehold houses is the right choice, but life in apartment buildings is very different. Removing the option of leasehold tenure will force millions of residents up and down the country to take on the communal management and accountability of their block, whether they want to or not.” He says.

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Leasehold reform has been presented by the Government as a huge victory for consumers but in reality, says Richard, these changes will mean an unprecedented shift of responsibility from professional landlords onto consumers. He points to the findings of a recent poll by Savanta Group, revealing that only 31% of people would willingly take on the management of their apartment block, with previous research also finding that one in three people would consider selling their property if they were faced with these obligations.

The HCLG Select Committee's Inquiry on Leasehold Reform also revealed that the Government may *"need to implement an exemption for mixed-use buildings"* when it came to the ground rent ban. "Having examined the evidence, the Committee clearly understood the difference between apartments and houses and recommended different treatment. However, this appears to have been ignored," he says.

Richard is in no doubt that reform is needed. But, he thinks by ignoring the difference between houses and complex apartment buildings, the Government is missing an opportunity to introduce proper regulation and has chosen instead to make life more difficult for flat owners.

"With the country in the midst of a national cladding crisis, brought about by a failed regulatory system, policymakers should be asking serious questions about whether now is the right time to remove professional oversight of apartment buildings. Residents need to be supported, not lumbered with additional management and safety obligations," he says.

Legislation will be brought forward in the upcoming session of Parliament, to set future ground rents to zero as the first of two-part reforming legislation in this Parliament. The Government has said it will respond to the remaining Law Commission recommendations, including those on commonhold, in due course but has given no set timeframe within which the leasehold sector can expect to see a decision on further reform.

The Law Commission published their report on enfranchisement valuation 'Report on options to reduce the price payable' in January 2020 and their reports on enfranchisement, commonhold and right to manage in July 2020. [These reports can be found on the Law Commission's website.](#)

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