

**The Conveyancing Association
Leasehold Solutions Guide
For Long Leases in England and Wales**

The Conveyancing Association (CA) has created this guide to pull together into one place the solutions available to the Conveyancing practitioner and their client when Leasehold issues arise. This is part of the CA's common sense approach to dealing with the Leasehold Sales Process.

| Issue Addressed | Area of Concern | Practice Guidance |
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| 1.0 Provision of replies to Leasehold Property Enquiries | Cost | <p>The ¹ Commonhold & Leasehold Reform Act 2002 (C&LRA) requires that administration charge made by a Landlord or Management Company (referred to in the Lease) should be reasonable. This only applies to charges imposed on the seller (as tenant) so if the buyer applied for the information there is no protection.</p> <p>There is no obligation to pay an unreasonable amount.²</p> <p>Any Lease Administrator signed up to ARMA-Q³ must ensure that any charges made for services outside of the Management Fee are proportionate.</p> <p>Any organisation or individual regulated by RICS must be transparent & proportionate in their dealings.</p> |
| 1.0 Provision of replies to Leasehold Property Enquiries | Delay | <p>Any Lease Administrator adopting the ARMA Consumer Charter⁴ must be honest, fair, open and transparent and provide a timely and professional service with access to the information needed.</p> |
| 2.0 Notice of Assignment and/or Mortgage | Cost | <p>If the amount of the fee for acknowledgement of notice is conclusively stipulated in the lease then this is binding.</p> <p>If the Lease is granted by someone acting for purposes relating to his trade, business or profession then the reasonableness test of</p> |

¹ Schedule 11 Para 1 of the Commonhold & Leasehold Reform Act 2002 makes provision for 'administration charges' to be of a 'reasonable' amount. The definition of administration charge includes a charge '*in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant*'

² Schedule 11 Para 2 of the 2002 Act

³ <http://arma.org.uk/documents/2014-11-ARMAConsumerCharterAndStandards.pdf>

⁴ Section 5.6(f) Requires ARMA members to provide the responses within a reasonable timescale after receipt of payment.

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| | | <p>the Unfair Terms in Consumer Contracts Regulations 1999 applies.⁵</p> <p>Any Lease Administrator signed up to ARMA-Q⁶ must ensure that any charges made for services outside of the Management Fee are proportionate. Any organisation or individual regulated by RICS must be transparent & proportionate in their dealings.</p> |
| 2.1 Notice of Mortgage | Acknowledgement | Where the Lease Administrator is unresponsive or refuses to receipt the Notice of Mortgage, the CML Handbook ⁷ allows for evidence of service in place of a receipt. ⁸ |
| 3.0 Deed of Covenant | Requirement | A Deed of Covenant is a void document as covenants can be enforced by a landlord or a third party with rights to enforce under the lease (eg Management Company) against an assignee without such a Deed being entered into. ⁹ |
| 3.1 Deed of Covenant | Cost of Approval | As an 'approval' or 'provision' of a document this is covered by the C&LRA and any administration fee must be reasonable. Case law exists which states that £80 is a reasonable amount to pay for the provision and acknowledgement of the Landlord's standard Deed. ¹⁰ |
| 4.0 Restrictions requiring Certificate of Compliance | Relevance | HM Land Registry (HMLR) guidance ¹¹ allows for the cancellation or disapplication of restrictions which are difficult or impossible to comply with. |
| 4.1 Restrictions requiring a Certificate of Compliance | Cost | As an 'approval' or 'provision' of a document, the C&LRA applies and any administration fee must be reasonable. |
| 5.0 Transfer of Share Certificate | Delay | A Management Company is duty bound to register the transfer of the share under the |

⁵ The Unfair Terms in Consumer Contracts Regulations 1999. The Regulations apply to leases administered by anyone acting for purposes relating to his trade, business or profession. Under these any standard lease terms must be 'fair' and satisfy the reasonableness test laid down. Any unreasonable terms are void and so the fee would not be payable.

⁶ <http://arma.org.uk/documents/2014-11-ARMAConsumerCharterAndStandards.pdf>

⁷ CML Handbook Part 1: 5.14.13 *Notice of the mortgage must be served on the landlord and any management company immediately following completion, whether or not the lease requires it. Please ensure that you can provide either suitable evidence of the service of notice on the landlord or management company or a receipt of notice.*

⁸ Recorded Delivery can be used as evidence of service of notice under the Recorded Delivery Service Act 1962 where no response is received, so long as the recorded delivery is not returned by the postal operator.

⁹ s.3 Landlord & Tenant (Covenants) Act 1995

¹⁰ *Spencer Wade v Orchidbase Ltd* [2014] - Case reference CAM/ 42UD/LAC/2014/0003; First Tier Tribunal. June 24th 2014. June 2014 a claim was brought by a buyer after purchase and after having paid for a deed. The amount charged was £300. The landlord also provided its standard form deed. The reasonable amount for all of this, said the Tribunal, should have been £80 and the landlord was ordered to refund the excess.

¹¹ Land Registry Practice Guide 19A: <https://www.gov.uk/government/publications/restrictions-and-leasehold-properties-pg19a/practice-guide-19a-restrictions-and-leasehold-properties#applications-involving-restrictions>

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| | | Companies Act ¹² within 2 months of lodgement or it commits a criminal offence under the Act. |
| 5.0 Transfer of Share Certificate | Cost | If the Management Company uses the Model Articles under the Companies Act 2000 ¹³ , they are prohibited from charging a fee for the transfer of the share. |
| 6.0 Consent Under a Lease | Cost | The cost of provision of consent required under a term of a Lease is covered by C&LRA and therefore must be reasonable. For example, tribunal decisions ¹⁴ have indicated that provision of Consent to Let should be between £95 - £165 for a new letting and £35 for a re-let to the same tenant. |
| 7.0 Right to Extend the Term | Application | A qualifying tenant of a flat ¹⁵ (or their Personal Representatives) who has been registered as the owner at HMLR for a minimum of 2 years has a right to a lease extension of 90 years, in addition to the remainder of the current term, with ground rent set at a peppercorn. The premium payable is the loss in value of the Landlord's interest which would result for the extension of the lease. The tenant is responsible for the Landlord's costs. Lease Administrators signed up to ARMA-Q ¹⁶ are required to have a written procedure in place. |
| 8.0 Right to Collective Enfranchisement | Application | Where there are at least two flats in the block and at least half of the tenants join in, they can compel the landlord to sell the freehold to them at a price fixed according to the statutory formula. ¹⁷ |
| 9.0 Right to Manage | Application | Allows qualifying flat owners to take over the management of the block of flats. No fault on the part of the existing management regime need be established and no fees are |

¹² s 771 Companies Act 2006

¹³ The Model Articles under the 2000 Act, which apply unless expressly excluded, contain a prohibition on charging a fee.

¹⁴ See *Holding & Management (Solitaire) Ltd v Norton* [2012] UKUT 1 (LC); and *Re Bradmoss Ltd's Appeal* [2012] UKUT 3 (LC)—fee of £135 held to be reasonable. *Freehold Managers (Nominees) Ltd v Piatti* [2012] UKUT 241 (LC)—fee of £165 inclusive of VAT for grant of permission to sublet allowed. Dicta that on a renewal, £35 inclusive of VAT might be more appropriate. See also *Proxima GR Properties Ltd v McGhee* [2014] UKUT 59 (LC)—£95 (inc VAT) reasonable for consent to sublet on the facts. However, Martin Rodger QC, Deputy President commented that:

"The approach taken by most landlords ... is to charge a standard fee, but care should be taken to ensure that any such standard fee is not an inflated or unreasonable fee for a routine and unobjectionable application. It is necessary to consider the work required to deal with a particular application."

¹⁵ Leasehold Reform, Housing and Urban Development Act 1993

¹⁶ <http://arma.org.uk/managing-agents/arma-q-accreditation>

¹⁷ Leasehold Reform, Housing and Urban Development Act 1993

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| | | chargeable – other than legal costs. ¹⁸ The Right to Manage company will then have the right to give consents required under the Lease. |
| 10.0 Notice of Address for Service | Provision | A Landlord must provide the tenant with notice for address for service. Without such notice being provided no payment of any ground rent, service charge or administration charge is due from the Tenant, until an address for service is provided. |
| 11.0 Notice of Ground Rent | Application | Ground Rent under a long lease is not payable unless the Landlord has provided notice, in the prescribed form, of the Ground Rent due and the date payable ¹⁹ |
| 12.0 Notification of Rights in Relation to Administrative Charges | Transparency of Rights | A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges. ²⁰ The summary must be legible in a typewritten or printed form of at least 10 point and to contain the prescribed title and statement. Failure to provide the notification entitles the recipient of the charge to withhold payment until the notification is made. |

¹⁸ Commonhold & Leasehold Reform Act 2002 ss 71 - 113

¹⁹ Commonhold and Leasehold Reform Act 2002 s 166

²⁰ The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (as amended) (and the corresponding regulations in relation to Wales)