



Leasehold Management Policy

Department: Leasehold Management

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CONTENTS		PAGE NO.
1	INTRODUCTION.....	2
1.1	Definition.....	2
2	AIMS & OBJECTIVES	2
3	POLICY STATEMENT	2
3.1.	Access to properties	2
3.2.	Administration Fees.....	2
3.3.	Alterations.....	3
3.4.	Consultation.....	3
3.5.	Estate Improvements.....	3
3.6.	Estate Walkabouts.....	3
3.7.	Freehold Service Charges.....	3
3.8.	Further Advances and Postponement of Charges	4
3.9.	Ground Rent Demands.....	4
3.10.	Insurance.....	4
3.11.	Lease Extension and Enfranchisement.....	4
3.12.	Leasehold Valuation Tribunals	4
3.13.	Right to Buy Discount Rules.....	5
3.14.	Right to Manage	5
3.15.	Sub-Letting	6
3.16.	Varying Leases	6
3.17.	Consultation.....	6
3.18.	Deed of Variation	6
3.19.	Landlord and Tenant Act	6
3.20.	Lease start dates	7
3.21.	Managing sink funds in mixed tenure schemes	7
4	CONFIDENTIALITY	7
5	EQUALITY AND DIVERSITY.....	7
6	EVALUATION & MONITORING	8
7	CUSTOMER FEEDBACK.....	8



1 INTRODUCTION

This policy covers a range of policy statements and issues that may arise in the management of leasehold and HomeBuy (shared-ownership) homes. A set of detailed **Leasehold Management Procedures** are available to provide clear guidance for staff, in line with the policy statements made within this document.

OHG has prepared this policy after consultation with residents. This policy should be considered in conjunction with the OHG **Leasehold Management Procedure**.

1.1 Definition

Leasehold management refers to housing services provided to OHG's leaseholders and HomeBuy shared owners by its specialist Leasehold Management Team.

2 AIMS & OBJECTIVES

Aims:

- to provide a cost effective and efficient service to Leaseholders
- to provide a level of service that meets if not exceeds the Audit Commissions excellence standard.

Objectives:

- to provide clear guidance for officers to enable them to carry out their roles within leasehold management.

3 POLICY STATEMENT

The list of policy statements below, have been drafted to ensure that residents, One housing Group (OHG), and its member Housing Associations, are appropriately protected and have a clear set of guidelines to consult. For detail on the operational management of the processes below, please consult the set OHG **Leasehold Management Procedures**.

3.1. Access to properties

Individual leases make provision for OHG to gain access with reasonable notice when necessary. They also make provision for access without notice in cases of emergency. On very rare occasions it may be necessary to force access in the event of an emergency.

3.2. Administration Fees

Administration fees are either provided for within the lease, or are for matters outside of the terms of the lease for such things as:

- copies of buildings insurance document
- licence to sublet
- pre-assignment enquiries etc



OHG will ensure that it complies with all statutory requirements in respect of administration fees. It will ensure that its administration fees are competitive and will endeavour to have them lower in comparison with benchmarked RSL's.

3.3. Alterations

The individual lease will generally require prior written agreement from the landlord for alterations. OHG will not withhold consent unreasonably. There will be occasions when OHG are requested to give retrospective consent. OHG will normally comply as long as other permissions and requirements (such as LA's) have been met and /or granted.

3.4. Consultation

OHG will observe the statutory requirements for consultation under Section 20 Landlord and Tenant Act 1985 (as amended). In addition it will actively consult and work with its residents to understand their needs and to provide, where possible, the services to meet those needs.

3.5. Estate Improvements

Specific estate improvements may be identified at an estate walkabout or through some other means such as resident feedback. Where a specific estate improvement is agreed, the work will be undertaken and recharged to leaseholders through their variable service charges where the lease permits. Where the lease does not permit such a charge, the need for the work must be assessed in this light. When the proposed improvement also benefits General Need's residents as well as leaseholders, only the appropriate portion of the cost will be collected through the Leaseholders variable service charges.

3.6. Estate Walkabouts

OHG have a programme of regular estate walkabouts. The frequency of inspection will vary dependant upon individual estate circumstances. Residents will be invited to participate in these walkabouts, and local councillors are welcome to attend. Estate walkabouts provide an opportunity for residents to meet staff to review the standard of management/maintenance on the estate and to consider any specific issues that may arise, including estate improvements.

3.7. Freehold Service Charges

OHG have a number of estates where the owners of houses bought their freehold under the Right-to-Buy Scheme. They may be required to contribute to estate costs via a service charge. When this is the case OHG will ensure that the freehold owners receive the same information in the same format as other variable service charge payers. OHG will also look to capitalise such charges over a twenty year period. This will allow it to avoid any issues over the enforceability of positive covenants in the Transfer of Part, as well as generating a capital receipt.

3.8. Further Advances and Postponement of Charges

OHG have no influence over whether Right-to-Buy Leaseholders refinance to release equity from their lease, unless OHG's charge to secure the repayment of discount charge is affected. When OHG have a charge against the property in respect of the repayment of Right-to-Buy discount it will not agree to postpone its charge in favour of any additional borrowing.

3.9. Ground Rent Demands

OHG will observe the statutory requirements in respect of ground rent demands as provided within the Commonhold and Leasehold Reform Act 2002.

3.10. Insurance

As the freehold owner of blocks of flats that include leasehold homes OHG are required by the leases to maintain a buildings insurance policy. This will be renewed on at least an annual basis and OHG will endeavour to secure the best possible deal via the market so as to minimise the insurance cost to our leaseholders.

3.11. Lease Extension and Enfranchisement

Lease extension is provided for in the Leasehold Reform, Housing and Urban Development Act 1993 (as amended). Technically it is not an extension, but the issue of a new lease for 90 years, plus the balance of the old lease. This provides an ideal opportunity to determine new lease terms. Where OHG are a superior leaseholder rather than the freeholder, and the term of its lease is less than the 90 years plus the balance of the term of the old lease; then the period of the new lease will be the length of OHG's remaining lease less one week. OHG will seek to extend its head leases when requested to by its under-lessees and they have agreed to meet OHG's costs. Enfranchisement is the ability of all leaseholders to come together and form a company to buy out the freehold. Again, the legal provision for this is enacted in the Leasehold Reform, Housing and Urban Development Act 1993 (as amended). Where OHG consider it appropriate, it may apply its discretion to allow either lease extension or enfranchisement to take place on a voluntary process rather than be enforced through the provisions of the Act.

3.12. Leasehold Valuation Tribunals

The Leasehold Valuation Tribunal (LVT) is the formal name given to the body appointed to make decisions on various types of dispute relating to residential leasehold property. The LVT is an independent decision making body which is completely unconnected to the parties or any other public agency. The Tribunal will look at the matter of the Leasehold Dispute for the property following an application to the Tribunal.

LVTs can:

- decide the price to be paid when a leaseholder wants to buy (enfranchise), extend or renew the lease of their home and the value cannot be agreed with the leaseholder
- vary estate management schemes under the Leasehold Reform, Housing and Urban Development Act 1993

- adjudicate in disputes about the right of first refusal procedure (which gives leaseholders the right of first refusal to buy the freehold when the landlord wishes to sell it) and the compulsory acquisition of the landlord's interest in blocks of flats
- decide liability for payment of service charges and can settle disputes about the landlord's choice of insurer
- decide applications on dispensation of service charge consultation requirements, administration charges, the right to manage, the appointment of managers, the variation of leases and estate charges.

There are in many cases a number of preliminary steps that must have taken place before an application can be made to the LVT. Some applications may require the payment of application and hearing fees. Leaseholders have the right to refer any of the issues listed in the bullet points above to the LVT, without reference to the landlord. OHG may look to place longstanding disputes to the LVT, where it has been unable to resolve them. OHG endeavours to provide an excellent management service (both in standard of service, and value for money) to its leaseholders. By doing so, it is anticipated that challenges by leaseholders through the LVT, will be held to a minimum.

3.13. Right to Buy Discount Rules

OHG will enforce repayment of discount for any Right-to-Buy purchaser who chooses to dispose of their purchase within the discount repayment period.

3.14. Right to Manage

The Commonhold and Leasehold Reform Act 2002 provides a right for leaseholders (of flats, not houses) to force the transfer of the landlord's management function to a special company set up by them. This right is not merely a means of avoiding poor management by the landlord, as it is not necessary for leaseholders to prove mismanagement by the landlord. The right empowers leaseholders to take responsibility for the management of their block. To qualify for the Right to Manage (RTM), the building must meet certain conditions and a minimum number of leaseholders is required to take part:

- The building must be self contained.
- The building must contain at least two flats.
- At least two-thirds of the flats must be let to 'qualifying tenants' A 'qualifying tenant' is a leaseholder who owns 100% of the lease [not shared ownership] whose lease was originally granted for an original term of more than 21 years.
- There is no requirement for any past or present residence in the flats, nor any limit on the number of flats which can be owned by one person.
- Where leaseholders consider taking over the management of the building by forming an RTM company, all qualifying tenants must be invited to participate.
- OHG endeavours to provide an excellent management service (both in standard of service, and value for money) to its leaseholders. By doing so, it is anticipated that challenges by leaseholders under the RTM, will be held to a minimum.

3.15. Sub-Letting

Individual leases generally contain clauses on sub-letting. Such clauses may prohibit subletting, or they may permit sub-letting with or without the consent of the landlord. Where there is discretion under the terms of the lease, consent to sub-letting will not be unreasonably withheld. Whilst OHG have no obligation to do so, it may in special circumstances, be prepared to consider permission to sub-let, even where the lease prohibits sub-letting. The procedure that supports this policy statement provides guidance to staff on whether consent should be granted.

3.16. Varying Leases

OHG manage leasehold properties occupied under a variety of different leases. Where possible OHG will work towards amending leases to:

- reduce the number in use
- provide a uniform format
- and to enable services available to some leaseholders to be provided to others.

Sometimes changes in the nature of services are required to meet modern standards, but cannot be implemented, because leases do not provide for the change. Faulty provisions in leases are sometimes uncovered as staff and leaseholders become more aware of what leases contain. For very good reasons to do with protecting leaseholders, it is difficult for landlords to vary the terms of leases. Without the full agreement of all leaseholders affected, it is difficult to vary the lease without costly and time-consuming legal proceedings. In view of the potential difficulties, where leasehold staff considers it necessary to seek to vary the terms of any lease, or a group of leases, a report will be submitted to the OHG Board for authority to proceed.

3.17. Consultation

OHG will always consult with leaseholders before seeking to vary the terms of leases. It may be impossible to reconcile the interests of all leaseholders. For example, one or two lessees may take a different view from the others about the need for a new or different level of service, often for financial reasons.

3.18. Deed of Variation

When OHG can achieve the required change by agreement it will formalize it with a deed of variation, signed by both parties. It may also be necessary to obtain the consent of any mortgage lender. This process may become difficult if there are a number of leaseholders involved, each potentially with a different lender.

3.19. Landlord and Tenant Act

Where OHG cannot obtain the agreement of all leaseholders involved, the Landlord and Tenant Act 1987 (as amended by Section 162, Commonhold and Leasehold Reform Act 2002) makes provision that 'any party to a long lease of a flat may make an application to the Leasehold Valuation Tribunal for an order varying the lease in such manner as is specified in the application'. Section 35 of the Landlord and Tenant Act 1987 allows such



applications to be made on the grounds that the existing terms are defective. This covers such matters as terms that effectively prevent the proper maintenance or upkeep of the building, or lead to unsatisfactory conditions of occupation.

3.20. Lease start dates

OHG and all subsidiary companies will not operate a lease start date policy for Right to Buy and Right to Acquire sales.

3.21. Managing sink funds in mixed tenure schemes

This policy statement applies to all situations where monies are paid via a service charge into a fund to be used to contribute towards the costs of future major works. The terms 'sink fund' and 'reserve fund' are interchangeable for the purposes of this policy.

In a mixed tenure scheme leaseholders will have contributed towards a sink fund via the annual service charge. When works take place then the portion of the costs that relate to other (non leasehold) homes in the scheme should be met by the landlord. The full cost of any works in a mixed tenure scheme should not be funded via the sink fund even if there are sufficient monies to allow this to happen.

In the absence of any ratio or proportion set out in any lease, head lease or under lease, then the ratio for the costs should be based on a simple pro rata division based on the numbers of the different tenures.

4 CONFIDENTIALITY

Under the Data Protection Act 1998 and the Human Rights Act 1998, all personal and sensitive organisational information, however received, is treated as confidential. This includes:

- anything of a personal nature that is not a matter of public record about a resident, client, applicant, staff or committee member
- sensitive organisational information

Officers will ensure that they only involve other agencies and share information with the consent of the resident concerned, unless:

- OHG is required to by law
- the information is necessary for the protection of children

5 EQUALITY AND DIVERSITY

OHG recognises the needs of a diverse population and always acts within the scope of its own **Equality and Diversity Policy**, the Human Rights Act 1998, The Disability Discrimination Act, and Race Relations Act.

OHG works closely with its partners to ensure it has a clear understanding of its resident community with clear regularly updated service user profiles. This enables OHG to offer a



high level of service to its diverse mix of leaseholders. The Performance Information Team is responsible for recording, analysing and monitoring information on ethnicity, vulnerability and disability.

6 EVALUATION & MONITORING

OHG regularly monitor all aspects of leasehold management, providing a detailed report to the OHG Board.

7 CUSTOMER FEEDBACK

Where residents have any positive or negative feedback with any aspect of this policy, we encourage them to provide this to us. OHG will accept feedback in any format, but preferably in writing, acknowledging it within 3 working days and responding to the points raised within it, within 10 working days. Should the resident be unhappy with our response, the issue may be progressed to the:

- OHG complaints procedure, commencing at stage one
- Independent Housing Ombudsman (IHO)
- Leasehold Valuation Tribunal (LVT)

The IHO will not normally consider such an issue until OHG complaints procedure has been exhausted.