



I am buying a leasehold. Should I worry about major works?

The answer is yes. The main law is contained in the Commonhold & Leasehold Reform Act 2002, Section 151. The law requires that the leaseholder must be consulted before the landlord carries out qualifying works or enters into a long-term agreement for the provision of services.

The Commonhold and Leasehold Reform Act 2002, Section 151, introduces new requirements for the statutory consultation of leaseholders. It replaces the old statutory consultation procedure (Landlord & Tenant Act 1985, Section 20), but the title 'Section 20' is retained.

There are new requirements for the landlord to state why he considers the works or the agreement to be necessary and for further statements setting out his response to observations received and his reasons for selection of the successful contractor. Consultation notices must be sent both to individual leaseholders and to any recognised tenants' associations (RTAs); both the leaseholders and the RTA have a right to nominate an alternative contractor and the landlord must try to obtain an estimate from such nominees.

The new procedures provide for two separate 30-day periods for leaseholders to make observations and landlords would be prudent to allow a minimum of three to four months for the whole process.

The new requirements are defined under two headings:

- Qualifying works
- Qualifying long-term agreements

While the principal purpose of the consultation process is to seek the leaseholders' views on the landlord's proposals, the effect of the provisions is to limit the landlord's ability to recover if he does not comply. If the landlord fails to carry out the full consultation procedures, in the correct manner, he is not able to collect or recover service charges above the level of the statutory minimum amounts, that is, £100 per leaseholder per year in respect of a long-term contract, or £250 per leaseholder for works to the building. The landlord will have to cover the loss himself, which may have implications for the Housing Revenue Account and, possibly, the District Auditor.

Qualifying works

These are the same works previously included within the old S.20 requirements (that is, 'works on a building or any other premises') with the addition of works of improvement.

When calculating the estimated cost, VAT on works must be included. It had been thought that landlords must consult if these works will cost over £250 for any one leaseholder. Thus, in a property with unequal service charge contributions, the landlord must consult all leaseholders if any one leaseholder would have to pay more than £250.

If consultation is not undertaken, the landlord will not be able to collect service charges over £250 per leaseholder.

The consultation requirements for qualifying works are contained in Schedules 3 and 4 of the 2003 service charge regulations.

Qualifying long-term agreements

This is an entirely new concept. A qualifying long-term agreement is an agreement entered into by the landlord with a wholly independent organisation or contractor for a period of more than 12 months after 31 October 2003. (Agreements before this



are exempt.) Although it is not spelt out in the Act, it is safest to assume that this would include ongoing contracts with no specific termination date.

Landlords must consult where the amount payable by any one contributing leaseholder exceeds £100 in any one year. Thus, in a property with unequal service charges, the landlord must consult all leaseholders if any one leaseholder would have to pay over £100 in any one year. The figure is to be calculated on the basis of the leaseholder's total contribution resulting from the agreement, including VAT (and any associated management or administrative costs which flow specifically from the proposed agreement).

If consultation is not undertaken, the landlord will not be able to collect service charges over £100 per leaseholder, per year. The consultation requirements for qualifying long-term agreements are contained in Schedules 1 and 2 of the 2003 service charge regulations.

Examples of potential qualifying long-term agreements include:

- agreements affecting the building generally (e.g. lifts, entry-phone systems, waste management or maintenance contracts);
- cleaning and gardening;
- insurance;
- utilities;