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## Webinars A Great Success

As you probably already know, we are a great believer in conducting Seminars over the Web (Webinars). Last year we held three seminars on property related matters:

1. Dealing with Anti-Social Tenants.
2. Appealing Decisions of the LVT.
3. Understanding Residential Long Term Leases.

The feedback which we received was extremely positive. Understanding Residential Long Term Leases was rated 4.7 out of 5 (1 = bad, 5 = good). Comments included “All staff found this to be useful, excellent idea to have good short presentations like this” and “Everyone here agreed it was jolly good and would appreciate it if you could keep us informed of further Webinars”.

Appealing Decisions of the LVT was rated 4.5, “Speakers very good and obviously very competent”.

Dealing with Anti-Social Tenants rated 4.5, “Very informative and for us a great way to attend a Seminar” and “We found this very helpful, thank you very much”.

Our first Seminar of 2006 was “Section 20 Consultation - Getting it right”. This webinar was presented by Jeff Platt, the Chairman of the Institute of Residential Property Managers. Jeff also sits as a member of the LVT.

The seminar was rated 4.5. Comments included “The information was well presented in a professional but light style”. “Very informative, thanks a lot, please keep us posted for the next Webinar” and “Useful and informative. Nice to know we are doing it correctly!”.

We are continuing with our programme of seminars throughout the course of 2006.

We are happy to consider holding Webinars on any other topics which may be of interest. If you have an idea for a Webinar that you would like us to hold, please email shaunjardine@brethertons.co.uk. If your idea is not one that we have already planned and we use your idea, we will happily provide you with a free pass to attend.

## Commonhold Property Managerfile Special Report

### What Is Commonhold?

Commonhold is a new way of owning property in a multi-occupancy property and offers an alternative to the current leasehold system. It has been introduced through the Commonhold and Leasehold Reform Act 2002 (CLRA 2002) and allows for multi-occupancy buildings to be divided into units and common parts but for the ownership of the individual units to be in the form of freehold ownership rather than leasehold. It is designed to overcome some of the disadvantages of leases in dispositions of units in interdependent premises. Commonhold can be applied to residential and commercial buildings however, in practice, it is more likely to be used in residential developments.

There is therefore no landlord allocated from their capacity of freeholder, as the building will be divided into numerous freehold units. In residential properties this will mean that each flat owner will own a freehold rather than a leasehold interest. This is to the advantage of the owner of the flat as their ownership will not be limited by time, as it is with a lease, and will therefore not be a wasting asset. Unit-holders are therefore not susceptible to the problem of falling property value due to the term of a lease nearing its end. As with a leasehold flat, the ownership will usually be limited to the internal wall, ceiling and floor between each unit and will not include external walls.

## How will this affect the common parts, usage and maintenance of the building?

As there is no superior freeholder, the rest of the building is owned and managed jointly by the individual unit-holders. They share the management of the communal parts of the premises with the freeholders of the other units. This is done through a Commonhold Association, which each unit-member is a member of. This is a limited company which will have a Memorandum and Articles of Association prescribed in Commonhold Regulations and governed by the rules and procedures of the Companies Act 1985. The Commonhold Association owns the common parts of the development. It is a private company, limited by guarantee which means that it has members who are guarantors rather than having share capital held by shareholders. These guarantors give an undertaking to contribute a certain amount – usually £1 – as the limit of their liability towards the potential winding up of the company. It cannot distribute its profits to its members, which means that any profits will instead be ploughed back into the company.

Only a unit-member can be a member of the Commonhold Association and be able to actively participate in the decision making process in the running of the building. The interests of landlords and tenants can sometimes be conflicting, therefore a Commonhold Association may reduce disputes as, in theory, all members will have similar interests and objectives for the building. There is no obligation on the unit holder being a member of the Commonhold Association. The Commonhold Association is able to estimate the overall costs of maintaining and insuring of the property rather than being simply obliged to pay an agreed percentage of the expenditure.

One of the features of commonhold is that unit-holders are under a greater burden and bear more obligations to the common parts of the property, unlike in a leasehold arrangement, where they are simply responsible for the payment of the service charges under the terms of their lease. This increased input to the management of the common parts may reduce the role of property managing agents in multi-occupancy buildings, however some unit holders may not be interested in the day to day obligations this may impose. It is likely therefore that, in

practice, professional managers will be appointed.

As there are no leases to determine the rights and obligations of each party, the Act states that all of the rights and obligations of the Association is set out in a Commonhold Community Statement. This will contain detailed provisions for the common parts of the property including the following:

- Defining each unit and the common parts
- Raising funds to enable the Commonhold Association to discharge its obligations
- Allocates the number of votes per unit
- Insurance obligations
- Maintenance obligations
- Procedures for dispute resolution between unit-holders and between a unit-holder and the Commonhold Association
- Other rules that will affect the unit-holders, such as letting, alterations and nuisance.

The provisions are therefore similar to the provisions of a lease. The advantage is that the statement will be for the whole building and not one per flat, which avoids problems such as a lack of uniformity in leasehold documentation, as the nature of each unit-holder's interest is standardised. Commonhold ownership does mean however that unit-holders will not need or have many of the various statutory rights and protections that are available to leaseholders. For example there is no right to challenge the charges at an LVT.

The basis of the statement has been prescribed by regulations and it is important to note that the basic form of the statement can only be departed from in limited circumstances.

How are Commonholds set up?

They can only be created from freehold land and come into effect when the land is registered at the Land Registry as commonhold. The Land Registry will only register a commonhold if there is:

- A Commonhold Association
- A Commonhold Community Statement
- Memorandum and Articles of Association of the Commonhold Association is registered with Companies House and made available to the public.

In the case of a new development, the commonhold will be registered without the unit-holders as these will be sold at a later date. Initially, all the units and common parts will be registered under the name of the developer. The individual units are registered as separate titles, which will simplify the subject of conveyancing when the units are individually sold and transferred from the developer to the purchaser. The developer will form and register the Commonhold Association and draft the Commonhold Community Statement. Registration will give the development a number of freehold titles, which will be registered in the name of the developer. Between the registration of the developer and the sale of the first unit (the transitional period) the developer has the option to revert back to an ordinary freehold status.

Under Section 9 of the CLRA 2002 it is also possible to convert an existing leasehold building into a commonhold property, however, the Act stipulates that all interested parties must consent to this. This would include leaseholders, landlords and any lenders. Obtaining all of these may be complicated and each party will want to protect what is likely to be their conflicting interest. A group of leaseholders cannot force a freeholder to change leasehold land into commonhold, although a freeholder can choose to convert the land with the consent of all the leaseholders.

It is most likely that commonhold will be most popular with new developments, primarily residential. The risk involved for developers of using this new system is how easily it will take on and for the units to sell. The system is widely used in the USA (known as Condominiums) and Australia (known as Strata Title) however, its practical implication and popularity in England & Wales still depends on whether anyone is prepared to take the first step in developing or converting to commonhold ownership.

## Compulsory Provision Of Service Charge Statements Delayed

The requirement for Landlords to provide an annual statement of service charge to leaseholders has been delayed.

Notwithstanding the fact that the Common and Leasehold Reform Act 2002 received Royal Assent in May 2002, parts of it still await formal commencement.

Under the Act Landlords were to be required to provide an annual statement rather than as at present responding to a request from a leaseholder. The Act envisaged that Landlords would have to explain in detail how money had been spent in managing and maintaining their properties.

The proposals making it obligatory to provide this information has met considerable opposition from the social sector, Leasehold Landlords, Councils and Housing Associations. The ODPM has noted that "It would not be possible to introduce the new measures without imposing considerable extra costs on social Landlords and their Leaseholders".

Whilst the relevant section has not been shelved, it seems unlikely to come into force for at least 12 months.

## LVT Update

### Abaris Limited v Altoun

In this case, the LVT reduced the Management fee by 15% even though the fee itself had not been correctly criticised/questioned by the applicants. The Managing Agents, Abaris maintain that because the application hadn't directly called into question their fee, they had not been given the opportunity to deal with the applicant's criticism of it at the LVT hearing.

The LVT decided that Abaris had "been inconvenienced, rather than prejudiced".

Abaris appealed to the Land Tribunal and lost. The Tribunal took the view that if there is a challenge to reasonableness, it should be regarded as a challenge to all "constituent parts".

The moral of the decision is that managing agents must use either their psychic powers when dealing with LVT claims or alternatively, be prepared to justify every item of expense even if it doesn't appear clear at the outset exactly what is being challenged.

### Bank Chambers –v- Royal Bank of Scotland

The Bank Chambers Residents Association challenged the service charge liability.

Over £170,000 of service charge during a three-year period was reduced by the LVT. These included reduction in management charges of £18,000! Caretakers wages, holiday cover for the caretaker, internal maintenance and repairs, water rates, telephone and cleaning costs.

There was apparently very little in the way of documentation supporting the Respondent's case. The Respondent was also heavily criticised by the LVT for being unfamiliar with the RICS Code of Practice.

## 'Conversion Into Dwellings' Means More Dwellings

The right to reclaim VAT on residential conversion works was further clarified by a case heard in the Court of Appeal recently. The argument involved the conversion of a school building which had previously included some residential accommodation. After the conversion was completed, there was a private residence plus a further three flats. A claim to recover VAT in excess of £300,000 relating to the conversion of the non-residential parts of the building was made. It was rejected by HM Revenue and Customs on the grounds that there had been a residence there before, so the work was not the conversion of a non-residential property.

In the Court of Appeal's view, the VAT was recoverable. The appropriate test to apply was, 'Are there more dwellings after the conversion work than there were before?' If there are more, then the VAT is recoverable, provided the relevant criteria are met. If not, it is not.

## In Brief

The Residential Property Tribunal Service estimates that it will receive 6,000 extra tribunal cases per year once its new range of powers are brought into force under the Housing Act. The tribunal will determine appeals on local authority decisions concerning the new regime for licensing houses, multiple occupation, health and safety of the rating regime which will replace the current housing fitness standards and the licensing of landlords in the selected areas of low housing demands.

**In a document as concise as PropertyManagerFILE it is impossible to give a complete answer to all facets of any legal problem. Treat PropertyManagerFILE as food for thought, but don't take any action based on its advice unless you have seen a solicitor. ©2006.**

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