

FREEHOLD AND LEASEHOLD PROPERTY OWNERSHIP

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1. About this guide

The purpose of this guide is to explain about the two common ways property is owned in England.

2. Understanding property ownership

There are two common ways to own a property:

- Freehold ownership.
- Leasehold ownership.

These are sometimes referred to as freehold or leasehold titles or interests. Both freehold and leasehold titles can be owned by individuals or by companies.

3. Freehold ownership

Every piece of land has someone that owns the freehold. They are called the **freeholder** and they own the **freehold title** to that land and any buildings on it (**property**). For most purposes, the freeholder is the ultimate owner of the property. If there are no leases of the property, the freeholder generally has complete control over their property (subject to laws and planning restrictions).

A simple example of freehold ownership is that most people who own and occupy their own house own the freehold title to that house. This means that they have control over the property and responsibility for repairing, maintaining and insuring it. Their only regular outgoings are likely to be council tax, utility charges and mortgage payments (where applicable).

4. Leasehold ownership

A freeholder can grant a lease to another person (**leaseholder**), allowing them to use and possess their property, or part of it, for an agreed period of time. By doing so the freeholder becomes a **landlord**. Leaseholders may also be referred to as **tenants**.

A lease will specify certain things, such as:

- How long the leaseholder can occupy the property for. This period is referred to as the **term** of the lease, for example, a lease might be granted for a term of ten years.
- How much rent (if any) is to be paid by the leaseholder and when.
- Exactly which parts of the property the leaseholder can occupy or use and for what purpose.
- Who is responsible for repairing different parts of the property. For example, the landlord might repair the roof but the leaseholder might be responsible for doors and windows.
- Whether the leaseholder will be liable to make any other payments to the landlord, such as service charge or a contribution towards insurance costs.
- Things the leaseholder must not do, for example, be a nuisance to other neighbours or physically alter the property.

A lease is a contract. A landlord and leaseholder must comply with the terms of their lease.

If you are a leaseholder and you do not comply with the terms of your lease, the landlord will have certain rights to enforce the lease. For example, they may be able to take you to court to require you to do something (such as repair the property) or stop you from doing

something (such as causing a nuisance). In more extreme circumstances, the landlord may be able to bring the lease to an end and prevent you from continuing to occupy the property. You may be responsible for the landlord's legal costs and interest on any money you paid late.

Not complying with the lease is also likely to breach any mortgage agreement you have.

5. Common types of leases

Residential

For residential properties there are two common types of lease:

- Long leases granted for a substantial period (often 99 years or more). These are bought and sold for an upfront amount, known as a premium or purchase price, often with a mortgage. Leaseholders under long leases typically still pay additional rents or service charge to their landlord.
- Short term leases or tenancies (commonly, assured shorthold tenancies, or **ASTs** in England). These are usually granted for a short period (for example, one year). Short term leaseholders do not generally pay an upfront premium for the property. Instead, they commonly pay rent each month. They often also pay a deposit to the landlord, as security in case they miss rent payments or damage the property.

Commercial

Commercial leases relate to properties such as offices, shops and warehouses. Many of these leases will be granted for a period of ten

years or less. Some commercial leases may be bought and sold for an upfront amount. Most require rent and other payments, such as service charges, to be paid regularly to the landlord. Some allow the landlord to increase the rent at certain times.

6. More complex leasehold arrangements

A simple leasehold arrangement would be, for example, where a freeholder of a house grants a lease of the whole house to a leaseholder. There will be one lease and the leaseholder will occupy the whole of the property.

Many property ownership structures however are more complex, particularly for larger properties. Examples of such structures include:

- A freeholder owning a house might grant a lease of the whole house to a leaseholder. If permitted by their lease, that leaseholder might then grant another (shorter) lease of the whole, or just part, of the house to another leaseholder. This is known as **sub-letting**.
- A freeholder might own a block of flats and grant a lease of each flat. Some, or all of, the leaseholders might then each sub-let their flats. The **common parts** of the property (such as the stairwells, lifts and gardens) would still be the freeholder's responsibility.
- A freeholder might own a mixed-use property, such as a block of flats with a row of shops underneath. To help with management of the property, the freeholder might grant a lease of the whole of that property to a company. That company would in turn grant leases of each individual flat or shop to leaseholders. Some of those leaseholders might then sub-let their flat or shop. The responsibility of the common parts would belong to the company.

- A developer might have a freehold interest in a plot of land and build a large estate of residential properties on it, made up of both flats and houses. Some of the houses might then be sold to individual homeowners on a freehold or leasehold basis. The flats will be leased to leaseholders. Once the site has been built and all the properties sold the developer will want to sell its freehold interest in the site and move onto its next development. So that the residents can run and manage their own site, the freehold might be sold to a company that each resident has a share in. The residents might pay a routine charge towards the cost of maintaining and repairing the common parts of the estate, such as any communal gardens.

When there are multiple leases granted over the same property, or the same part of a property (such as a flat in a block), these sit underneath each other making a vertical "chain of leases". As a result of this chain, each leaseholder has contractual responsibilities to the landlord directly above them, and any tenant directly below them.

As there can be multiple levels of leases, leaseholders are often given alternative names, such as "head leaseholder" or "sub-tenant" to help identify what level they are at. The leases themselves may be given different names for the same reason, such as a "head lease" or a "sub-lease". These names are used loosely and can mean different things depending on the lease structure in question.

Leases can be granted for any length of time but if a leaseholder is sub-letting, the sub-lease must be for a shorter period than the lease it is being granted out of. This means the shortest lease is often the last in the chain and that leaseholder is usually the person entitled to occupy the property.

7. Why is leasehold ownership used?

There are several reasons why a leasehold ownership structure might be used. These include:

- Legal restrictions on the way freehold titles can be sold and owned. Generally, this means that a freeholder cannot divide up a property and sell each part on a freehold basis. To dispose of, or allow others to use, parts of that property, the freeholder usually grants leases of those parts.
- To generate income for the landlord, for example, via rental payments.
- To enable a landlord to retain control of how the property is used and occupied.

8. Limits on a leaseholder's ability to use their property

Leaseholders should be aware that their lease will limit what they can do at the property. Generally, the shorter period of time the lease is granted for, the more restrictive it is. Most leases will contain restrictions on matters such as:

- Physically altering or extending the property.
- Selling or sub-letting the property or allowing others to occupy it.
- The use of the property (for example, residential or business use).

Certain activities may be prohibited completely or may require the landlord's permission first, often by way of a written legal document. The lease will usually require the leaseholder to pay any costs the landlord incurs when they give this permission, for example, any

surveyor's fees or legal costs. As an example, a leaseholder may need the landlord's permission before building an extension to their property and may need to pay the landlord's fees in documenting this permission.

Some obligations are imposed on landlords by law regardless of what is written in the lease. This is often to protect shorter term residential leaseholders, for example, by requiring the landlord to keep certain parts of the property in repair, such as the drains and external windows.

9. Residential leaseholder rights

In some circumstances, a leaseholder with a long lease of a flat may have rights at law that are not mentioned in their lease, for example, the right to pay for their lease to be extended so that it runs for more years (known as a lease extension). Some of these rights are collective ones, meaning they can only be exercised when other leaseholders from the same property act together. These include the right to:

- Buy the freehold interest (known as collective enfranchisement).
- Be given the chance to buy the freehold interest, or a superior lease, before it is sold (known as the right of first refusal).
- Form a company to manage the common parts of the property (known as the right to manage).

Leaseholders of houses may have the right to extend their lease or to buy the freehold.

In certain circumstances, leaseholders that pay a service charge can challenge the reasonableness of what they are charged.

Residential leaseholders of long leases need to be mindful of how many years are left on their lease. Mortgage companies will often only lend against leases of a certain length, so it can become difficult to sell your lease as time progresses. Extending your lease also becomes significantly more expensive once there is less than 80 years left to run, so it is best to extend it as soon as possible.

10. Commercial leaseholder rights

Some commercial leases give a leaseholder a right known as **security of tenure**. Essentially this allows a leaseholder to:

- Stay in occupation of their property even after their lease has come to an end.
- Require that the landlord grants them a new lease after their original lease ends.

Security of tenure can be problematic for a landlord because the landlord:

- Will want to know when a leaseholder is leaving the property.
- May not want to grant another lease.
- May have to pay the leaseholder compensation if they do not grant a new lease.

Whether or not a leaseholder has security of tenure at the end of their lease depends on factors such as:

- The type of lease and the length of time it was originally granted for. Some leases are prevented by law from having security of tenure.

- Whether a process commonly known as **contracting out** was conducted between the landlord and leaseholder before the lease was created.
- Who is occupying the property at the end of the lease and what they are using the property for.

If we can help you with your freehold or leasehold property please contact

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