



HomeOwners
Alliance



Homes Held Hostage

The rise and abuse of leasehold

A report by HomeOwners Alliance

Chief Executive's message

“

Paula Higgins
Founder and CEO

When is your home not really your home? When it is owned by a freeholder. At the very heart of our housing market is a rotten system: leasehold. It is as complex as it is unfair, landing many homeowners with vast and exorbitant fees, punitive restrictions, and depriving them of many of the benefits of homeownership. Alongside this, there is a growing industry of professional freeholders and their advisers, ensuring they can continue to extract money from ordinary leaseholders.

The very complexity of the leasehold system means that many less experienced homeowners don't realise how unfair it is until it is too late, and politicians shy away from public debate on it. There have been some partial reforms, but the proposed alternative of commonhold has floundered.

Far from subsiding, the problem of leasehold is growing. It has been a slow burn scandal that is now simmering. The leasehold system is so profitable for property developers that they are ensuring that it is becoming far more widespread across the country. Our surveys show not only that leaseholders are troubled by the system, but that the general public now believes it is one of the most serious issues in the housing market. At the HomeOwners Alliance, we see first-hand how the leasehold system too often turns the dream of homeownership into a nightmare.

The time has come to ensure that the housing market serves householders fairly and efficiently. The government must commit to radical and urgent reform of the leasehold system, or else homes will continue to be held hostage.



”

Contents

1

Introduction

3

Key findings

4

Home Ownership vs. Leasehold Ownership

6

The scale of leasehold

8

The growth of leasehold

9

What's the problem?

10

Leaseholder confusion

11

Leasehold transactions

12

The cost of lease extension

14

Estate agents and leaseholds

15

Exorbitant charges

16

Shared ownership, council and housing association owned property

17

Unfair leases and informal lease extensions

18

Leaseholders' stories

19

The case for reform

20

HOA's recommendations for reform

23

Help and guidance

24

HomeOwners Alliance toolbox

Introduction

If you spend hundreds of thousands of pounds on a flat or a house, it is reasonable to expect that your home would then be yours to own forever. But for millions of ‘homeowners’ across the country this is not the case, because of the fact that they are leaseholders. In the eyes of the law, leaseholders do not own their properties, but merely have a contract that gives them access to it for the remainder of time left on the lease.

The leasehold system of home ownership is a relic of English law that dates back to the Domesday Book of 1089¹. Although it is not unique to England and Wales, we are one of very few advanced nations that still clings to this form of tenure, rather than adopting a more modern approach.

Leasehold is not working in this country. It is a very one-sided and complex system, causing multiple financial and other disadvantages for leaseholders. The leaseholder pays for everything – from the full cost of the original development of the building, through to its day-to-day maintenance. Leaseholders can be subject to exorbitant charges from the freeholder or their agents, often through incomprehensible but punitive contracts.

Extending the lease or buying the freehold can be incredibly difficult and time-consuming, and prohibitively expensive. In extreme cases, freeholders can forfeit the leaseholder’s home for breaking the contract. And ultimately, if or when the lease expires, the leaseholder loses any right to live in what they see as their own home.

By contrast, the freeholder, or lessor, pays none of the costs, can make money from the leaseholders, and yet at the end of the lease takes back full ownership of the property benefitting from any uplift in house prices.

As a result, millions of homeowners across the country run the risk of being held hostage by their freeholders and managing agents. Many leaseholders have never controlled the single most important asset in their lives – their home. Many don’t realise the issues they could have until it is too late – only 42% of leaseholders say they even know the length of their lease.²

The problem of leasehold is growing, with the number of leaseholders rising rapidly. In 2015, leasehold properties accounted for 43% of all new build registrations with the Land Registry – almost double the proportion (22%) in 1996³. In London the figures are even higher – 89% of new housing stock is leasehold, and now 50% of all housing stock is leasehold tenure.⁴

¹ Taken from the Ministerial Foreword of The Commonhold and Leasehold Reform Act 2002 by the then Housing Minister Hilary Armstrong

² HomeOwners Survey 2017, see section on Leaseholder confusion for full results

³ Land Registry data (referenced here: <http://www.telegraph.co.uk/finance/personalfinance/borrowing/mortgages/12099723/Why-a-boom-in-leasehold-flats-for-young-and-old-is-causing-concern.html>)

⁴ <http://www.leaseholdknowledge.com/wp-content/uploads/2014/02/LKP-leasehold-market-evaluation-final.1.pdf> pg. 4, 17



There is also now the relatively new phenomenon of new build houses – not just flats – being sold leasehold. A whole industry has grown up, serving the interest of freeholders at the expense of leaseholders.

The growth in leasehold means the decline in proper home ownership in recent decades is even more stark than official figures suggest. In this report we have focused specifically on the implications of this growth on owner-occupiers – those who believe they own the home they live in. Even though many of the abuses of the leasehold system are also felt by renters and second home owners, we feel it is owner-occupiers who are most adversely affected, and as the voice of Britain's homeowners it is this section of the leasehold market we will look at specifically.

According to the government, the 1.577 million owner-occupied leasehold properties across England and Wales are owned by their leaseholder⁵. But in the eyes of the law, they are in fact owned by their freeholder. The UK's official rate of home ownership was 64.6% in 2014⁶, but this includes the leaseholders who are not their legal owners – subtract them, and the rate falls to just 58.9%.

Our archaic system of leasehold tenure is not only locking millions out of home ownership, but also extorting millions of pounds from leaseholders every year. Lease extensions net lofty sums for freeholders, despite the fact that they require nothing more than the stroke of a pen to secure.

We believe it is time to make lasting, meaningful changes to this system in order to prevent more British homes being held hostage in the future.

“

What is the point of buying a flat on leasehold, getting a mortgage, paying the maintenance and other charges to the freeholder, being restricted to do anything with your flat, eg needing a permit to keep animals, in fact NOT REALLY OWNING the property you paid for? What is the point of buying a property in this weird country

Lucas

”

⁵ See sections on scale of leasehold and methodology for the calculation of the 1.577m figure. This figure excludes leasehold properties that are privately rented. Government's official statistics categorises leaseholders as property owners, yet they only own the right to occupy the property.

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/595785/2015-16_EHS_Headline_Report.pdf

Key findings

- **1.577 million owner-occupied properties across Britain are not owned by their leaseholder** in the eyes of the law ([page 6](#))
- These leaseholders have been wrongly classed as owners, meaning the **true rate of home ownership in the UK is 58.9%**, significantly lower than the official government figure of 64.6% ([page 6](#))
- **58% of owner-occupied leaseholders do not know the length of time remaining on their lease**, according to the latest HomeOwners Alliance survey ([page 10](#))
- Of those that do, almost a quarter (around 370,000 owner-occupied homes) are under 80 years. The **cost of extending these is likely to total over £4 billion** ([page 13](#))
- **Almost half (49%, or 771,000) of all owner-occupied leaseholders have had at least one negative experience of their freeholder or managing agent**, ranging from high maintenance or repair costs (24%) to lease disputes that had negatively impacted the value of their property (2%). There is set to be a dramatic increase over the coming years as the scale of the ground rent and leasehold house scandal begins to unfold ([page 9](#))
- Leasehold tenure continues to increase, with **young homeowners likely to be disproportionately affected as well as those downsizing** ([page 7](#))
- **More than three quarters of estate agent listings do not display legally required information** about tenure and length of lease. ([page 14](#))

Summary of HOA's Recommendations (full recommendations to be found at end of report)

- 1 Commit to scaling back leasehold
- 2 Review of the whole leasehold system
- 3 Outlaw the creation of new leasehold houses
- 4 Outlaw the doubling of ground rents
- 5 Mandatory commonhold tenure for all newly-built blocks of flats or apartments
- 6 All lease extensions to be 250 years minimum with a peppercorn rent
- 7 Standardised leasehold contracts
- 8 Make it faster and fairer to buy and sell leasehold properties
- 9 Make it easier for leaseholders to contact their freeholder
- 10 Provide accurate and timely information to purchasers
- 11 Extend the rights afforded to private leaseholders to other groups

Home Ownership vs. Leasehold Ownership

In the eyes of the law, a leaseholder does not 'own' their property. Instead they have a legal right to occupy and use the property for a set number of years (typically from 99 to 999), with certain conditions attached as set out in the lease. The restrictions can include prohibitions on or freeholder consent required for material alterations to the property, sub-letting and owning pets, even down to whether they can hang their washing out to dry or not in public areas. Leaseholders are responsible for paying for maintenance and buildings insurance, and usually also have to pay an annual ground rent, as well as administration fees to the freeholder. The leaseholder has to get permission from the freeholder to make substantial changes to the property's structure or use, and to get information from the freeholder when selling the leasehold to a new homebuyer. Sometimes some restrictions may be appropriate in flats, but they shouldn't be necessary for houses at all.

In contrast, the freeholder retains the legal ownership of the ground upon which the property is built, and of the building itself. In flats, freeholders or their managing agents are generally responsible for the maintenance of the exterior of the building and any common parts (such as hallways) as well as organising buildings insurance, but can charge the cost to the leaseholder.

In extreme circumstances, the freeholder can potentially forfeit the leasehold if the leaseholder breaks the terms of the lease in some way (such as by not paying the ground rent or maintenance costs), although courts are generally not supportive of such extreme penalties.

The laws governing leasehold were tightened in an attempt to even the balance of power. For example, in certain circumstances, leaseholders have a legal right to **extend their lease**, and a legal **right to manage** the property. Leaseholders can also, in certain circumstances, **buy the freehold**. In a property with multiple occupation, the various leaseholders can sometimes join forces to buy the freehold of the entire building, and they would own a share of the freehold each.





But these rights do not exist in all circumstances, and the process of exercising them can be very expensive, time-consuming and difficult, and generally the leaseholder is legally required to pay not only their own costs but also the costs of the freeholder.

It is still the case that if the remaining term of a lease runs down to zero, the full ownership and use of the property returns to the freeholder. If leases drop below 80 years, they can become very expensive to extend the lease or buy the freehold. For that reason, it can be difficult to obtain mortgages against leaseholds with a tenure of less than 80 years, and thus also difficult for the leaseholders to sell. Ultimately, as leases get shorter, the value of the leasehold can fall year by year, to the extent that people can see the value of their home fall even in a rising property market.

“

My parents bought a leasehold property around 50 years ago they paid the ground rent for many years however something went wrong and they stopped receiving requests for the ground rent to be paid when they did finally receive a bill it was for around £10,000. The house was sold, my parents went to court and were evicted.

Ros

”

The scale of leasehold

There are no official figures for the scale of leasehold in the UK, for the simple reason that the government does not produce them. The National Census has many questions on tenure of housing, but has no specific questions on leasehold. The otherwise exhaustingly detailed annual English Housing Survey counts leaseholders as homeowners and collates basic data on the length of the lease and ground rent.

However, it is possible to build up statistics on the scale of leasehold, from a range of sources, most notably Leasehold Knowledge Partnership (LKP)'s comprehensive work in this area, which shows there are a total of 4.99 million occupied leasehold flats across the UK⁷ (based on 2011 census data). This is in addition to leasehold houses.

According to our own analysis of available data (as explained in the Methodology section), from the LKP, DCLG and other sources 1.577 million of these leasehold flats and houses are owner-occupied. This means that in the eyes of the government they are homeowners, but in the eyes of the law they are little more than tenants.

These 1.577 million owner-occupied leasehold properties in England and Wales are made up of:

- 1.143 million flats/maisonettes in the private sector
- 433,000 leasehold houses⁸

For the purposes of this report, we have chosen to discount flats that are owned as a share of freehold tenure. Only around 13% of flats hold a share of their freehold⁹. Although these owners are also technically leaseholders, they are likely to have a greater say in the management of their buildings because they also own a share of the freehold. So they will not be beholden to an external freeholder for lease extensions or ground rent.

The UK housing market comprised 28.1 million residential properties in 2014, of which 18.2 million were owner-occupied, resulting in home ownership at 64.6%¹⁰. Subtract the 1.577 million owner-occupied leasehold properties from this calculation and this drops to 16.573 million. If indeed leaseholders do not fully own their properties (as the law states), then **Britain's true home ownership rate is in fact 58.9%** - nearly 6% less than the government's official figures.

⁷ <http://www.leaseholdknowledge.com/wp-content/uploads/2014/02/LKP-leasehold-market-evaluation-final.1.pdf>. This figure does not include leasehold houses.

⁸ Department of Communities and Local Government - <http://www.thisismoney.co.uk/money/mortgageshome/article-3088134/The-great-divide-Buy-165-000-house-left-road-outright-buy-one-right-don-t.html>

⁹ Buying the freehold with other leaseholders - for example in a block of flats. 13% figure provided by LKP.

¹⁰ <http://visual.ons.gov.uk/uk-perspectives-2016-housing-and-home-ownership-in-the-uk/>

¹¹ <http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/rel/census/2011-census-analysis/a-century-of-home-ownership-and-renting-in-england-and-wales/short-story-on-housing.html>



It also means that true ownership levels are now equivalent to the early 1980s, around the start of the Right to Buy era¹¹ In 1981, the official rate of home ownership was 58%. Although this figure would also have included leasehold owners, the number of these at this time would have been significantly smaller.

This underlines the scale of the home ownership crisis in the UK. Home ownership in Britain increased from the end of World War II and accelerated from the 1980s onwards due to the Right to Buy policy, growing incomes and easier access to finance. It peaked in April 2003, when 72% of the population owned their own home.¹²

But this trend has gone into reverse over the past decade thanks to a catalogue of factors, as we have explored in our **Death of a Dream report**¹³. Chief among these has been the failure to build enough new, good quality homes in the areas where they are needed most. Other factors, such as the growth of buy-to-let and wage stagnation, have also played their part. Now we can add the **growth of leasehold tenure as another major factor**.

The leasehold issue disproportionately affects younger people, because they are more likely to live in flats or maisonettes (which are invariably leasehold). Older people are more likely to live in houses, which are more likely to be freehold. People who have experienced the downsides of leasehold but then progress

up the property ladder are more likely to ensure they end up with a freehold tenure. That said, older people may choose to move to a retirement flat – a sector with such a poor reputation that a charity, CARLEX, has been set up to solely campaign against retirement leasehold exploitation.

It is the younger age group which is increasingly struggling to get a foot on the property ladder in the first place, and who have borne the brunt of the fall in home ownership. In 1991, 67% of 25-34 year-olds owned their own home, but by 2014, this had almost halved to just 36%¹⁴. Many of those 36% who are officially fortunate enough to own their own home, in fact, do not in the eyes of the law. They are more likely to be among the 1.577 million leasehold households who remain beholden to their freeholder. Those aged 25-34 are likely to be wanting to put down roots and start families, but their status as leaseholders means they have a declining security compared to those with other forms of tenure.

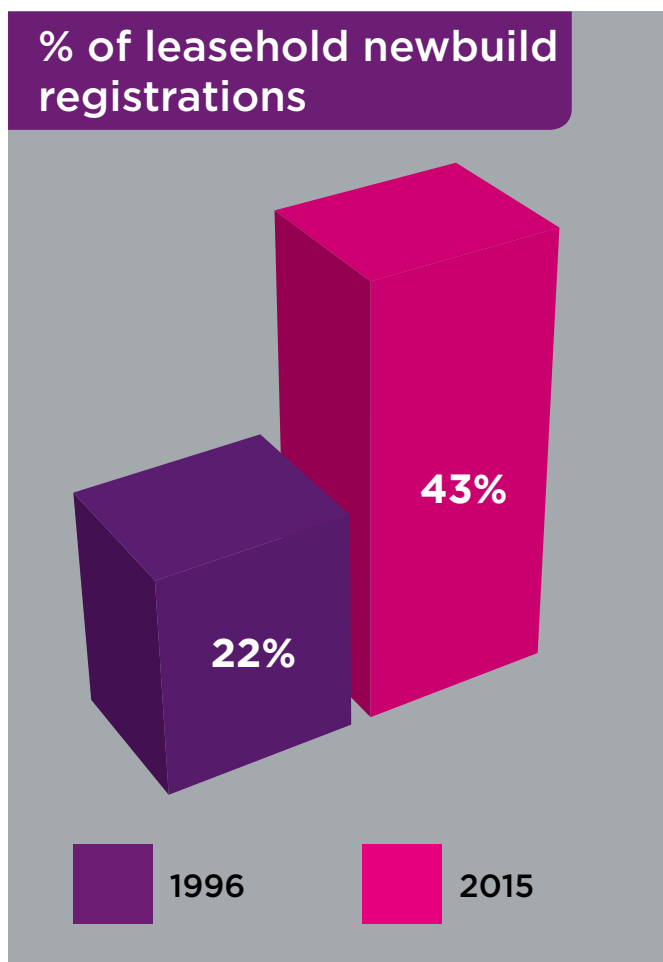
¹² <http://www.bbc.co.uk/news/business-36943134>

¹³ <http://hoa.org.uk/wp-content/uploads/2012/11/HOA-Report-Death-of-a-Dream.pdf>

¹⁴ <https://www.theguardian.com/money/2011/aug/26/property-buyers-mortgage-rental>

The growth of leasehold

Although it has been around for almost 1,000 years, the number of leasehold properties has grown exponentially over the past two decades. In 1996, only 22% of newbuild registrations with the Land Registry were for leasehold tenures¹⁵. By 2015, this had increased to 43%, meaning the rate had almost doubled in less than twenty years.



As one would expect, the problem is even more pronounced in urban areas. In London, an estimated 50% of all properties are now on a leasehold tenure, and 89% of new housing stock is leasehold.

This growth in leasehold is likely to be largely due to an increasing number of purpose-built flats, which are invariably sold as leasehold. But it is also the result of the growing number of newly built houses being sold as leasehold by developers – a practice which was almost unheard of twenty years ago.

The government has recognised that the leasehold system is being abused and is committed to consulting on specific measures to tackle this area. But there is mounting evidence that urgent action is needed to help those who are currently in a leasehold trap they can't get out of.

As leasehold tenure continues to grow, so too does concern about it. Our annual Homeowners Survey shows that the proportion of people who say the leasehold/freehold system is a “serious concern” has risen from 42% in 2016, to 50% in 2017¹⁶. That is a massive rise in concern in just one year, and it is now seen as one of the most serious issues in the UK housing market.

¹⁵ Land Registry data (referenced here: <http://www.telegraph.co.uk/finance/personalfinance/borrowing/mortgages/12099723/Why-a-boom-in-leasehold-flats-for-young-and-old-is-causing-concern.html>)

¹⁶ HomeOwners Alliance HomeOwners Survey. YouGov research of 2,081 adults (of which 1301 were homeowners) undertaken 9th March 2017

What's the problem?

There may be little political attention given to the leaseholding system, but it causes very real problems to homeowners. There is widespread dissatisfaction among leaseholders about the services and value-for-money they received from their freeholder or managing agent. To get a picture of the scale of problems, we asked leaseholders about their experiences as part of our annual Homeowners Survey.

Nearly half (49%) said they had encountered problems with their freeholder – a total of at least 771,000 owner-occupied households.¹⁷ Only 51% said they had no problems.

The leaseholders listed a number of issues ranging from excessive charges to issues with lease extensions. The most common problem cited was the **high cost of works and management fees for maintenance or repairs**, which 24% of all leaseholders (equivalent to over 370,000 owner-occupied households¹⁸) said had been an issue. Almost one in five (18%) said they got good value-for-money for what they pay their freeholder, while 6% said they had encountered difficulties in extending their lease.

Two per cent even said that lease disputes had negatively impacted the price of their property. That may seem a small number, but the impact on those affected is huge. It is also likely to rise sharply, as those in new build leasehold houses and flats (as well as mortgage lenders) realise the effect their restrictive leases will have on their assets.

“

I have 67 years remaining on my lease on a ground floor conversion flat in Tulse Hill, recently valued by an estate agent as worth £400,000. I have approached the freeholder of the property about a voluntary lease extension and they have come back with a quote of £47,748 and a ground rent of £250 for a term of 99 years. That seems exorbitantly expensive to me. All online calculators estimate £30,000.

Glenn

”

¹⁷ 48.9% of 1,577 owner-occupied leasehold flats: 771,153

¹⁸ 23.6% of 1,577 owner-occupied leasehold flats: 372,000

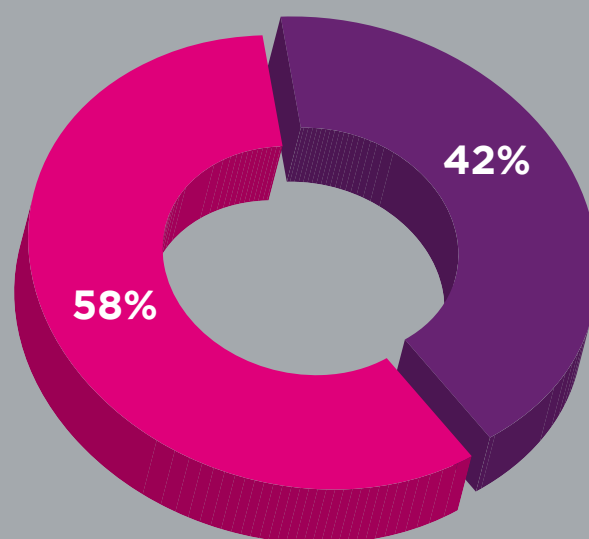
Leaseholder confusion

A critical element of the leasehold issue is a lack of understanding. Leasehold is a complicated system, and the more you look at the legal issues around it the more complex it gets. But ordinary homeowners are expected to grasp its complexities in order to retain ownership and control of their own homes – they in effect have to become legal experts. Worryingly, our Homeowners Survey highlighted a clear lack of knowledge.

The research showed that **little over half of leaseholders owner-occupiers knew the length of their lease.**¹⁹

Just 58% said that they knew the number of years remaining before their lease expired, and when one considers the potential implications of a lease running down, this is astonishingly low. It means there are around 670,000 leaseholder owner-occupiers who don't know the length of their lease.²⁰

Do you know the length of your lease?



Leaseholders sample size: 159



¹⁹ Survey conducted online by YouGov, 2081 UK adults 9th March, 2017. Survey figures are weighted and are representative of all UK adults online (aged 18+).

²⁰ 42.49% of 1.577 million owner-occupied leasehold flats: 670,067

Leasehold transactions

The homebuying and selling process in the UK is already fraught, but being a leaseholder (or potential leaseholder) makes it even more so. Freeholders charge to provide the information necessary for the sale of the property, and also for registering the change of ownership, and if this amount isn't specified in the lease, there is no obligation for these charges to be reasonable and at times exorbitant fees are charged. There is also no requirement for them to provide the information within a certain time or in fact at all, meaning transactions can be dragged out for months.

Research from the Conveyancing Association and View My Chain shows that on average it takes 14-16 days longer for a leasehold transaction than a freehold one. Not only do leaseholders experience significant delays when selling their home, but three out of four of them (75%) are being overcharged. In 37% of cases, the leasehold information required to purchase a property arrives from the freeholder more than 30 days after they have paid for the information.²¹ Even if the charges by the freeholder are excessive, the leaseholder cannot refuse to pay or else the sale won't go through.

There is no option of going to the First Tier Tribunal to challenge the fee, and even if there was, this would cause further delay and abortive transactions as prospective buyers would be put off.

There is no obligation on freeholders or their managing agents to provide information necessary for the sale within a reasonable time or at a reasonable cost.²² The combination of these factors (time lag, unreasonable charges and difficulty) can put off potential purchasers of leasehold properties more so than purchasing a fairly straightforward freehold property.²³



²¹ Modernising the HomeMoving Process – White Paper 2016

²² Although some leases might provide for fees to be reasonable.

²³ <http://www.which.co.uk/news/2016/06/three-in-10-property-purchases-fall-through-442589/>

The cost of lease extension

Extending the term of a lease can be extraordinarily expensive – potentially a large share of the entire value of the property.

As discussed earlier, the shorter a leasehold term, the more it negatively impacts the value of the property. The point at which length of lease starts to have a serious impact on the saleability and value of a property is generally reckoned to be 80 years, when the value of the property is typically 90% of the value if it were freehold.

A lease extension or a freehold purchase relating to a lease with less than 80 years remaining will include an additional payment to the freeholder based on the “marriage value” (the increase in the value of a leasehold property if the lease is extended, or if it is combined – “married” – with the freehold).

A property with a lease of 50 years will usually only be worth 70% of the value of a full term lease (so the marriage value is 30% of the value of the property if it had an extended lease); a property with a lease of 30 years is only worth half the market value if it was freehold.

The cost of extending a lease can thus add up to many tens or even hundreds of thousands of pounds, which means that some leaseholders simply can't afford to extend. This can be a particular issue for pensioners who have lived in a property for a long time but can no longer take out a mortgage to pay for the lease extension. In extreme cases, leaseholders with short leases face the dilemma of being trapped in their property with an increasingly short lease and declining property value, or selling it at a massive loss just to get out of it.

In our annual Homeowners Survey, **almost one quarter (24%) of the leaseholders who knew their length of lease said that it was below 80 years**, while a further third (33%) held leases for between 80 and 100 years. If these figures are replicated across the leasehold sector (and there is no reason to think that these numbers are atypical), then this means **there are 372,000 owner-occupied leasehold properties across England and Wales the values of which are being impacted by their short leases of under 80 years.**²⁴



²⁴ 23.6% of 1,577 million leasehold owner-occupiers is 372,000

“

Costs have almost doubled in 7 years and we are now paying over £300 a year each for a small patch of grass to be mowed and 9 faulty bollard lights. Is there any regulation of the industry for freeholders? If not there needs to be as there are 100s of these companies demanding money for nothing and getting paid by threatening hard working people with legal action.

Emma

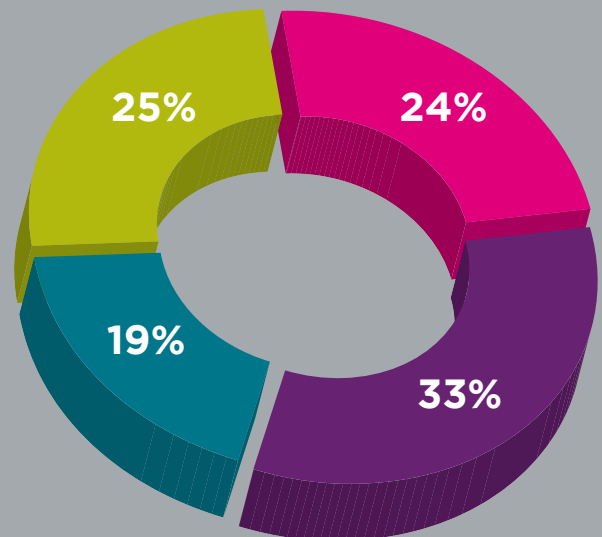
”

These leases will have to be extended in the coming years, each requiring substantial payments. The average flat price in the England and Wales is £217,500²⁵ and so the reduction in value if it had an 80 year lease would be 10% of that - £21,750. Thus the cost of extending the lease would typically be a minimum of half that, i.e. £10,876.

If we assume that the 372,000 owner occupiers with leases under 80 years live in average priced flats, and the leases are exactly 80 years (rather than less), then the **total amount the leaseholders would have to pay their freeholders is £4.05 billion**. This is a highly conservative estimate, and in reality, the total cost would likely be far higher, since many leases would be substantially under 80 years; and the leaseholders also have to pay their own and the freeholders' legal and valuation costs. The amount that leaseholders would have to pay freeholders to extend those leases that are currently under 80 years could conceivably be well in excess of £5 billion.

With figures like this, it becomes easy to see why there is a burgeoning sub-industry in buying up freeholds.

What is the length of your lease?



Leaseholders who know length of lease sample size: 95

²⁵ House Price Index <https://www.gov.uk/government/news/uk-house-price-index-hpi-for-january-2017> + proportion of total households in England and Wales

Estate agents and leaseholds

With leasehold problems seemingly so widespread, one would assume that potential buyers would be wary of leasehold properties. While this may well be the case, there is also evidence that estate agents are not revealing as much about properties' tenures as they should be, meaning buyers are kept in the dark until later in the buying process.

Estate agents are required by law to display the tenure of a property listed for sale, as well as the length of the lease if that property is leasehold²⁶. Yet across a sample of 100 flats listed on a property search website, just 24 displayed this information correctly, with the majority (51%) not even listing the form of tenure.²⁷

“

a real worry

”

how member Marian described the process of selling her leasehold flat which had only 74 years remaining - she had to sell it at a discount but was in the end just relieved that someone had bought it. It was a 100 year lease granted in 1990 - she bought flat as a new build then and was not advised about the problems and expense she would encounter after lease went below 80 years.



²⁶ https://www.tpos.co.uk/images/documents/rules-codes-obligations/residential-estate-agents/TPOE27-6_Code_of_Practice_for_Residential_Estate_Agents_A4_-_effective_from_1_Oct_2016.pdf

²⁷ Reviewed 100 flats/maisonettes listed for sale on Zoopla on 21.03.17

Exorbitant charges

Our Homeowners Survey showed that the biggest single area of complaint against freeholders was excessive charges, which almost one in four leaseholders (24%) mentioned. There are many ways that leaseholders can end up paying too much:

- Since the freeholder is not paying for the maintenance, they have no incentive to ensure any work done is good value. In some cases, the freeholders own the maintenance companies that do the work, which then charge the excessive fees that are passed on to the leaseholder. There have also been incidents where the freeholder colludes with a maintenance company to push up the cost of work, and then takes a cut.
- The freeholder also generally has responsibility for buying the building insurance, which is then charged back to the leaseholder. The freeholder has no incentive to ensure good value insurance, and on occasions have acted as insurance brokers themselves – in effect selling insurance to themselves at inflated cost and then passing the cost on to the leaseholders.
- The freeholder has a right to charge an administration fee simply for handling the work of the freehold, and often these charges are not controlled by the lease. Sometimes the freeholder outsources the management of the freehold to a managing agent, who again can charge excessive fees.
- Freeholders can also charge fees for other activities, for example (as mentioned above) providing information during a sale of the leasehold.
- Those who own only a share of their property (and pay rent on the rest) are nonetheless responsible for 100% of the maintenance and service charges.

Sometimes some of the fees are capped by the lease, and the leaseholders can in many cases take the freeholder to a tribunal to ensure the fees are reasonable. But these protections are clearly not enough to protect leaseholders from exploitation, and the government has made it even more difficult for leaseholders to get justice. Last year, the government started charging £100 to make a tribunal application and £200 if a hearing was granted. Ironically, these charges are typically borne by the leaseholder as they generally make the application.²⁸



²⁸ <http://www.lease-advice.org/news-item/the-first-tier-tribunal-property-chamber-new-fees/#>

Shared ownership, council and housing association owned property

Those who own an ex-local authority home, either by exercising their right to buy or purchasing the property on the open market, will find that they have even fewer rights than leaseholders with private freeholders. For instance, these flat-owners cannot exercise the right to manage if they are unhappy with the service the Council provides. They have little say in when and how major works are undertaken, except through the unwieldy Section 20 procedure. And when they do try to challenge the Council, they find themselves up against Council lawyers.

Those living in shared ownership properties encounter similar issues. Although they only own a share of the property, they are required to pay the full service charge, maintenance and upkeep of the entire flat. And if you go into rent arrears they can lose the equity they have built up in their share.

Finally, there are more and more people buying freehold houses on new build estates that have service charges and/or maintenance liabilities. Typically these relate to green spaces nearby (which traditionally would have been adopted by the local authority).

These spaces now remain in private hands as the developer will have sold them to a private company, yet the cost of maintenance is borne by the freehold houses owners, who don't own the land, have no control over the appointment of the maintenance company, no control over how the land is to be maintained and no access to the Property First Tier Tribunal.

“

I bought my flat which is an ex Council property in 2002. No work has ever been undertaken in all the years I've lived here until this year when the Council undertook painting of external gates and downpipes and fitting a fence and new outhouse door. They didn't inform me or consult me at all re this and now say I'm liable to pay for work I didn't ask for or need after it's been done.

Anne

”

Unfair leases and informal lease extensions

The complexity of the leasehold system means that unscrupulous freeholders can take advantage of the lack of knowledge of leaseholders, often through unfair contracts. Some flat owners and owners of leasehold houses on new build estates are discovering that they are committed to paying ground rents that double every 10 years. As these ground rents begin to escalate (from £250 per year, to £500, £1,000, £2,000 etc.) those who own the homes will not only find themselves paying more, but also find them increasingly difficult to sell.²⁹

Freeholders, not wanting to lose out on this lucrative income stream, will often do everything within their power to scupper and block leaseholders' attempts to rectify the situation. One tactic is to offer informal lease extensions, which means no independent survey or legal advice needs to be sought, and it isn't constrained by the law on leasehold extensions (which stipulates that the lease has to be extended by 90 years on top of the remainder of the existing term, and that the ground rent afterwards will be a peppercorn, i.e. zero).

This may initially seem like a good idea, as it means a reduction in initial fees borne by the leaseholder. In reality, however, it means that the lease is only being extended to 99 years rather than by the statutory extra 90 years, and what seems like innocent 'modernising' of the lease's rent review clauses mean that leaseholders continue to pay out for ground rents in increasing amounts over the years following.

All of the above reveals a few key trends. Firstly, that there is a worrying lack of understanding among leaseholders about the tenure of their homes; and this issue is compounded by a lack of clarity from estate agents and developer marketing suites selling these properties. Secondly, that a large number of leaseholders are not satisfied with their dealings with their freeholders and believe they are not delivering value-for-money. Thirdly, and most importantly, that freeholders use their positions of power to extort money from leaseholders in a number of different ways, with leaseholders ill-equipped to fight back. All of these show that there is both a need and an appetite for reform.



²⁹ <https://www.theguardian.com/money/2016/nov/05/ground-rent-scandal-engulfing-new-home-buyers-leasehold>

Leaseholders' stories

Stephanie and her husband Gerry fell in love with a new house in Tyne and Wear, in October 2013 and part-exchanged their existing home in order to buy it. They took the developer's suggestion of a solicitor, who informed them that the house was leasehold tenure, but that as it was a 125-year lease, it was as good as a freehold.

Their problems began in summer 2016 when they wanted to add a small extension to the back of their home. After enquiring with their managing agent, they were quoted a figure of £1,440 + premium in order to get a licence for the works. Put off by this punitive charge they then investigated buying their freehold, only to be told that this would set them back over £10,000 + fees. To add to this, every time Stephanie made an enquiry to the managing agent, she was charged a £112 correspondence fee.

Their next move was to use a private surveying firm to complete a valuation and negotiate with the freeholder, eventually settling on a final bill of £7,500 including all fees for the freehold. However, after committing a £913 indemnity to the deal, they discovered that the newly-arranged deal would still have meant seeking permission from the managing agent for extensions, conservatories or selling the house. Stephanie and her husband now expect the case to go to tribunal.

Andrew and his family moved into a new-build house near Clitheroe, Lancashire, in late 2011. Like many buyers, he took the developer's recommendation of which solicitor to use to complete the transaction.

At the time of purchase, Andrew was offered the opportunity to buy the freehold of the house for £4,500. Due to the many other costs he was incurring at the time, he opted against it, and his solicitor did not question his decision. It was only after completing the purchase that Andrew discovered that the terms of his lease included a clause which meant his annual ground rent (£320) would double every ten years, meaning that within 50 years the ground rent payable will increase to more than £10,00 per year.

Around six months after he bought it, the freehold of Andrew's house (and around 40 others around him) was purchased by a firm which specialises in ground rent and insurance premium collection and leasehold administration. A neighbour of his has since enquired about buying their freehold and been quoted around £40,000. Although Andrew is considering moving to a new property he is worried that the terms of his lease will put off potential buyers and make his home unsaleable.

The case for reform

The leasehold system isn't fit for purpose, but what are the alternatives?

The system most commonly proposed as an alternative form of tenure is commonhold. This is similar to the systems used in other parts of the world for condominium or apartment buildings.

When it was enshrined in law in 2002, commonhold was envisaged as a replacement for leasehold tenure, but uptake has been very slow.³⁰ Because the numbers are so small, there are no accurate statistics around commonhold, but some estimates suggest there could be as few as 20 commonhold developments in the whole of England and Wales. Even if that is a slightly pessimistic estimate, it seems unlikely that the numbers even get out of double figures. Commonhold is a massive disappointment, which while well-intentioned, has had virtually no impact.

So why has commonhold floundered, while leasehold has flourished? The main reason is that housebuilders have a strong financial incentive not to offer commonhold. Why would a housebuilder hand over commonhold ownership to flat buyers, when it can retain the freehold and sell that freehold on to investors at a premium a few years down the line, and collecting ground rent and administration fees in the meantime?

Another obstacle is that over half of mortgage lenders will not lend on commonhold simply because they aren't familiar enough with them to know what the risks are.³¹

Leasehold is a well-established and complex beast with many vested interests, which even with committed government action would take years to fully reform across the whole housing sector. It is important to note that freeholders – who are often investment funds including pensions – have property rights also, and it would be wrong to simply expropriate them.

But that is no excuse not to quickly stamp out abuses going forward – such as banning informal lease extensions and leasehold houses. Over time, other leaseholders can be moved onto a better system, such as when they extend the lease.

Increasing numbers of leaseholders are wising up to the way in which the system is currently stacked against them, and the appetite for change is palpable. Untangling hundreds of years of leases will not be easy, and no one expects the system to be overhauled overnight. But there are a handful of simple but effective steps that the government could take immediately to ensure that the balance of power begins to shift away from freeholders.

³⁰ <http://www.legislation.gov.uk/ukpga/2002/9/contents>

³¹ www.cml.org.uk/lenders-handbook/englandandwales/question-list/1842/

HOA's recommendations for reform

There are many simple steps the government should take to tackle the problems of the leasehold system:

- 1 Commit to scaling back leasehold:** The government should accept that leasehold is very much inferior to freehold or commonhold as a form of tenure, and make a public commitment to scaling it back. To do this, the government will need to assess the scale of the leasehold issue by producing reliable and extensive data on leasehold and requiring the Land Registry to make more data available.
- 2 Review of the whole leasehold system:** having committed to scaling back leasehold, the government should investigate the abuses in the sector in greater detail, and offer proposals for reform, including ways to transfer existing leasehold properties to a commonhold tenure, and simplifying the Right to Manage, building on the work of the All-Party Parliamentary Group on Leasehold and Commonhold.
- 3 Outlaw the creation of new leasehold houses:** There is no justification for a homebuilder retaining the freehold when only one property is built on that land, and so this profiteering practice must be stopped at source.
- 4 Outlaw the doubling of ground rents, by banning ground rent increases above inflation:** Government should avoid price controls in a free market, but a leaseholder is stuck with their freeholder in an exclusive contract which can be ruinously expensive to get out of (e.g. by selling their home). The practice of doubling ground rents amounts to nothing but shameless profiteering by freeholders at the expense of leaseholders, and if not outlawed will result in a whole raft of buyers finding their homes unsaleable within a generation.
- 5 Mandatory commonhold tenure for all newly-built blocks of flats or apartments.** This should be a requirement for planning permission to be granted to any new development (excluding local authority or Housing Association developments).
- 6 All lease extensions to be 250 years minimum with a peppercorn rent,** with no increased premium payable to the freeholder (e.g. extension to 250 years should be no more expensive than for the current premium for a 90 year extension) including informal extensions.

7 Standardised leasehold contracts: the government should prevent the exploitation of leaseholders with incomprehensible lease clauses by producing standardised leases with set terms that balance the interests of leaseholders and freeholders in a reasonable way, as it has done with tenancy agreements. To the extent there are valid differences between conditions, these should be clearly highlighted as alternative options (e.g. allowing leaseholders to sub-let or not). These new prescribed clause leases should be a requirement whenever a lease is extended, as well as for new build, so eventually all leaseholders will move over to them.

8 Make it faster and fairer to buy and sell leasehold properties by requiring freeholders/managing agents to provide documents within 10 days and for a reasonable fee as set by government.

9 Make it easier for leaseholders to contact their freeholder. The Land Registry should hold a public digital register of the person or company responsible for administering the terms of the lease whether that be the freeholder, management company or managing agent.

10 Provide accurate and timely information to purchasers by enforcing existing regulations which require estate agents to include leasehold information on every property they market, with a mandatory fine for non-compliance. The minimum amount of information should be the remaining terms, amount of ground rent, rent review clauses, service charges and any restrictions on use and enjoyment. Require buyers to sign a one-page, key facts document about their leasehold property.

11 Extend the rights afforded to private leaseholders to other groups who are at an even greater disadvantage. This would include extending the Right to Manage to those freeholders on private estates, shared ownership schemes and those living in council or Housing Association-owned blocks.

Research methodology

Leasehold flats with a private freeholder

There are a total of 4.99 million occupied leasehold flats in the UK as of the Leasehold Knowledge Partnership's 2014 report into the sector, which is based on 2011 census data.³² Of these, 63% are privately owned (3.14 million). However, only 1.315 million of these are owner-occupied.³³ Around 87% of these have a third-party owner of the freehold (i.e. they don't own a share of the freehold).³⁴ This means there are 1.144 million privately-owned, owner-occupied leasehold flats where the leaseholder does not own a share of the freehold.

Leasehold houses (private and social freeholder)

In addition to this, there are an estimated 670,000 leasehold houses in the UK, according to 2013 figures from the Department for Communities and Local Government³⁵. If we assume that 64.6% of these are owner-occupied (the national average), this means a further 432,820 owner-occupied leasehold houses.

This means the total number of owner-occupied leasehold properties in England and Wales is at least 1.577 million.

The UK housing market comprises 28.1 million residential properties in 2014³⁶. In 2014 home ownership was officially 64.6%, meaning 18.15 million owner-occupied homes, but this drops to 16.573 million when the 1.577 million leasehold owner-occupied properties are subtracted. This means true home ownership rate is in fact around 58.9% - almost 6% less than the government's quoted percentage.

For our calculations, we have assumed that all flats/maisonettes listed as being in the 'social sector' in the 2011 census are owned and rented out by local authorities, rather than owned privately. If this were not the case, the number of leasehold, owner-occupied properties would be even higher.

To calculate the cost of lease extensions, ONS House Price Index data³⁷ was used alongside government Live Tables on Dwelling Stock³⁸. For the purposes of calculation, it has been assumed that England and Wales have an equal ratio of flats to other forms of housing, giving an average value per flat of £217,500. Leasehold houses have been discounted from this equation as they are highly unlikely to yet have leases of under 80 years.

³² <http://www.leaseholdknowledge.com/wp-content/uploads/2014/02/LKP-leasehold-market-evaluation-final.1.pdf>, page 8

³³ <http://www.leaseholdknowledge.com/wp-content/uploads/2014/02/LKP-leasehold-market-evaluation-final.1.pdf>, page 9

³⁴ Statistics provided by Leasehold Knowledge Partnership

³⁵ DCLG (referenced in: <http://www.thisismoney.co.uk/money/mortgageshome/article-3088134/The-great-divide-Buy-165-000-house-left-road-outright-buy-one-right-don-t.html>)

³⁶ <https://www.gov.uk/government/statistical-data-sets/live-tables-on-dwelling-stock-including-vacants>

³⁷ <https://www.gov.uk/government/news/uk-house-price-index-hpi-for-january-2017>

³⁸ <https://www.gov.uk/government/statistical-data-sets/live-tables-on-dwelling-stock-including-vacants>

Help and guidance

HomeOwners Alliance is an independent consumer organisation providing help and assistance to our members. We campaign for policies that help homeowners and publish free advice and guidance on everything to do with **buying, selling** and **owning** your home. See **recent publications** and our guides below on leasehold/freehold issues.

- » **Leasehold vs Freehold:** what's the difference?
- » **Leasehold charges:** what to know before you buy
- » **Should I extend my lease?**
- » **Step by step guide to extending my lease?**
- » **Should I buy the freehold?**
- » **Service charges and maintenance companies:** problems with your leasehold property

CARLEX & Leasehold Knowledge Partnership (LKP) – charity set up to protect and support leaseholders and to campaign for justice. LKP's also runs an accreditation scheme for managing agents.

<http://www.leaseholdknowledge.com/>
<http://www.carlex.org.uk/>

ALEP (Association of Leasehold Enfranchisement Practitioners) – professional association of property professionals who specialise in lease extension, freehold acquisition and correction of management problems within leasehold properties.

<http://www.alep.org.uk/>

All Party Parliamentary Group on Leasehold and Commonhold Reform – chaired by Sir Peter Bottomley MP and Jim Fitzpatrick MP, this group of 66 MPs meet regularly to discuss issues and to push for reform. Leasehold Knowledge Partnership provides the secretariat and can be reached on APPG@leaseholdknowledge.com

Conveyancing Association – voice of the specialist UK Conveyancer and campaigns to change negative leasehold management practices.

<http://www.conveyancingassociation.org.uk/campaigns/>

The Leasehold Advisory Service (LEASE) – gives advice to leaseholders on the law affecting residential leasehold property in England and Wales.

<http://www.lease-advice.org/>

HomeOwners Alliance toolbox

Choice tools to help you make wise choices

Here are our best tools and explanations at the HomeOwners Alliance. They'll help you understand issues, find and connect with knowledgeable people who can help, and keep you up to date with offers in the market.

HOA Membership

[Click and Join Us](#)

The one thing you shouldn't be without! Members of the HomeOwners Alliance receive a 10% discount off conveyancing fees, access to our home helpline, expert advice and legal service.

HOA General House Buying and Selling Tools

Comparisons

[Compare Conveyancing Quotes](#)

Conveyancers from a quality assured panel of over 150 regulated conveyancing firms, a straightforward top 3 ranking, and a special offer for HomeOwner Alliance members.

[Compare Online Estate Agents](#)

Thinking of using an online agent? Our tool lets you compare online estate agents on price, tells you what is and isn't included in their packages, and gives our verdict and customer rating.

[Compare Local Estate Agents](#)

Want to find the right local agent? Our tool compares agents in your local area by the fees they charge, average time to sell a property like yours, how close they might get to achieving an asking price and how successful they are at selling similar homes.

[Compare House Removal Companies](#)

Up to 5 competitive quotes from Local and national Ombudsman regulated house removals companies, in seconds, all through our partnership with reallymoving.com.

[Find a Local Surveyor](#)

Need a building survey or structural survey? We'll provide a list of local surveyors who can carry out your survey together with a price for the job and their contact details. Contact them when you are ready.

Leasehold Calculator

[Leasehold Extension Calculator](#)

Looking to extend your lease? Our calculator can help estimate how much it will cost to purchase more years.



HomeOwners
Alliance

Web: hoa.org.uk

Email: hello@hoa.org.uk

HomeOwners HelpLine (members only): 033 0088 2050

HOA service enquiries (including membership): 033 0088 2051

