

The difference between freehold and leasehold



*When you buy a property, you will either buy a freehold or a leasehold interest in that property. Here **Adam Crawford**, Partner and Head of New Build Homes at **Prince Evans Solicitors LLP**, looks at the difference between freehold and leasehold and what this means to the first time buyer and the conveyancing process.*

As starting point it is worth noting that there are three tenures (tenure means the way in which you hold a property) and these are freehold, leasehold or commonhold. However, for the purpose of this article we will discount commonhold as it is extremely rare.

Typically, a house will be freehold and a flat/apartment will be leasehold (although occasionally a house may also be leasehold).

FREEHOLD

Owning a freehold interest in a property means you own the building and the land it stands on outright. As noted above you will only be a freehold owner if you buy a house (you may also have a share of a freehold if you buy a leasehold and this is covered below).

As a freeholder,

you will be responsible for maintaining your own property and the land you own.

If you own a freehold property you will not normally have to pay any rent since you already own the land on which the property is located. However, the property may still be liable to make other contributions. An example of this would be if the property is part of an estate with a liability to contribute towards the cost of a third party or management company maintaining the shared parts of the estate (such as roads, pathways and any communal facilities or landscaped areas).

You may still be bound by restrictive covenants (obligations you must observe) eg not to carry out alterations without consent; however the restrictive covenants are typically far less restrictive than with a Leasehold property and your conveyancer will advise you accordingly.

LEASEHOLD

If you own a leasehold interest in a property then this means you

have a lease from a landlord/freeholder to use the home for a number of years. You do not own the land on which the property sits but instead rent this from the landlord.

Below we consider the key elements of owning a leasehold property:

Rent – normally you would pay an annual ground rent to the landlord which ranges from a peppercorn (which essentially means no ground rent is payable) up to a few hundred pounds per annum. Care needs to be taken as to the amount of the Ground Rent and how and when this increases as this has become a key concern recently which can affect the ability to obtain a mortgage and/or re-sell the property. Your conveyancer will be able to advise you on this point.

Term – the lease will be granted for a term of years on the initial grant. It is common to see leases which were originally granted for 99, 125, 250 or 999 years. The longer the term the better, although provided there is an adequate term remaining this is acceptable. As a lease term diminishes, the property



theoretically becomes less valuable. As a lease gets closer to having only 80 years remaining it becomes harder to sell and you may need to consider extending the lease at that stage or before.

Rights for the benefit of the property – the lease should grant you all the necessary rights you need to use the property. This will normally include rights of access, rights of support from the building in which the property is located, rights to use any common areas (shared areas) including hallways, staircases, communal gardens etc.

Rights which the property is subject to – the lease will contain rights over the property in favour of the landlord and others. This will normally include any rights of access which are necessary, rights of support to the other properties in the building etc.

Covenants which the property is subject to – the lease will contain covenants (or obligations/regulations) which must be observed. For example, there may be restrictions or requirements you must observe when you wish to sell the property, there may be restrictions on carrying out alterations, or there may be restrictions on whether you can keep pets at the property. You should advise your conveyancer if there are specific requirements you have (for example if you keep pets and wish to take these to the property with you) so they can check the covenants as early as possible

Covenants the landlord must observe – the lease will contain any covenants/obligations the landlord (or management company) may have to observe for the benefit of the property. These will typically include a requirement on them to insure the building (although you will need your own contents insurance), a requirement to maintain and repair the structure of the building and the common (shared) parts, and to enforce covenants against other owners etc.

Service charge – the lease will normally contain a provision requiring you to pay service charges towards the cost of the landlord (or management company) in performing their obligations and any associated administration/management charges. Generally, you will be required to contribute a fair proportion (with other owners in the building and on the estate of all services provided by the landlord (or the management company). These are normally paid in advance either monthly, quarterly, half yearly or annually as the lease requires.

Your conveyancer will check the terms of the lease and the key elements outlined above and will ensure that this provides you with the rights you require and that there

are no covenants/restrictions which will be detrimental to the mortgageability or your ability to re-sell the property.

WHAT ELSE IS DIFFERENT IN THE CONVEYANCING PROCESS WHEN BUYING A LEASEHOLD PROPERTY?

While the conveyancing process (the legal process of transferring property from one party to another) follows a similar path to that of buying a freehold property, there are some key differences.

Your conveyancer will raise enquiries for the landlord to answer (often referred to as Leasehold Property Enquiries – LPE1). This form asks the landlord to provide items such as a statement of the current leaseholder's account, three years' previous service charge accounts and a current service charge budget, details of any upcoming works or items of upcoming expenditure etc. Your conveyancer will report to you on the replies that are received and any concerns resulting from these replies.

If the service charge accounts indicate a possibility that there will be a shortfall in the service charge collected for the current year, a request will be made of the seller's conveyancer to retain a suitable sum from the net sale proceeds for an appropriate period of time to meet any shortfall once the final service charge accounts have been prepared.

On completion, you will normally have to refund the seller for any service charge, ground rent or other leasehold charges they have already paid to the landlord in advance, and you will normally also have to pay a fee to notify the landlord that you have taken ownership of the property and that you have taken out a mortgage over the property.

DIFFERENT TYPES OF LEASEHOLD (INCLUDING OWNING A SHARE OF THE FREEHOLD)

There are different types of leasehold ownership depending on the size of the building/estate and the legal structure.

For some properties, especially with

smaller developments, you may also be given a share of freehold – this can be directly as a named owner on the freehold or by being granted a share in the management company/landlord which owns the freehold title.

Or there could be an external landlord where you are not given a share of the freehold. In this case there may be a management company which manages the building/estate and you may or may not be asked to become a member or shareholder in this company.

Sometimes your landlord may only have a leasehold interest themselves where they hold a lease from a superior landlord. If this is the case you will be required to observe the terms of both your lease and any superior lease(s).

All of the above options are perfectly acceptable provided that the lease provides the necessary term and rights you require for the property and there are no onerous conditions. Your conveyancer will advise you in detail of the leasehold legal arrangements.

SUMMARY

It is clear that it is preferable to own a freehold property; however flats and apartments are normally financially more within reach for the first time buyer and therefore many first time buyers will find themselves buying a leasehold property as their first home.

Leasehold is a perfectly acceptable tenure, but can be a little more costly at the outset in terms of fees payable due to the additional costs and the extra work involved. It is also worth noting that you have less control over the ongoing outgoings (ie you do not set or control the service charge) compared to a freehold property.

Often the conveyancing process for buying a leasehold property can be a little slower than it is if you are buying a freehold property due to the additional enquiries which need to be raised.

If you are buying a leasehold property then you should ensure you instruct a conveyancer with plenty of leasehold experience to ensure that you are properly advised.



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