

Leasehold Ground Rents - Client Guide

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What is a ground rent?

If you buy a house or a flat that is leasehold, the lease will require you to pay a small amount every year called the 'ground rent'. This may be a nominal, or 'peppercorn' rent, that you don't actually have to pay to the landlord. However, it might be as much as £100 or £200 pounds every year, which you must pay on time. The landlord's freehold interest in the property is called the 'reversion'.

If you do not pay the ground rent the landlord can sue you for it as a debt. However he could also seek a court order for possession of your house or flat.

What's in it for the landlord?

The reason builders want to sell houses and flats on a leasehold basis is so they can eventually then sell the 'freeholds' of blocks of properties for substantial sums of money to property investors.

These property investors can then make money by selling the freehold of each house (or an extension of the lease, as appropriate) to the original buyers.

The investors also make money from the tenants by charging them fees every time the tenants sell or take out a mortgage, or when they ask for consent to make any alterations to the house or flat, plus there are profits to be made on service charges and insurance commissions.

You will also have to pay the fees of the landlord's surveyor and solicitor in each case. These can be significant amounts, and there is very little control over how much any of these charges are.

Do I have to buy a leasehold?

If you are buying a new-build or existing flat or apartment then, in general terms, this must be leasehold. See our 'Leasehold - Client Guide' to learn why.

If you are buying a new-build house there is rarely any reason for this to be a leasehold. In general, if you have a strong bargaining position with the builder you should insist on buying the freehold.



The problem of escalating Ground Rents

There is nothing wrong with a lease that reserves a small ground rent, say £50 per year, or a 'peppercorn rent'. The problem that has appeared over the last year or so is where the lease says that the ground rent will increase to an unreasonable amount. For example, the lease may say the ground rent doubles automatically every 10 or 15 years. This might sound reasonable at first sight, but over 120 years a ground rent of £250 that doubles every 10 years would become £1,024,000! In contrast if it had increased by the average inflation rate it would only be £8,600 in that time - see the table below.

Year of Term	Year	Ground Rent	Increase at 3% RPI
0	2017	£250	£250
10	2027	£500	£336
20	2037	£1,000	£452
30	2047	£2,000	£607
40	2057	£4,000	£816
50	2067	£8,000	£1,096
60	2077	£16,000	£1,473
70	2087	£32,000	£1,979
80	2097	£64,000	£2,660
90	2107	£128,000	£3,575
100	2117	£256,000	£4,805
110	2127	£512,000	£6,457
120	2137	£1,024,000	£8,678



In the News....

The Guardian Newspaper campaign against high ground rents on new-build properties gives these examples:

Buyers of a £101,000 flat in Dudley built in 2010 by Taylor Wimpey found that the ground rent was set to spiral to £8,000 a year. The couple are now trapped in an apartment they can no longer sell because the ground rent review clause in the lease is preventing lenders approving a mortgage for their buyers.

Another buyer of a £200,000 new mid-terrace three-bed house in Bolton, built only six years ago, has a ground rent that by 2060 will be £9,440 a year. Potential buyer's solicitors have told their clients not to touch it, making it almost unsaleable.

Others have revealed how houses were sold by developers with the promise that a 999-year lease was "virtually freehold", only to discover that buying out the lease just a few years later was three or four times more expensive than promised.

Government Action - when?

The Law Commission has published a preliminary consultation paper on proposed reforms to the leasehold system, to stop buyers being exploited. Final proposals are promised for late 2019. However it may be some years before these are implemented, and they might not help existing tenants.

Possible Solutions - Renegotiate the lease terms

- If buying a house, insist on buying the freehold, not a lease
- Ask the landlord/seller to agree to vary the lease to acceptable terms
- Cap any increases of the ground rent at £250 (£1,000 in London)
- Check the maths on any indexation or doubling provisions. Ask the valuer to check it too.
- If the seller won't change the terms - don't buy it
- If an existing lease of an apartment, extend the lease under your statutory rights, which will reduce the ground rent to a peppercorn

Problems with high or escalating ground rents:

1. The landlord can repossess your property if you don't pay the ground rent

If you don't pay the ground rent, then the landlord can sue you for it, but they can also claim possession of your property, without compensating you at all for the loss of your house. Now normally the risk of this ever happening is low, since all you would have to do is pay the arrears of rent, and the court would exercise its discretion not to give the landlord possession of your property.

However, because of a legal loophole, if the ground rent is more than £250 (£1,000 in Greater London), the lease would be deemed to be an 'Assured Tenancy' (like the usual tenancies given to buy-to-let tenants). This would mean that the court would have no discretion, and the landlord would be entitled to a mandatory possession order if you failed to pay the outstanding rent. You would lose your home, and the landlord would not have to compensate you for its value, but you would still be liable for the mortgage.

The problem is that, although the rent might start off as less than £250, if the lease says the ground rent will increase regularly every few years by a formula or percentage, then the ground rent might eventually be more than £250. This would mean you would be at risk of losing your property if the rent isn't paid. Lenders will not lend on leases where there is this risk.

2. The cost of extending your lease or buying the freehold

Many tenants of leasehold houses have the right to buy the freehold. Also, most tenants of leasehold flats have the right to claim an extension of their lease by 90 years - and the ground rent will be then be reduced to a 'peppercorn' under the terms of the new extended lease.

The maximum price you pay in both cases is set by a statutory formula involving the length of the lease, the value of the ground rent as well as the value of the property. The landlord can't just state a price and say take it or leave it. The Leasehold Advice Service website www.lease-advice.org has a simple online calculator for this maximum amount. There are also many specialist surveyors who can advise you on what the likely cost would be. You can use this statutory right to a new lease at a peppercorn rent as a way of reducing the rent on a problem lease with a high or doubling ground rent, but the price might be more than if it was a low ground rent.

3. Your property may become worthless or unsaleable

Many lenders have decided not to lend on properties where the ground rent is too high, or could double or increase to an unreasonable amount. They may also refuse to lend where they consider that the length of the lease is too short, or the charges for consents of notices under the lease could be excessive. As a result you might find your flat is unsaleable.

Your conveyancer can point out any unreasonable lease terms. You should ask your valuer for advice on the effect on value since your conveyancer cannot advise you on matters of valuation.

