

Autumn 2012

ASTBERRYS

Newsletter

We are letting and managing agents for individual flats and blocks of flats in Kensington and Chelsea. We will also let to you our own properties. We carry out all building works, refurbishment and maintenance of flats and blocks, which we manage. We offer in-house legal advice on all aspects of the letting business and property law. We also carry out valuations and property sales.

We are members of the Association of Residential Letting Agents, and we are authorised as an appointed representative by the FSA to conduct insurance mediation activities. One of our directors is a barrister.

Our regular Newsletter covers areas of interest concerning the management and legal aspects of property, the sales and letting markets.

WHAT CAN YOU DO IF A LESSEE IN YOUR BLOCK WILL NOT PAY HIS SERVICE CHARGES

Whether you are an individual freeholder, corporate freeholder or have a share in a company owning a freehold the flat owner who will not pay service charges can represent a serious problem.

Before considering any form of legal action the freeholder must be sure that he has followed all of the relevant provisions in the lease. Most leases set out the way in which the service charge regime is administered. Typically, a budget should be set at the start of the service charge year, often not the calendar year. This budget may have to be “certified” by the managing agents. The lease may allow for a reserve or sinking fund to be built up to cover major items of future expenditure such as redecoration of the outside or internal common parts. However, some leases do not allow this and others limit the amount that may be demanded to a percentage of the previous year’s expenditure. At the end of the service charge year an account of expenditure and income should be prepared. Many leases require that each flat in the block should have its own account showing a credit or debit according to its share of annual expenditure set against service charges paid during the year. Often a lease will stipulate that the account must be prepared and “certified” by chartered accountants. **For a more detailed discussion of the operation of service charge regimes in leases go to www.astberrys.co.uk and click on the Newsletter for New Year 2012.** Each lease is different and the mistake made by many freeholders or managing agents is to assume, that all leases are the same. It is fatal to any court or tribunal proceedings. If you have not applied the service charge regime set out in your tenant’s lease any proceedings you bring may be thrown out before the court or tribunal even starts looking at the merits of your claim.

If the service charges claimed relate to “major works”, past or proposed, then the law requires the service of various statutory notices, go to www.astberrys.co.uk and click on the Newsletter for January/February 2011. If the correct notices have not been served, then the tribunal may dismiss your claim and limit the amount you can recover to £250.

Assuming the freeholder has followed the lease and served any necessary notices what should he do if the flat owner will not pay? He can sue the flat owner for the unpaid service charges. Of course, this may be very awkward if the freeholder is a “share of freehold” company, which is owned by all the flat owners in the building. In such a case you will be suing your neighbour, go to www.astberrys.co.uk and click on the Newsletter for February/March 2010.

How do you sue the flat owner who will not pay? Service charges are an unpaid debt and the freeholder could issue a claim in the county court. However, **the flat owner who does not want to pay service charges is**

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LEXHAM GARDENS, W8



EARLS COURT SQUARE, SW5



NEVERN SQUARE, SW5



CAMPDEN HILL GARDENS, W11



BLOCK MANAGEMENT

We manage blocks at all of these addresses and at many others in Kensington and Chelsea. Astberrys are experts in block management. We only operate in Kensington and Chelsea and we are never more than 15 minutes drive away from any block we manage.

We offer:

- Service charges and ground rent collection in accordance with the lease and relevant legislation
- Administration of the “major works” process
- Company secretarial services for any freehold company owning a block we manage
- In house legal advice on all aspects of Landlord & Tenant Law
- Insurance mediation services
- In house maintenance for electrical, plumbing and most other work
- Insurance valuation and risk assessment

If you are a freeholder and you are looking for block management services please telephone on 0207 370 0123 or email us at management@astberrys.co.uk

likely to argue, that the sums demanded are excessive. He will claim that the services supplied to the building were not necessary or too expensive or that any works were not carried out to a proper standard. Courts do not deal with these disputes, generally. Such matters are litigated in front of a special tribunal, the Leasehold Valuation Tribunal, commonly referred to as the LVT. Proceedings started in a county court for recovery of unpaid service charges are very likely to be transferred to the LVT. It is therefore normally sensible for a freeholder to start his claim there and not in the local county court.

Anyone can argue a case in front of the LVT, unlike the position in a court. However, in many cases the freeholder will be represented by a lawyer or managing agent. The preparation for the hearing and the use of an expert, usually a chartered surveyor is time consuming and can be expensive.

The main problem with the LVT comes at the conclusion of the hearing. So often even if the freeholder wins he still loses. This is because the freeholder’s legal costs are not paid by the flat owner, who wrongly refused to pay the service charges. The LVT may order the flat owner to pay the service charges but it cannot order him to pay more than £500 towards the freeholder’s costs. In most cases the LVT does not even order this sum to be paid.

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What can the freeholder do to recover the legal costs? They are frequently thousands of pounds even where the unpaid service charges are small.

The flat owner's lease may allow the freeholder to recover the costs directly from the flat owner. It will all depend on the wording of the lease. This can be a complex area and lead to legal arguments as to the correct interpretation of the relevant clause in the flat owner's lease. Any dispute may lead to further litigation between the freeholder and tenant and yet more legal costs.

If the flat owner's lease does not provide for the recovery of legal costs directly against him, then the freeholder may still be able to recover the costs from all of the other flat owners in the building as part of the general building service charges, although the LVT has the power to make an order forbidding the freeholder from acting in this way. This is an area which can lead to disputes between the other flat owners and the freeholder. Why should they have to pay costs when they have done nothing wrong? But they may have to, it will depend on the wording of the relevant clause in their lease.

At Astberrys we are expert in dealing with the flat owner who does not pay his service charges or who is in breach of any other obligation in the lease. One of our directors is a barrister and as managing agents we offer a unique and highly cost effective service to freeholders whose blocks we manage:-

- **An in depth knowledge of the relevant law and a highly practical understanding of the problems associated with non payment of service charges and the costs of enforcement.**
- **In house legal advice and direct representation at the LVT in appropriate cases.**
- **Direct access to specialist barristers without the need to use a solicitor. We prepare the instructions and collate the documents. This saves time and costs.**

We only manage blocks of flats in Kensington and Chelsea. To talk to us about your problems with a flat owner who will not pay service charges or who is in breach of other covenants in the lease, please email business@astberrys.co.uk or telephone 0207 370 0123.

MARKET UPDATE

SALES

The recent changes in the Stamp Duty Land Tax have depressed sales above £2 million. SDLT is now charged at 7% above this price. Purchases of property through a company attract SDLT at 15%. In addition proposed changes in 2013 will impose further taxes on corporate property purchases. **The pressure on the government to be seen to “soak the rich” has resulted in a fall of over 40% in prime London property transactions at the £2 million plus level,** around 700 fewer transactions. The result of course, is that the Inland Revenue has lost some £150 million in SDLT receipts! and it may put off inward investment in the residential property market in Kensington and Chelsea.

The market in general is characterised by very low volumes but also by a noted reluctance on the part of buyers, especially in the western part of the Borough, to pay the asking price. How long can foreign money prop up prices in Kensington and Chelsea? How will the proposed tax changes affect the very top end of the market? From 2013 in addition to paying 15% SDLT a company purchasing a home worth between £2 and £5 million will have an annual charge of around £15,000 imposed and will pay tax on any sale. This type of punitive property tax regime is more akin to some of those in continental Europe. Unless there is a change of heart by the government London property may soon start to look far less attractive to foreigners other than the super rich from Russia and South East Asia.

RENTALS

So far London's standing as one of the premier world financial centres has not been too adversely affected by the aftermath of the financial crisis and four years of recession. The potential for damage looked far greater 24 months ago in the aftermath of the 2009 layoffs. Yet employment now in financial services is at an all time high, just short of 400,000. Will this continue? Maybe not. Changes in the regulatory and tax regimes in the UK, actual or perceived are very likely to adversely impact upon London as opposed

QUEENS GATE, SW7 - 22.5 m²
Let at £315 per week



CRESSWELL GARDENS, SW5 - 18 m²
Let at £245 per week



PENYWERN RD, SW5 - 32 m²
Let at £355 per week



HOGARTH RD, SW5 - 27 m²
Let at £295 per week



Examples of very small units, which have been let by Astberrys to students at high yields and with advance payment within the last two months. To talk to us about sourcing, refurbishing, letting and managing flats for the prime student market and generally, please telephone on **0207 370 0123** or email us at **business@astberrys.co.uk**

to New York or South East Asia. If employment stalls in the City rents will fall in Kensington and Chelsea. This is already happening, especially in regard to the larger properties.

Generally the rental market is very buoyant up to £500 per week. This is a product of an under supply of small residential units in Kensington and Chelsea relative to demand. This demand is further heightened by a general desire on the part of tenants to cut costs. Many tenants wish to live in a good residential area and are willing to exchange size for postcode. **All agents in Kensington and Chelsea are reporting sluggish demand for the more expensive flats.**

One area where activity is very pronounced, especially at the start of a new academic year is the student let market. Many students at London University are asked to pay upwards of £200 per week just to live in campus accommodation with shared facilities. By paying around 30% more they can rent their own studio. The demand for quality studios or one bedroom flats in the £300 to £400 per week bracket near Imperial College in Exhibition Road or on a direct underground link to Holborn (University College) or the Temple (Kings College and the LSE) make W8, SW7 and SW5 attractive to wealthy foreign students, whose parents normally have to pay the whole year's rent in advance. We have extremely good contacts with these and other academic institutions and can help you let your flat to suitable overseas students, who make excellent tenants. **To talk to us about the lucrative student letting market telephone 0207 370 0123 or email us at business@astberrys.co.uk.**



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