

New Year 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 and excellent short term apartments. We carry out all building works, refurbishment and maintenance of flats and blocks. 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.

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

SERVICE CHARGES - THE LEASE, THE STATUTORY REQUIREMENTS, THE PITFALLS. FREEHOLDERS BEWARE

The whole area of service charges is fraught with difficulty. In an earlier article, click on the Newsletter for January/February/March 2011 at www.astberrys.co.uk, we looked at the specific legal requirements relating to major works, which might have to be carried out to a building, such as a roof or lift replacement or substantial exterior redecoration.

In this article we look at the more fundamental question of the basis, on which service charges are payable and the nature of the service, which the freeholder must provide.

The starting point is the lease. The freeholder must follow it. Failure to do so may mean that service charges are not recoverable and the freeholder may find himself with an obligation to maintain or repair a building without being able to charge the flat owners. All leases are different and it is essential to read your lease and not make the mistake of assuming that any particular provision, which you may have spotted or heard about in another lease, applies to your lease. Your lease may be quite different. It is truly astounding the number of leases that are circulating. Some are clear and workable, others complex and rebarbative. It really is a case of the good the bad and the ugly. **The rule is - read your lease, carefully and follow what it says.** That said, many leases share similar formats.

The service charge year will vary from lease to lease. It is sometimes the calendar year but in older leases especially, it often runs from March to March, June to June or September to September [there are historical reasons for this]. Common mistakes made by freeholders centre round the following obligations -

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Earls Court, SW5

**Short Let
From £800 pw**

Exceptionally beautiful and elegant 1 bedroom flat. Very spacious, approx 97m². Ambassadorial reception room. Fully fitted kitchen. 2 bathrooms. Terrace. Sleeps up to 4 people. Very close to underground.



Earls Court Square, SW5

For sale. £275,000

Studio flat on the raised ground floor with mezzanine sleeping area, kitchen and bathroom. Very luminous and bright. Long lease. Just under 23 m². Access to Earls Court Square.

A good investment opportunity for a professional buy to let investor, providing a yield of 4.8%. Also a suitable pied a terre for a first time buyer.

Preparing an expenditure account for the previous service charge year. The freeholder is not spending his money. He is spending the money in the service charge account to which the flat owners in the building have made contributions, typically twice in any service charge year. Most leases require the freeholder to account for this expenditure. He must show how much was raised and what it was spent on. If the freeholder fails to do so then he may not be able to collect service charges in the following service charge year. Notwithstanding, it is surprising how many freeholders ignore this provision. It is especially easy to make this omission if the freeholder is a company, owned by all the flat owners in the building. **Often the flats owners confuse the obligation placed on them by law to file statutory accounts for the company owning the freehold with the obligation under the lease to provide annual service charge accounts. The two are not the same.** The difference will matter a great deal if ever the owners of the freehold company find themselves confronted with a member who refuses to pay service charges. On the difficulties of co ownership and freehold companies generally click on the Newsletter for February/March 2010 at www.astberrys.co.uk

The use of chartered accountants and certification. Many leases require someone independent of the freeholder to examine the annual expenditure and income and draw up the expenditure account, see above. **Provision is often made for a chartered accountant. If this is what the lease requires then it must be done or the freeholder's right to collect service charges will not be upheld by a court or tribunal.** However, minor variations might be permitted. For example, in one of the buildings we manage the freeholder wanted to use a chartered accountant qualified in Scotland. The lease required the building service charge accounts to be prepared by a chartered accountant qualified in England and Wales. However, we wrote to all the flat owners asking if anyone would object. Nobody did and the freeholder used his Scottish accountant. It would be hard for any flat owner to object in circumstances where the deviation from the requirement in the lease was in form not substance and where they had been consulted. Another pitfall is to ignore the provision requiring the accountants or managing agents to certify expenditure. Often this is no more than a few lines at the bottom of the account or the production of a short letter. Once again it may not be possible to recover service charges until this certificate has been produced and a court or tribunal will require the freeholder to produce a certificate before making any flat owner liable for service charges.

Setting out a table showing the amount by which each flat owner is in credit or debit. Some leases stipulate that, following the preparation of annual service charge accounts, such a reconciliation must take place. **The advance service charge paid by any flat owner in the service charge year must be balanced against his annual share of expenditure and a table produced showing by how much each flat owner is either in credit or debit.** In some cases the lease even requires any credit to be refunded to the flat owner, although usually it is simply carried forward to the next service charge year. There is legislation which, when it comes into force will make such a reconciliation procedure compulsory. For the moment it does not have to be followed, unless the lease says so. However, it is certainly good practice.

Providing a budget at the start of the service charge year and certifying the same. At the start of the service charge year it is sensible to set out a budget. Many leases in fact require this. The budget should deal with regular expenditure and any special expenditure relevant to that service charge year. It should also, where permitted by the lease, allow for a contribution to a reserve fund and allow for a small contingency. Care should be taken not to forget the incidence of VAT, otherwise you will find the building

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is 20% underfunded. Such a mistake is not as uncommon as you may think! **Once again failure to draw up a budget or not drawing up an accurate one may have serious unintended legal consequences later on.** Often the budget, like the service charge accounts must be certified by managing agents or accountants. If this is a requirement then it must be followed.

Collecting the service charges on the correct date, using the correct form giving the required information. If the lease requires payment of service charges in March and September then the freeholder cannot demand them in January and June. It does not matter that he may have to fund the building expenditure until March [assuming he has no reserve or made no provision for this in the previous year's accounts]. **However, not only must the demands be made for the correct date they must also set out details of the landlord and his address and they must also set out a summary of the flat owners rights, including the right to challenge the amount of service charges in a tribunal. If these details are missing from the demand then the demand is not valid and the flat owner does not have to pay service charges** until such time as the demand in the correct form is sent. If the freeholder delays making valid service charge demands for more than 18 months then, in some circumstances he may not be able to recover any service charges at all. It is extraordinary how many freeholders and managing agents send out invalid service charge demands. It can sometimes prove to be an expensive mistake.

Once correct service charge demands are made, for the right date and in accordance with the lease and all statutory requirements, **the flat owner must pay the service charges. However this is subject to his right to challenge the amount of the service charges on the basis that they are not “reasonably incurred”. He may also challenge the previous year’s service charges on the basis that any works carried out by the freeholder were not “of a reasonable standard”.** In order to guard against such potential difficulties a freeholder should always consider the following -

- a) for any significant expenditure engage the services of a chartered surveyor or architect to draw up a specification and certify that the works are necessary
- b) arrange for professional supervision of the works so as to reduce the risk of any later argument that the works were not carried out properly.

These extra professional fees are almost always recoverable by way of service charges in any event.

At Astberrys we are experts in the management of service charge regimes. We are experienced in the interpretation of leases, and one of our directors is a barrister. We enjoy excellent contacts with surveyors, architects, accountants who specialise in freehold block management and solicitors. We have our own maintenance and building team with direct links to specialist sub contractors, but we are also more than happy to work with contractors of your choice.

We only manage blocks in Kensington and Chelsea, never more than 15 minutes drive from our offices in Earls Court village and we provide a fast and effective service. Generally we charge £350 plus VAT per flat and 10% plus VAT of the cost of major works

We have blocks under management in Holland Park Avenue, Campden Hill Gardens, Lexham Gardens, Earls Court Square, Nevern Square and many other locations within W8, W11 and SW5. To talk to us about block management contact us on 0207 370 0123 or email us at management@astberrys.co.uk

MARKET UPDATE

SALES

Will the phenomenal growth in capital values seen in the last 24 months continue into 2012? In the Autumn 2011 edition of this Newsletter we put forward three reasons why it may - “the bullion effect”, “the inflation factor” and “the lack of alternative investment headache”, click on the Newsletter for Autumn 2011 at www.astberrys.co.uk

These factors are still present and will tend to prop up the market but demand from countries outside the Eurozone may well start to weaken as their own economies dip. China in particular may be on the cusp of a major property collapse. And it is hard to see that many more EU nationals, who have not already purchased in Kensington and Chelsea will. On the other hand increased turbulence abroad may yet mean more foreign money looking for a safe home in prime London property.

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Finborough Rd, SW10

For sale. £520,000

2 bedroom lower ground floor flat. Very tranquil. Charming walled garden. Approx 62m². Features - an open plan kitchen/reception room, 1 double and 1 single bedroom, bathroom, large storage vault. Share of freehold. Low outgoings.

One factor which may dampen prices in the medium term is the amount of new housing stock coming onto the market. There are very large building projects scheduled to complete within Kensington and Chelsea over the next decade - the area at the extreme western end of High Street Kensington, the Chelsea barracks, the Earls Court exhibition complex and other smaller sites. New build flats are especially sought after by foreign investors and the combination of falling foreign demand and a rising supply of luxury housing stock would force prices down, even assuming a benign economic outlook.

Nevertheless, property has proved to be a superb investment in the recent past. Property prices in Kensington and Chelsea have risen nearly 400% in the last 25 years. Average yields in prime central London finished 2011 at around 3.7%. This is a respectable return in times of low interest rates and it does not take into account both capital growth and the possibility of leverage.

Overall we are not very optimistic for 2012. The very top end of the prime market, £3 million plus will continue to grow. The bottom end of the market in Kensington and Chelsea, especially those areas still reliant on domestic demand or suitable for basic buy to let investors will remain flat at best. Overall we predict very modest growth, less than 5%, with a serious risk of a real correction if continental Europe is tipped into a deep recession.

RENTS

There is clear evidence that for the first time since 2009 rents in prime London areas are starting to come off from an all time high [the rise was around 25% in the last two years]. This cooling is not surprising and we predicted it. The first three months of 2012 should see a continuation of this trend. In particular keep an eye on the City. Redundancies of around 10% of the workforce have already occurred. If another 10% are made redundant by Easter then rents will slide further and faster. In 2011 in the region of 20% of all tenancies in prime London areas were granted to EU nationals, the figure is probably higher in Kensington and Chelsea. It would not be safe to assume that they will all still be here by the end of 2012.

In particular the demand for top end accommodation - £1,500 plus per week plus will falter. In late 2008/early 2009 some of the more expensive flats could only be let at 50% of their pre 2007 rent. This may happen again.

As always in a downturn many tenants will seek out the smaller, but well presented flats. We have some of the best in SW5, please visit www.astberrys.co.uk In economically uncertain times, most tenants will still want to live in Kensington and Chelsea, but will see the sense in downsizing, unless their landlords agree at the very least to no price increases. And many new tenants will not want to commit to high rents, preferring smaller, cheaper units in prime areas.

2012 will be a good deal tougher for landlords than 2011.



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