

Leasehold Flats

Guide

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INTRODUCTION

Welcome to our Leasehold Flats and Management Guide. This guide is a brief introduction to Pooks, the managing agent of your apartment building, and to the principles and obligations behind the occupation of leasehold residential property.

We have tried to provide simple and clear advice in what can become a complex area. This booklet addresses many of the issues that commonly arise but should you have any queries relating to a specific point please contact us.

ABOUT US

Pooks is a family owned business established in 1885 and now run by brothers Marcus and Tim Pook together with a dedicated staff of 15 who between them oversee the letting and management of a substantial number of residential and commercial properties.

We are a firm of Chartered Surveyors and are committed to providing a service that is second to none. We are regulated by the Royal Institution of Chartered Surveyors ensuring compliance with the RICS Code of Conduct and Members' Accounting Regulations

We provide a bespoke service tailored to the specific needs of individual clients. We maintain an intimate knowledge of each building under our management which is invaluable in providing an effective and responsive service for residents and leaseholders. Our proximity to buildings under our management means that issues on site can be directly viewed by our surveyors, often within hours, or even minutes in an emergency, resulting in accurate assistance on site setting us apart from other agents managing from a distance.

LEASEHOLD APARTMENT BUILDINGS

The running of blocks of flats and apartments is often a complicated matter for both the freehold owner and individual leaseholders. The appointment of a managing agent with appropriate expertise provides a single focal point for all parties and facilitates the efficient running of the building. Landlord services will be cost effectively and reliably provided, removing the load from both freehold owner and leaseholders.

Management Company and Managing Agent

There is often confusion over the distinction between the *management company* and the *managing agent*.

The *management company* is the legal entity with responsibility for the performance of Landlord's duties of the lease. Often each leaseholder will be a shareholder in the company and one or more leaseholder will be a director. The management company is the Landlord.

The *managing agent*, such as Pooks, is employed by the directors of the management company to undertake the building management duties on its behalf. The managing agent reports to, and is instructed by, the management company and/or freeholder.

We are constrained in what we spend by the directors of the management company (or freeholder) who generally set the overall annual budget. Sometimes you as a leaseholder may wish to see certain works undertaken such as redecorating communal areas but the managing agent can only oblige if there is provision in that particular year's budget. In other words there is a direct correlation between what you as a leaseholder pay each year and what works we as managing agent can authorise.

Role of the Managing Agent

Residents often view the managing agent as doing nothing other than send out bills and collect money. Building management is of course far more involved than this with many tasks being administrative in nature and unseen by leaseholders. The following however summarises our main duties:-

- Maintaining a full financial service to calculate and collect service charges; make payments to contractors/suppliers; produce statements and accounts; recover arrears. This is undertaken using specialist estate management and accounting software and with the security of the client accounting rules of the Royal Institution of Chartered Surveyors.
- Prepare, specify, tender and supervise contracts for routine servicing, cyclical maintenance and non-routine major works.
- Ensure compliance with the provisions of the Commonhold and Leasehold Reform Act 2002, Landlord and Tenant Act 1985, health, fire and safety regulations and other legislation.

- Deal with work requests, emergency repairs and contractors to ensure maintenance and smooth running of the building.
- Deal with questions, queries, complaints, etc., from residents and others.
- Maintaining a regular inspection programme of all buildings.
- Dealing with insurance matters relating to the structure of the property.
- Meetings with residents and residents' associations to discuss the management of the building.
- Carrying out referenda and other similar communications to gauge residents' views on proposals affecting the building.

Regular Services

Most apartment buildings are provided with the following services. In all instances we aim to build a level of service provision and cost structure appropriate to the individual site and the wishes of clients and leaseholders:-

Cleaning communal areas: This would normally be carried out once per week and would cover dusting, damp wiping, vacuum cleaning and cleaning of glass to internal doors and fire screens.

Wall marks: Where these can be dealt with during normal cleaning visits, they are. Where walls are badly marked/scuffed a special clean or redecoration may be required which would be the subject of a special order.

Bin stores: Where provided these would be swept and disinfected as required (normally at least once a month) during the cleaner's visit.

Communal areas window cleaning: Again this is once per month. We do not normally arrange cleaning of individual flat windows.

Carpet cleaning: The common parts cleaning would provide for weekly vacuum cleaning but periodically we will arrange for a shampoo of the carpets where necessary.

External sweeping: This would normally be carried out once per month unless otherwise specified.

Garden maintenance: During the season (March – October) there will generally be attendance by the contractor once every two weeks although the cycle varies from site to site. During the winter this is less frequent. Routine gardening services include grass cutting and weeding of beds whilst hedge cutting and shrub pruning

would be carried out 'as and when' required. The contract will not cover planting or replacement of plants other than by special order.

Building repairs: These would be dealt with as required and according to priority. Our responsibilities do not extend to matters within individual apartments. Where appropriate, preventative maintenance contracts will be put in place particularly in respect of passenger lifts, fire detection & alarm systems and automatic gate/barrier installations.

Emergency Systems: Emergency lighting, fire fighting equipment, fire alarm and smoke detection installations are subject to specialist maintenance contracts ensuring standards of maintenance to the requisite British Standards and in compliance with regulations.

Lift maintenance (where present): A contract is put in place for regular maintenance and emergency call-outs for breakdowns. Maintenance by specialist contractors is to the requisite British Standard and in compliance with regulations.

Door Entry System/T.V. Aerial Maintenance: These are not normally subject to a maintenance agreement as we find that the costs are high despite generally good reliability of equipment. They are dealt with on a call out basis using preferred contractors when a breakdown occurs.

External and Internal Decoration: This work is carried out periodically according to the decorative finish which has been used. Normally, external decoration would be dealt with on a three to four year cycle and internal decoration on a five to seven year cycle. Where the current decoration is particularly poor, we would consider with residents bringing the work forward. Similarly the decorating cycle will be extended if surfaces are wearing particularly well.

Other Services: According to the requirements of the building and terms of leases other services may be provided on a regular or ad-hoc basis through the service charge fund.

Leaseholders' Choice

It is not intended that services should be provided come what may, whether or not they are required by the leaseholders. It is your home and you will have an opinion as to what is necessary and appropriate. Some matters such as building insurance and essential maintenance are fundamental requirements but others such as cleaning frequency can be variable.

Where changes are felt to be necessary these will be implemented after appropriate consultation through the management company/freeholder and (where one exists) the tenants association or residents association. Clearly in order for us to vary the servicing, we have to be sure that the change does represent the wishes of the majority, and accords with legal obligations.

The best forum for discussing service levels and costs is a residents association which has a strong membership and a mandate from leaseholders. We welcome the formation of such associations as it provides us with a focal point and a body with whom we can plan changes.

Repair Liability

The repairing liabilities of both the leaseholder and the Management Company are set out within the lease. The detail varies between sites but the broad principles remain the same and can be summarised as follows:-

The Leaseholder (You): You are responsible for all matters within the flat itself plus the repair of pipes cables, drains etc which may be outside of the exterior of the flat but which only serve the flat itself (called 'exclusive conduits & media' in the lease). An example of this is the waste from your kitchen sink until it meets the main waste stack or main drain serving both your and other flats.

It may be that your flat is damaged due to problems within another flat such as a water leak from the flat above. Repair would still be your responsibility although the cost (or part) involved may be recoverable from the insurance policy for the building. In such circumstances we would of course become involved in ensuring that appropriate remedial action is taken by the owner of the flat that is the source of the problem.

The Managing Agent (Us): On behalf of all the leaseholders, and at cost to the service charge fund, we are responsible for arranging all repairs to the main structure of the building, the communal areas of the building, all communal drains and rain water gutters and pipes, the grounds of the building and common areas such as parking, courtyards, paths, driveways etc.

If you are ever in doubt about the repairing obligation or liability for any item, we will be pleased to advise.

Building Insurance

In most cases the building insurance is arranged by us through a Master Policy. In some cases insurance may be arranged direct by the freehold owner. In either case a summary of insurance cover is available upon request.

The insurance policy covers the following risks to the building, although exact detail will vary from site to site.

- Fire
- Flood

- Storm
- Subsidence or heave – subject to certain conditions
- Vandalism – subject to certain conditions
- Theft and/or attempted break-in – subject to certain conditions
- Escape of water (eg a water leak from a tank or an appliance such as a radiator or washing machine)
- Accidental damage to sanitary ware and fixed glass
- Collision with the building by a vehicle
- Third party and public liability cover

Insurance Claims

Where a claim relates to a matter solely affecting your flat we will put you in touch with the insurers who will settle the claim direct with you. If the claim is complicated or major in nature we will assist in conducting the claim if appropriate.

Where there is a claim which affects the communal area, the structure or several flats within the building, then we would deal with both the claim and the works required.

Policy Excess:

In most cases a policy excess will apply to each claim, the value of which varies from site to site. This amount can not be recovered from the insurance policy and is dealt with as follows:-

In the case of a claim relating solely to your flat you are responsible for meeting the excess.

In the event of a single claim/incident affecting a number of flats the excess would be apportioned between the flats.

In the case of a claim affecting structure or common parts the excess will be met by the service charge fund and any affected flats.

Claim Process:

In the event of a claim being necessary please contact us in the first instance. The claim process however is as follows:-

Upon hearing from you we will either send a claim form to you for completion, or we will direct you to the insurance brokers. Insurers will generally require at least two repair estimates in support of your claim.

If you carry out the work before acceptance of your claim or authorisation by insurers you do so at your own risk. Remember that the insurers may wish to appoint Loss Adjusters to deal with the claim.

When the claim has been approved you must pay any contractors employed by you. The original receipt should either be sent direct to insurers for reimbursement or to us for processing with the claim. When large amounts are involved the insurers will often pay the contractor direct.

Where works are of an emergency nature either to secure the premises or to prevent further damage you will usually receive a verbal authority to proceed with essential works without the need for an estimate for that part of the works. This applies only to emergency works. Please remember that insurers strictly define what can be classed as emergency work and to undertake additional work without authority may prejudice your claim.

When the damage to your flat is to such an extent that the flat is uninhabitable, the policy provides cover for alternative accommodation. It will be necessary to negotiate with the loss adjuster the type of alternative accommodation to be provided, depending on the nature and extent of the damage. We will assist in the conduct of such major claims.

NOTE: The buildings insurance policy does not encompass contents within flats. Leaseholders should arrange their own contents cover.

Pets in Flats

Some leases have an absolute ban on any pets or certain pets. It is essential that you refer to us for advice before bringing a pet into the premises.

Sub-Letting Your Flat

If you wish to sub-let your flat, most leases state that you should obtain consent of the management company/freeholder and that the sub-tenant should enter into a direct deed of covenant to ensure that the sub-tenant complies with the terms of your own lease. Some leases apply this requirement only to sub-leases longer than one year. Please refer to your lease.

You will be required to pay an administration charge and reasonable solicitor's costs for the preparation and completion of the deed of covenant.

Please also check with your building society, bank or other lender to ensure compliance with their requirements for sub-letting.

Parking

A major source of complaints in a block of flats relates to parking. Most leases allocate a parking space to each flat and these are shown on the lease plan. Residents should ensure that they only park in their allocated space(s), leaving any

other car outside of the parking area. Second cars should not be regularly parked on visitor spaces.

Where a lease does not allocate spaces, parking is on a 'first come, first served' basis but again it is for one car per flat only.

Visitor spaces are for visitor's vehicles only and are available for visitor's short term parking only. This is interpreted as meaning not more than a day or night.

Responsibility for resolving violation of an individual parking space rests with the affected leaseholder in the first instance. We are however able to assist with matters such as tracing the keeper of a vehicle through the DVLA or action necessary in the event of more widespread problems.

Noise and Nuisance

Leases place very clear restrictions on noise from T.V.'s, stereos, parties, etc., particularly late at night. Please ensure that you comply with the terms of the lease and exercise consideration for your neighbours at all times.

Carrying out major car repairs in your parking space; leaving a derelict car in the parking court; abuse of the visitors parking spaces; not taking correct control of your pets; erecting satellite dishes; failure to control sub-tenants are all matters about which we regularly receive complaints.

Inter-neighbour disputes are best dealt with locally in the first instance. Where escalation is necessary we will become involved upon request from an interested party and will take action to enforce the terms of the leases.

The Service Charge

The Service Charge provisions are set within the lease and can not be altered. Detail may vary between sites but most developments follow similar principles:-

- At the beginning of each service charge year an estimate is prepared detailing what amounts we consider will be needed to provide the services to your building. The servicing needs of the building are agreed in conjunction with the directors of the management company and/or the freehold owners. The comments and suggestions of any tenants' association are also given due consideration.
- A payment application will be issued on the basis of this estimate according to the frequency set out within the lease. This will either be annually in advance, half-yearly in advance or quarterly in advance. Payment is then due.

- Within six months after the year end (but in practice usually within four weeks) an account of what has actually been spent is produced. This account is sent to you.
- You receive with the account an adjusting invoice:

If expenditure has exceeded the estimate a balancing payment is due on receipt of the invoice.

Where expenditure has been less than the estimate, the invoice will show the amount of credit allocated to your account and will either reduce any amounts already owed (if amounts are outstanding) or will reduce the next payment due.

Expenditure Types

Each expenditure type is separately assessed to build the overall budget. The following are the principal categories of expenditure:

- Buildings Insurance
- Utilities (lighting of communal areas, communal heating etc)
- Cleaning of communal areas
- General repairs & maintenance
- Maintenance of grounds
- Lift Maintenance (where applicable)
- Fire Precautions
- Salaries & Wages (where on-site staff such as caretakers are provided)
- Preparation & audit of accounts
- Managing Agent's charges
- Reserve Funds (external painting; long-term major repairs etc)

Security

It is the responsibility of leaseholders to ensure that external doors are kept locked. Please do not release entry codes unnecessarily to visitors, tradesmen etc. Please be vigilant and report suspicious activities to the managing agent.

Refuse

It is the responsibility of leaseholders to take household waste to the bin area and take individual bins to and from the kerbside for collection. Large items, unwanted furniture etc should not be left in the bin area in the hope that it will be removed by someone else!

FREQUENTLY ASKED QUESTIONS:-

How is the estimated service charge calculated?:

The lease requires us to estimate at the beginning of each financial year the total likely expenditure to be incurred during the year. We do not just quote a figure, but we separately estimate expenditure against each of the main items of expense.

The estimated figures are based upon a combination of known expenditure during the previous year, existing regular service contracts, quotes from contractors and our own knowledge and experience, and is subject to adjustment after the end of the financial year.

The servicing needs of the building are agreed in conjunction with the directors of the management company and/or the freehold owners. The comments and suggestions of any tenants' association are also given due consideration.

The estimate includes building insurance, but I already pay this to my building society/bank/other lender:

Under the terms of most leases we are required to insure the whole building but not your belongings. Where your bank or building society has required you to insure through them, you should obtain from us a copy of the insurance summary details and current schedule and give this to them.

Why does the estimate contain a provision for 'building repairs' when there is a maintenance period from the developer or NHBC guarantee?:

There are a lot of misunderstandings regarding both the developer's repair liability and the NHBC cover. The developer will only deal with defects due to bad/defective workmanship within a set time from the sale of the first flat. This is not a maintenance provision for every item that requires repair – some matters may only be covered for six months from the completion of the installation. This could expire before the first flat is occupied!

There are numerous matters that may have to be dealt with by the service charge fund as building repairs. Examples are blocked drains, door entry system repairs, electrical repairs, blocked gutters, etc.

The NHBC insurance cover only deals with major structural failure which occurs during the first ten years. Minor repairs are not covered and fall to be dealt with as building repairs.

Why is the figure in the estimate different from the figure in my lease?:

The service charge figure shown in the lease refers to the estimate for the first financial year only. Thereafter, it has to be re-estimated.

On the statement there is a heading for a service I do not receive. Why is this?:

Our statements are produced to a standard format. As such there may well be a heading that does not apply to your building because that service is not provided in which case no expenditure is recorded against that heading.

I am paying a different amount to my neighbour. Why?:

The charge can be apportioned between apartments in a number of ways and this will be defined within the lease. The most common apportionment is based on relative floor areas. Larger flats will pay a greater share of the service charge than smaller flats.

What happens to money held in reserve funds?:

All reserve funds are invested in an interest bearing account. The net interest earned is added to the reserve fund.

Some of the expenditure on building repairs look very high considering the description of the work. Why?:

Within the statements we can only give a very brief description of the type of work that was undertaken and not a full note.

What is the balancing charge/credit adjustment?

There is always an adjustment to the service charge after the year end as it is highly unlikely that our estimate would equal exactly the amount expended during the year. This adjustment can be a credit if we over estimated or a debit if we under estimated.

I am being invoiced for an adjustment or arrears for a period prior to my ownership. Do I pay this?:

As the current owner, you are now liable for making this payment but your solicitor should have made arrangements to cover this contingency, usually by holding a retention from the money due to the original vendor.

I am selling my flat. Do I receive a refund of sums paid in advance?

No but your solicitor will normally obtain pro-rata repayment of this from your purchaser. This may be subject to a retention by the purchaser to deal with the possibility of a year-end balancing charge.

I am selling my flat and the purchaser's solicitor has raised written enquiries. Who replies to these?

Replying to such enquiries is your responsibility and is not within our remit as managing agent. Upon request we will provide replies relating to the management of the building but we must charge for this. This is because it would be unfair for other leaseholders to bear any of your sale costs within the service charge fund.

What is the Reserve Fund?

The objective of a reserve fund is to spread the costs of non-annual major work such as decorating to avoid large fluctuations in the annual charge.

The reserve fund is invested in an interest bearing client account and the level of the fund and the interest earned, together with details of any expenditure from the fund appear in annual audited accounts.

If you sell your property, you should inform your Estate Agent that a reserve fund exists as this helps to allay fears that prospective purchasers may have, that there will be substantial increases in service charges, particularly if the building is due for decoration.

Why are service charges paid in advance?

Service charge payments are due in advance as defined within the lease. This is because the only source of funds to pay for the servicing of the building is the service charge fund itself. Therefore, if leaseholders do not pay, there are no funds to insure or service the building.

If payment is not received, we have no alternative but to take legal action to recover outstanding amounts.

Can I pay by instalments?:

We regret that this is not possible for the reason above and is not permitted under the lease.

I am in financial difficulties and cannot pay. What shall I do?:

In such circumstances you should immediately contact your mortgage lender. They have an interest in your property as it is security for their loan to you. In some circumstances they may assist you with the payment. It is important that you keep them advised as, if solicitors are instructed for collection of your charges, they will inform your mortgage lender that they are taking action.

Why is the invoice not in my name?:

This usually occurs when a sale has taken place and your solicitor has not registered the assignment with us as required by the lease. You should contact your solicitor immediately to ensure that the position is regularised.

Until registration has taken place, we are unable to amend the record relating to your flat. However, as the owner, you are responsible for the charges and should pay these even though you may be resolving matters with your solicitor.

I am going to sell before the period end date on the invoice. Do I still have to pay?:

Yes. As the owner of the property when the invoice was issued the payment is due from you in full. You should ensure that your solicitor seeks reimbursement from your purchaser as set out above.

If you are completing a sale prior to the beginning of the invoice period, pass the invoice to your solicitor who will ensure that the purchaser becomes aware of it.

For most sales, solicitors write to ask us if there are any payments outstanding. If you have not paid, it is possible that this may hold up your sale.