

The Federation of Private Residents' Associations

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August 1988

NEWSLETTER

No. 17

LANDLORD AND TENANT ACT 1987

The remaining sections of this Act come into force on 1 September this year and on 1 April next year. Pages 2 to 5 of this Newsletter reproduce relevant letters from the Department of the Environment (DOE) and the DOE News Release. The Federation was consulted upon the draft Statutory Instruments (SI) and we are pleased that SI 1284, Service Charge Contributions (Authorised Investments) Order 1988, was revised in the light of recommendations by the Executive Committee that any sum in any trust fund (to which section 42 applies) should be deposited at a place in the United Kingdom.

SECTION 20 LANDLORD AND TENANT ACT 1985

Would Members please note that as from 1 September this year, the level of the prescribed amount is being raised from £25 per flat or £500 per building to £50 per flat or £1,000 per building.

THE HOUSING BILL

The Housing Bill is still going through parliament and the Federation's objections and proposals for amendments will be reported upon in the next Newsletter.

PARK WEST SUB-LETTING

As the agents responsible have appealed to the Department of the Environment against the local authority planning enforcement orders served in respect of seventy flats being used as short-lets at Park West in Mayfair, the Federation has sent a letter to the DOE Inspector in support of Westminster City Council.

THE ANNUAL GENERAL MEETING

The Annual General Meeting will be held on Thursday 6 October 1988 at 7.00 pm in the New Hall of the Royal Horticultural Society, Greycoat Street, London, SW1. At the meeting the Executive Committee will re-introduce a Motion to change the Articles to enable the AGM to be held in the autumn.

SUBSCRIPTIONS AND ENTRANCE FEES

A decision was made by the Executive Committee to increase the entrance fee for an association from £40 to £45 and to increase the standard category association subscription from £2.25 per member flat p.a. to £2.50; the minimum subscription to be left at £32 and the maximum subscription to be raised from £198 p.a. to £215. The minimum subscription will therefore apply to those associations with 1 to 12 member flats, the standard subscription to those with 13 to 85 member flats and the maximum subscription to associations with 86 flats or more. The rates for Associate Membership are to be left unchanged. These new rates came into operation on July 1 this year.

THE OFFICE

The Office will be closed from 15 August to 1 September.

RECEIVED

Dear Mr Mason

THIRD COMMENCEMENT ORDER OF THE LANDLORD AND TENANT ACT 1987

Further to my letter of 12 May, I attach a Press Notice announcing the making of the third and final commencement order on the Landlord and Tenant Act 1987 bringing sections 41, 43 and 44 (dealing respectively with service charges, insurance and appointment of managing agents) into force on 1 September and section 42 (dealing with the handling of service charge funds) into force on 1 April 1989.

We have also made two related orders, one under section 42(5) of the 1987 Act dealing with the investment of service charge contributions and the other increasing from 1 September 1988 the prescribed limits when consulting about works under section 20 of the Landlord and Tenant Act 1985.

I will let you have a set of the statutory instruments when they are available.

Yours sincerely

John Cane

J CANE

Dear Mr Johnston

Thank you for your letter of 2 July to Mr Ball in response to the consultation letter about the draft commencement order for Part V of the Landlord and Tenant Act 1987 and the draft orders dealing with the handling of service charge contributions and increasing the prescribed limits when consulting about works.

I am grateful for your comment on both matters. The service charge contributions order has been revised in the light of your comments.

Yours sincerely

John Cane

J CANE

ENVIRONMENT**NEWS RELEASE**45427 JULY 1988FINAL SECTIONS OF LANDLORD AND TENANT ACT 1987 IMPLEMENTED

Nicholas Ridley, Secretary of State for the Environment, today announced that a commencement order had been made for the remaining sections of the Landlord and Tenant Act 1987 which are not yet in force.

Three of these sections, dealing with service charges, insurance and consultation on the appointment of managing agents will come into force on 1 September 1988. The one remaining section, which requires that service charge contributions are to be held in trust, will come into force on 1 April 1989.

In answer to a written Parliamentary Question from David Martin MP (Portsmouth South), Mr Ridley said:

-1-

"I and my hon Friend the Parliamentary Under Secretary of State for Wales have now made the third commencement order for the Landlord and Tenant Act 1987, covering all the sections not already covered by earlier orders. The provisions in sections 41, 43 and 44 dealing respectively with the strengthening of tenants' rights on variable service charges, insurance and consultation on the appointment of managing agents will come into force on 1 September 1988. There are transitional provisions for section 41 to deal with situations where action is already in hand or where the accounting period has already started before 1 September 1988. Section 42, dealing with the handling of service charge contributions will come into force on 1 April 1989, together with an order under section 42(5) dealing with the investment of service charge funds held in trust.

"Under a separate order the prescribed amounts above which a landlord must consult his tenants about works will be raised on 1 September 1988 to £1000 or £50 per dwelling whichever is the greater.

"This completes the implementation of the Landlord and Tenant Act 1987, which has significantly strengthened the rights of people living in flats, and, as regards the payment of variable service charges and insurance, people living in houses and other dwellings also."

NOTES TO EDITORS

The Landlord and Tenant Act 1987, which received Royal Assent on 15 May 1987, strengthens the rights of tenants of private flats in England and Wales. It implements the main findings of the Committee (chaired by Mr E G Nugee QC) which reported in November 1985 on the problems of management in privately owned blocks of flats. Parts I to IV and VI (dealing respectively with right of

first refusal, appointment by the court of managers, acquisition of leasehold block in certain circumstances, variation of leases and information to be supplied to tenants) and section 45 (dealing with the power of housing associations to manage leasehold residential property) are already in force.

The third commencement order brings into force on 1 September 1988:-

Section 41 which strengthens the existing service charge provisions in the Landlord and Tenant Act 1985 and extends them to all dwellings subject to variable service charges. It entitles tenants to more information about costs incurred and gives new rights to recognised tenants' associations when a landlord wishes to carry out works.

Section 43 which gives tenants rights to request information about the insurance arrangements, to inspect the policy and accounts and receipts, and to challenge the level of the premium or the cover provided on the grounds that it is unreasonable. It also enables a tenant to extend the time limit for a claim so as to persuade a reluctant landlord to submit a claim or, if necessary, take other action to enable a claim to be made.

Section 44 which gives recognised tenants' associations a right to be consulted about the appointment or performance of a managing agent and to be consulted about the appointment periodically thereafter.

It also brings into force on 1 April 1989:-

Section 42 which provides that any contributions to service charges (including sinking funds) are to be held in a trust fund for the benefit of the tenants. This should safeguard the funds against misappropriation or the landlord's insolvency. The purpose of having a later commencement date for this section is to give landlords sufficient time to adjust their accounting systems to comply with the requirements of this section.

Two other related orders have also been made. One raises the prescribed limits when consulting on works to £1000 and £50 respectively and comes into force on 1 September 1988. The other deals with the way in which service charge contributions including those made to sinking funds are invested under section 42(5) of the 1987 Act and comes into force on 1 April 1989.

Press Enquiries: 01 276 0920
(Out of Hours: 01 276 4120
Public Enquiries: 01 276 3000
(Ask for Public Enquiries Unit)

St Andrews Mansions,

Marylebone Times
May 1988 No 7 page 18

*The home of
Rose Macaulay,
Novelist and critic
(1881-1958)*



ST ANDREWS is a small mansion block, thirty one flats in all, believed to be one of the first purpose-built blocks of flats constructed in London. St Andrews Mansions first appears in the Post Office Directory in 1899. The architect was Robert James Morley (1850-1930) who was also responsible for the distinctive architecture of Sicilian Avenue, Holborn, and other town houses in Harley Street and Wigmore Street.

Externally the block is architecturally unpretentious, lacking some of the more flamboyant features of the period. It does have an imposing presence though, with its corner site on the intersection of Dorset Street and Chiltern Street emphasised by a sturdy turret. The most distinctive external feature is undoubtedly the entrance archway and wrought iron gates, with the original timber porters cabin, leading to the L-shaped courtyard and garden. This



The good news is that St Andrews Mansions Residents' Association has won its planning fight.

type of courtyard development is much more common in France. Certainly the court has a strong Parisian atmosphere, with its wrought iron balconies, statue, flowers, and hanging baskets. It also has a sense of peace and privacy rarely found in central London. Many of the details of the building, brackets, coal hoist, balustrading, and coloured paving tiles are largely original, giving the block an authentic nineteenth-century quality in every respect.

The block was originally known as Manchester Square Mansions and achieved notoriety when the Prince of Wales kept his mistress here. Some years later, around the time of his coronation, the name was changed to what it is today.

Other famous characters have lived in the block. Writer and novelist Rose Macaulay lived here from 1931, first at No. 2, and then No. 10. In 1925, the actress Eileen Carey (Mrs Sean O'Casey) took a flat. This she described as 'very dark, and quiet as well because the flats looked out upon a courtyard where a porter was on duty at the gate'. It was while she was living here and performing in *Rose Marie*, in the West End, that she met, and later married the playwright Sean O'Casey.

On 17 November 1987, residents of St Andrews Mansions, Dorset Street, put in a bid with the Department of the Environment to have their building listed. Some months previously, in July 1987, the peace of the residents had been shattered by a developer who had been given a year's option to buy the freehold of the block. He proposed certain 'improvements', such as the installation of a lift, and the building of another storey. Unfortunately for the residents, a survey taken two years before this had revealed that a large amount of structural work was needed on the whole block including work on the roof, and the reinforcing of the ironwork which was by now rusting badly, and weakening. For the landlord, the developer's offer would

bring about some of these repairs to the structure at roof level.

For the residents however, the developer's offer would have a disastrous effect on their living conditions. Not only would the granting of planning permission effect the daylight and sunlight to the flats, the privacy of the residents, and bring about a change in the character of the building, it would also 'frustrate the exercise of our rights as residents, under the legislation now being enacted, to negotiate purchase of the freehold ourselves'. This last point on the list of objections to the application, refers to the Landlord and Tenant Act of 1987, which specifies that the first refusal on the sale of a freehold must go to the leaseholders. Moreover, not even the 93 year old resident, Glad Spencer, wants a lift installed, living as she does on the third floor, and still a working actress.

Subsequently, an action group has been formed by the residents to fight the application. Support has been mobilised, petitions and letters written, and Councillor Rossi has given support. Other resident groups and societies such as the Manchester Square Trust, the St Marylebone Society, the Marylebone Association and even the Victorian Society have also pledged their support.

On 11 February the first application was refused, but a second and third quick followed from the developer. The action group is now in the process of fighting the second application, and also attempting to buy the freehold themselves. In July of this year the developer's option on the freehold expires. Residents are desperately hoping that time will be on their side.

For more details contact Anna Saunders, Secretary of the St Andrews Mansions Residents Association (01-935 0300), or write to the Planning Department of the Westminster City Council.

NEWS OF MEMBERS

Kingston Guardian Series, Thursday June 23, 1988

FLATS CHARGES 'EXTORTIONATE AND UNCARING'

RESIDENTS who bought their flats from Kingston Council face crippling charges this year of up to £5,000 each.

That's how much flat-owners at Kingsnympton Park fear they will have to pay for new windows and renovations ordered by the council, which manages and owns the freehold to the estate.

The residents are now protesting at what they have labelled excessive and badly planned charges.

They are angry that the costs are being added to the annual £800 service charge per flat.

They say the council should be spreading the cost of the work over a number of years and are furious that — despite a condition in the lease to the flats — no special contingency fund was set up.

Ten owners have already gone it alone and

By
**JILL
GALE**

fitted new double glazing at a cost of about £3,000 per flat.

But astonishingly these will have to be ripped out when the council refitting project is launched in the autumn at a cost per flat of some £4,000.

Jenny Lewis, secretary of the Kingsnympton Owners' Association said: "The council has not sent us any tenders, which it has to do under the 1987 Housing Act. This bill is based on an estimate.

"Most people have put in double glazing because it is on the schedule of jobs that need to be done."

"We are not rich. Many of us are on one salary with large mortgages.

"The council is encouraging people to buy up the flats then we find it is impossible to manage.

"They are asking us for money up front. We don't know when the work is going to be done and we think it is an extortionate amount of money for what

they want to do.

"The council appears to be behaving in a high-handed and totally uncaring way," she said.

"In no other situation would one be expected to pay thousands in advance for major structural alterations, upon which one had not been consulted, nor seen plans, drawings or specifications, nor given a date on which the work was to start or be completed, and at more than the current market price."

Coun Tony Martin, chairman of Kingston's housing committee, said there were options open to owners to help with payments, such as additional mortgages, interest free loans, and other arrangements on which the council would advise.

"Our officers have agreed to respond to this letter," he said.

"But it is a legal requirement for us as landlords to charge for works in advance.

"However, I will be looking closely into the other matters."

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CONGRATULATIONS

Chancellor House Association. By quoting Russell v Laimond Properties, see Newsletter 11, this Association was able to negotiate a reduction in the rent of the caretaker's flat.

Lima Court Residents' Association. The Association was able to persuade the Southern Electricity Board to rate the supply to the common parts on the cheaper domestic tariff.

Thatcham Court Residents' Association. This Association successfully fought off planning consent for the redevelopment of the block that involved the construction of extra flats on the roof.

FREEHOLD FLATS

Some Members may have seen reports in the Mail on Sunday and other newspapers which suggest that a new law is imminent that would allow the owners of flats the right to buy-out their landlord. Provided that more than seventy per cent of the occupiers agree, the freehold could be purchased and if the landlord objects, an independent tribunal will decide whether the buy-out can go ahead and, if so, will fix the price. These newspaper reports are based upon the substance of the Law Commission's two Reports: 'Commonhold - Freehold Flats' and 'The Law of Positive and Restrictive Covenants', together with the Lord Chancellor's answers in the House of Lords to questions on possible legislation on the subject. With the kind permission of the Controller of Her Majesty's Stationery Office, the complete exchange of question and answer is reproduced below and comprises all column 1055 of the Official Report of Proceedings in the House of Lords of 18 July 1988.

1055

Freehold Ownership

[LORDS]

of Flats

1056

Freehold Ownership of Flats

2.43 p.m.

Lord Jacques asked Her Majesty's Government:

Whether, following the report of the working group in July 1987, they will introduce legislation on the subject of freehold ownership of flats and other interdependent buildings.

The Lord Chancellor (Lord Mackay of Clashfern):

My Lords, as I said in a Written Answer to my noble friend Lord Swinton on 8th June 1988 (*Official Report*, Vol. 497, col. 1486), the Government have arranged for legislation to be prepared at the Law Commission giving effect to an integrated scheme comprising the proposals set out in the group's report and the remainder of the proposals in the Law Commission's report on land obligations, *The Law of Positive and Restrictive Covenants*. I understand the work is now in hand.

Lord Jacques: My Lords, I thank the noble and learned Lord for his reply. Perhaps I may put to him two supplementary questions. First, the working party declined to state any view on the subject of compulsion. Have the Government a view on the subject? Secondly, when can we expect the legislation?

The Lord Chancellor: My Lords, my answer to the noble Lord's second supplementary question is, as

soon as parliamentary time is available. So far as concerns the first question, as he rightly said, the report left the question of compulsion open. At the moment legislation is being prepared but no final decision has yet been taken as to whether, and to what extent, there should be an element of compulsion. The noble Lord will know that other countries successfully operate condominium schemes without compulsion. The question of compulsion remains under consideration.

Baroness Llewelyn-Davies of Hastoe: My Lords, can the noble and learned Lord confirm that under the terms of the Landlord and Tenant Act 1987 the landlord is obliged to give the tenants the right of first refusal or first option if he decides to sell the freehold?

The Lord Chancellor: My Lords, I think that that is so, but I am speaking from memory. I have not had an opportunity to check it. I believe that that is probably right.

Lord Jacques: My Lords, can we expect such compulsion where a negligent landlord is not carrying out his obligations? Will the would-be freeholders be able to seek compulsory purchase?

The Lord Chancellor: My Lords, that is a situation which I should certainly wish to bear in mind in considering whether we should have compulsion and, if so, to what extent.

In view of this, Members may find useful to have the Summary of the Proposals in the Working Group Report on Commonhold - Freehold Flats, published July 1987 by the Law Commission, which is reproduced on the next 5 pages of this Newsletter by kind permission of the Controller of Her Majesty's Stationery Office and which is Crown Copyright. The Executive Committee is indebted to Reginald Jones (Ashley Gardens) for composing the Federation's comments on this Report when in draft form.

FREEHOLD FLATS

and freehold ownership of other interdependent buildings
A brief summary of the proposals in the Working Group Report
published July 1987

1. WHAT COMMONHOLD OFFERSNew Land Ownership System

The Report proposes a new land ownership system for England and Wales, which it calls "commonhold". Commonhold would exist alongside the present arrangements, offering an alternative which for the first time would give a standard, satisfactory method of freehold ownership of flats. It could equally apply to subdivided buildings, or groups of buildings, used for any other purpose. Legislation would be required to introduce it.

Commonhold adapts, for England and Wales, the condominium system which is well established in the United States and Canada and is also known as strata titles in Australia and New Zealand.

The new system is designed to offer the greatest possible flexibility. It could be used for new developments, for existing buildings being subdivided and for blocks already occupied as flats or in separate units for some other purpose. The only requirements would be: the whole building, or every building, on the designated site must be included in the commonhold, and there must be at least 2 separately owned units.

Problems Tackled

A number of problems have been associated with long-term ownership of flats, and similar units in buildings. The commonhold proposals aim to tackle them.

- (a) Expiring leases: mortgageability. Long leasehold flats can be difficult or impossible to mortgage during the last 40 or so years of the lease. Commonhold ownership would be freehold, so it would not expire.
- (b) Enforcing obligations. There is at present no satisfactory way to ensure that when a freeholder undertakes positive obligations - e.g. to repair or to contribute to the cost of services - those duties will bind later owners of the property. (This is why flats are now sold on long leases). A Commonhold Act would ensure that all owners and occupiers had to comply with the obligations.
- (c) Conveyancing costs. Leases of flats are often long and complicated, and sometimes defective. This causes delays in conveyancing and increases costs. Much of the documentation for commonholds would be standard, and prescribed by statutory instrument. The result should be an increased public understanding, greater efficiency in conveyancing and reduced costs.
- (d) Management. Continuing the improvement process started by the Landlord and Tenant Act 1987 (based on the Nugee Report), flat owners in a commonhold would be responsible for managing their block through their own commonhold association. They would have guaranteed

democratic voting rights at association meetings. Associations would be free to employ professional managers.

(e) Winding up. At present, if it becomes necessary to wind up a flat scheme, there can be complications because there is no settled system. In a commonhold, the method of winding up would be laid down, everyone would have to consent, and the proportionate share of the value of the whole property to which each owner would be entitled would be fixed in advance.

2. HOW COMMONHOLD WORKS

What People Own

The owner of a commonhold flat ("a unit owner") would own his flat freehold, until the commonhold ends. That ownership would carry with it, automatically, the right to the facilities he needed (e.g. for access, gas, water, electricity, etc.), and the right to services (e.g. cleaning common parts, outside decoration and insurance). If a particular development had other common facilities for owners (e.g. car parking, a garden or recreational facilities) the right to use them would also go with ownership of the flat.

The commonhold association would be responsible for the services and common facilities. They would collect service charges from all owners, in proportions laid down in advance. Those service charges would include contributions to a reserve fund to meet heavy costs which do not occur often (e.g. replacing a lift or a boiler), so that there should not be inconvenient major fluctuations in the sums payable.

When a commonhold came to an end, the owner's right to a particular flat would be converted into a share of the whole property. As the reason for ending the commonhold might be the destruction of the building, this avoids difficulties of "owning blocks of airspace". Also, it would provide an efficient machinery for selling the site if that was what the owners wanted to do.

Commonhold Association

Each commonhold would have a commonhold association whose members would be all the unit owners in that commonhold. It would have three functions: first, it would organise the services and collect the service charge; secondly, it would be the owner of the common parts of the building; and thirdly, if the commonhold ended it would hold the whole property on behalf of the individual unit owners.

A commonhold association would be a corporate body, coming into being automatically when the commonhold is set up and continuing until the commonhold ends. Except in very small developments, containing no more than six units, its day-to-day affairs would be managed by a small committee of members. At least once a year, there would be a general meeting which all members could attend.

A commonhold association would not be a limited company. The detailed requirements for filing returns, which apply to companies, would not affect them. However, because a common-

hold association could not be wound up if insolvent, its members would have "restricted liability". Each member would be liable to pay in full his proportion of the association's debts, but he would not be responsible for any other member's proportion.

Registration

Commonhold ownership would be based on the registration of title at HM Land Registry, and it would not be possible in any other way. In areas where registration is not yet compulsory, voluntary registration would be available for this purpose. The link with land registration would mean that commonhold would benefit from all the advantages of the registration system: details of ownership would be clearly set out on the register; those particulars would easily be supplied to intending purchasers; simplified forms of transfer would be used; and there would be a State-backed guarantee of ownership once registered.

Creating a Commonhold

Standard documentation would make it simple to set up a commonhold. A freeholder who was the only person interested in a property could decide to make it into a commonhold by presenting a declaration for registration. This would define the units and give the votes, service charge contributions and ownership shares of each unit owner. Where others had an interest in the property, e.g. as mortgagees or tenants, they would all have to agree. However, there would be arrangements to prevent a tiny minority unreasonably blocking a move to create a commonhold. A majority of at least 80% in favour would be able to apply to the court to override the objections on the ground that they were not reasonable.

Compulsion

It would be possible for a degree of compulsion to be linked to the commonhold system, so that e.g. there could be leasehold enfranchisement of flats, but only on a block-by-block and not a flat-by-flat basis. However, compulsion is in no way necessary to the commonhold scheme, and the Report leaves completely open the question of imposing it.

3. HOW COMMONHOLDS AFFECT OUTSIDERS

Purchasers

When buying a flat in a commonhold development, or any other commonhold unit, the procedure would closely follow any other property purchase and is likely to be less complicated than buying a leasehold flat. All the basic information about ownership and details about the commonhold would be readily available from the Land Registry. A prudent purchaser would want details about service charges, and particularly arrears for which he might be responsible if they were not discharged before the sale went through. There would be a standard procedure, involving completing a simple prescribed form, to allow a unit owner to obtain the necessary information from the commonhold association.

The owner of a commonhold unit would be free to sell to anyone he chose, and would not need to obtain permission from his fellow unit owners or the commonhold association. There should therefore be no delay of the kind that might arise if their consent were necessary.

Mortgagees

Creating a mortgage of a commonhold unit would be possible in exactly the same way as any other property, and there should not therefore be any difficulty in obtaining mortgage finance. From the lender's point of view, there will only be one major difference. If the commonhold comes to an end - which seems unlikely to happen often - the interest of the unit owner would be converted from ownership of a flat into ownership of a proportion of the whole property. In these circumstances, the winding up of the commonhold association would be conducted by a liquidator, and it would be for him to ensure that mortgagees received the money which was due to them when the property was sold. Their loans will therefore remain secure.

Tenants

No one should find themselves unexpectedly a tenant in a commonhold. Before a property with a sitting tenant is converted into a commonhold, the tenant must consent. When the owner of a unit in an existing commonhold proposed to grant a tenancy, he would have to give the tenant notice in advance.

The reason why a warning would be appropriate is that in the event that the whole commonhold came to an end, any tenancy which was then continuing as a matter of contract would come to an end. However, the tenant would be entitled to compensation, from his landlord's share of the value of the property.

In the case of tenants who enjoy statutory security of tenure, the general principle would be that their statutory rights were not affected by the commonhold scheme. However, if the commonhold came to an end for the purpose of redevelopment of the whole property, those rights would be ended. This already applies in the case of some statutory security schemes, and similar provisions would be extended to the others. The reason for this, in what is likely to be a strictly limited number of cases, is fairness to the other freehold unit owners within the commonhold, whose ownership rights could otherwise be prejudiced by the actions of another owner over whom they had no control.

Neighbours

Being the neighbour of a commonhold should not make any difference to a property owner's position. Both parties would still be subject to the general provisions of the law requiring owners to be reasonable in the use of their property.

In one way, a visitor to a commonhold may be better placed than a visitor to a similar property held under the present property owning arrangements. If the visitor were injured on any of the common parts of the property, he would have the right to claim damages if the injury resulted from lack of care on the part of the occupiers. The value of that right necessarily depends upon how much the occupier is worth, and in the case of some landlord companies of leasehold developments this is very little. The commonhold association, on the other hand, which would be the occupier of the common parts of a commonhold property, would have a statutory obligation to insure against liability arising from this sort of accident.

People who enter into contracts with a commonhold association, e.g. someone who agrees to carry out repairs to the building, will be warned that they are dealing with this special sort of body, because they will all have the words "commonhold association" in their name. This would be important because restricted liability might make it difficult to recover debts from a commonhold association. However, not only would the warning enable them to make a special bargain, but they would have the advantage of knowing that the association should have a reserve fund for certain liabilities.

4. OTHER POINTS FROM THE REPORT

Landowners' positive obligations

Although the commonhold scheme would solve the difficulties relating to passing positive duties from one freehold landowner to the next as far as properties within a commonhold were concerned, this general problem would nevertheless remain. It applies in circumstances where it would not be reasonable to impose the whole management system of a commonhold - e.g. fencing obligations on a housing estate, contributions to repairing a private road, etc.

The latest proposals to tackle the problem were contained in the Law Commission's Report, The Law of Positive and Restrictive Covenants (Law Com. No. 127), published in 1984. Although each scheme could be implemented separately, the Commonhold Report suggests minor modifications to the 1984 scheme which would allow both to be introduced, without overlap to tackle the problem comprehensively.

Consultation and Support

In the course of the preparation of the Commonhold Report, the Working Group carried out a programme of consultation with a selected group of interested bodies on mainly technical questions. Among those consulted, and who supported the introduction of a commonhold scheme, were those representing consumer interests (National Consumer Council, Welsh Consumer Council and Consumers' Association), those representing mortgagees (Building Societies Association and Committee of London and Scottish Bankers), professional bodies (Chancery Bar Association, Law Society, Institute of Legal Executives and Royal Institution of Chartered Surveyors), associations of local authorities, Property Advisory Group and Association of British Insurers.

Composition of Working Group

The Working Group was Chaired by a Law Commissioner, Mr T M Aldridge, and comprised officials from Department of the Environment, Lord Chancellor's Department, Department of Trade and Industry, Treasury Solicitor's Department and HM Land Registry.

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LEGAL ACTION GROUP PUBLICATIONS

The following are three excellent guides produced primarily for lawyers and other legal advisers but expressed in non-technical language and set out in a manner which is readily accessible to the layman.

1. "Quiet Enjoyment" is the legal term to describe what every tenant is automatically entitled to in the occupation of his or her premises. Many different short-comings of landlords, whether active or passive can, in fact, be breaches of this tenant's right. This book on the subject is therefore not without interest to long leaseholders but is of perhaps of greater relevance to tenants. Particularly enlightening is the introductory section on basic principles of the law of tort and contract as applied in the context of landlord and tenant. The sections dealing with the nature of the remedies by the tenant against the landlord for interfering with quiet enjoyment and a description of the Court procedure for taking action against the landlord are of more practical significance. The second part of the book deals with the criminal sanctions available against the landlord for failure to allow quiet enjoyment. There is a useful appendix covering, first, the definition of "occupiers" of residential accommodation and the extent to which they are protected by the law and secondly, the requirements of the law as to notices to quit and protection from eviction.
2. "Repairs" This is a useful reference book which sets out clearly the law relating to the obligations of both landlord and tenant in respect of repairs. It is also useful in bringing into one work, not only the general law on the subject, but more specialised aspects such as unfit housing, public health requirements and particular problems such as asbestos, over-crowding, condensation and vandalism.
3. "Defending Possession Proceedings" If any of the Federation's members are unfortunate enough to be at the receiving end of a summons for possession of their flats, they will find this guide of considerable comfort even if able to employ the services of a lawyer and, if not, of great assistance. It has four sections: Public Sector tenants, private tenants, procedure and mortgagors' possession proceedings. It is thus applicable to all types of Federation members.

"Quiet Enjoyment" by A Arden and M Partington April 1985 £7.00

"Repairs: Tenants' Rights" by J Luba May 1986 £11.00

"Defending Possession Proceedings" by J Luba, N Madge and D McConnell January 1987 £14.00

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Would you please circulate the Newsletter to all your Members, extra copies are obtainable from the Office at £1.50 each, post paid.

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