



**FPRA**

Federation of Private Residents' Associations

Embargo: Immediate - Wednesday 29th September 2010

The Federation of Private Residents Associations Ltd.

PO Box 10271

Epping, CM16 9DB

E-mail. [info@fptra.org.uk](mailto:info@fptra.org.uk).

Web. [www.fpra.org.uk](http://www.fpra.org.uk).

Main Telephone Number: 0871 200 3324

## **National residents group propose REAL Improvements to legislation for Leaseholders**

### **Not simply a 'bonfire' of vital 'Quangos'**

The Federation of Private Residents' Association (FPRA) has responded positively to the **Law Reform Consultation** expressing views on areas of leasehold law requiring urgent reform to protect private sector leaseholders.

**Bob Smytherman, Chairman - Federation of Private Residents' Associations said:**

"As a non-profit national body representing the interests of flat dwellers and long leaseholders we hope the new coalition will give full consideration to the needs of probably between 2 to 3 million flat dwellers, including some particularly vulnerable groups, such as those in the retirement leasehold sector."

"We believe our proposals represent a cross-section of the leasehold sector and confident that they are an accurate reflection of the views of all leaseholders in England and Wales and could be achieved at minimal cost to government with substantial savings to every leaseholder in England and Wales.

### **FPRA proposals include:-**

#### **Improving Legislation for Leaseholders**

There is a glaring need to consolidate all the Landlord & Tenant legislation, particularly the Acts since the Housing Finance Act 1972. Since that time, there has been a succession of statutes constantly altering clauses in earlier Acts

making interpretation of leasehold law excessively difficult, even for members of the legal profession, never mind the average leaseholder or tenant.

### **Simplifying Legislation for Leaseholders**

In addition to the need to consolidate, many of processes and systems created the law requires simplification to make them more workable, e.g. major works consultation under Section 20 of the Landlord & Tenant Act 1985 which has financial thresholds unchanged for many years.

### **Criteria Applied in the Law of Enfranchisement**

A review should be undertaken as to whether a single development of several blocks paying one service charge should be able to opt to be treated as one unit.

Leasehold houses within a development of leasehold flats should be able to enfranchise under the Leasehold Reform Housing and Urban Development Act 1993 or under the Leasehold Reform Act 1967 or have a choice.

### **Inappropriate Design of Legislation**

Most landlord and tenant legislation has been designed to deal with potentially conflicting interests of leaseholders and freeholders; however one of the successes of the legislation over the last two decades has been to enable leaseholders to enfranchise and thus own their own freehold but this change is not fully reflected in legislation. It has created an unfair situation where invariably unpaid directors of resident management companies are subject to the same requirements as commercial landlords; it is suggested that such companies should not be required to undertake such detailed and burdensome duties where not appropriate.

### **The Commonhold & Leasehold Reform Act 2002**

Unfortunately the Commonhold provisions in the Act were poorly drafted and, as a result, Parliament's intention to create an entirely new form of tenure has completely failed. Remedies would include making it compulsory in all new developments, a right to convert from leasehold in existing blocks by a majority decision.

Other flaws in the Commonhold provision include:

- (a) The failure of Commonhold to provide for shared ownership leases (any larger development will tend to include a social housing element as a result of Government's planning policies).
- (b) The lack of clear provisions on how a mortgagee's interest is secured when a Commonhold is wound up, leading to the unwillingness of most major lenders to lend on Commonhold units.

- (c) The failure to provide some of the same protection as is available in leasehold developments in that in Commonhold developers are able to award long term "sweetheart" contracts prior to the Commonhold association taking control of the development.

## **Disability**

The admirable disability legislation has failed to address the situation in blocks of flats particularly conflicting requirements of people sharing the same entrance.

## **Excessive Insurance Commissions on Blocks of Flats**

Leaseholders of flats are usually required to pay for insurance of the structure of the building through the freeholder. Many freeholders see this as a profit-making opportunity and the whole insurance market for blocks of flats is, as a result, distorted by the payment of excessively high commissions and quasi-commissions in various guises to brokers, intermediaries and others, often amounting to 30%, 40%, 50% or even higher percentages; thus, the premium charged to the leaseholder is substantially higher than it should be. Legislation requires that service charges, including insurance, must be reasonable and, if not, is referable to the Leasehold Valuation Tribunal; however, unlike other charges, such as maintenance, cleaning, etc. in the case of insurance, the protection afforded by the law is ineffective, by reason of the distortion referred to above when the definition of "reasonable" is considered.

The FPRA's proposal is that similar regulation should be introduced as in the Life and Pension market so that unfair commissions are banned. The earning capacity of legitimate brokers and others would not be affected as transparent fees at a reasonable level could still be charge. At present, it is claimed by some professionals that commissions are already transparent and this may well be the case with those paid to members of the RICS or ARMA but it is not necessarily so when paid direct to freeholders or associated undertakings. Furthermore, even with professionals, disclosure is on request only and not automatic; the majority of leaseholders would not even know of the abuse or the right to challenge it.

## **Safety of Leaseholders funds held by managing agents/freeholders/others**

Leaseholders are usually obliged to pay advance payments and contribute to sinking/reserve funds. It seems that the sums held by unregulated and unprotected third parties may well exceed £1billion and perhaps may be even higher. It is believed there is no other area in the UK where funds are held by a third party and such third party is not regulated and can in practice be some person or organisation without any qualification who sets up in the property managing business, irrespective of experience or even of a criminal background but nevertheless is able to take and hold "deposits". This situation has on occasion resulted in leaseholders

being defrauded or otherwise losing funds. Bizarrely, there is a whole statutory scheme of protection for rental deposits but none for leaseholders who are obliged to advance much greater sums. There is, it is true, legislation requiring deposits to be held "on trust" but this is difficult to enforce in practice.

It is, in the view of the FPRA absolutely essential that some system is devised so that such funds are protected by the Financial Insurance Services Compensation Scheme or similar.

### **Deposit protection where funds are held by Financial Institutions**

Following from the above, the funds held in deposit accounts are, because of the current limits, protected only up to £50,000. Whilst this may be adequate for small blocks of flats, in the event of failure of the institution in question, larger blocks would have minimal protection. This could be addressed by a very simple change in the Financial Services Authority (FSA) rules by stating that, where monies are held in trust for leaseholders, the compensation limits would apply to the individuals and not to the total sum.

### **Energy Efficiency**

Most legislation drafted to encourage energy efficiency, including the award of grants, effectively excludes flat owners because no account is taken of the need for collective action with the landlord's co-operation and where the lease may preclude expenditure on work which in effect amounts to an "improvement".

### **Conclusion**

It is realised that many different areas have been covered in this but it has nevertheless been restricted to the larger and more pressing issues. It is therefore hoped that the Law Commission will be able to give careful consideration to each and consequently implement the suggested solutions as a means of positively improving the lives of millions of flat dwellers.

*Ends*

**Media Contact:-**

***Bob Smytherman***

**Chairman - Federation of Private Residents' Associations**

**Main Telephone Number:**

**0871 200 3324**

**Home (01903) 507073 Mobile: 07867 562538**

**Direct email: [Bob@fpra.org.uk](mailto:Bob@fpra.org.uk)**

**Notes to Editors:**

The Full response to Law Commission – Eleventh Programme of Law Reform consultation which closes on Friday 15 October is attached

Proposals should apply to England & Wales only

The FPRA is a non-political, not-for-profit advice, support and lobbying organisation for our members who include private residential leaseholders, tenants' and residents' associations and residential management companies as well as those companies where the leaseholders together own the freehold of their own residential block.

This email was sent from The Federation of Private Residents Associations Ltd.

A Non Profit Company limited by guarantee. Registered number 1992130

FPRA only advises member associations - we cannot and do not act for them.

Opinions and statements offered orally and in writing are given free of charge and in good faith and as such are offered without legal responsibility on the part either of the maker or of FPRA Ltd.

Telephone Number; 0871 200 3324 (normal national rates apply)

E-mail. [info@fpra.org.uk](mailto:info@fpra.org.uk).

Web. [www.fpra.org.uk](http://www.fpra.org.uk).

Direct email. [Bob@fpra.org.uk](mailto:Bob@fpra.org.uk)