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REPORTING TO THE LENDER & OTHER HOT MORTGAGE ISSUES

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Lecture is aimed at: Property professionals and fee earners involved in both contentious and non-contentious property work

Learning Outcome: To give an increased knowledge of the subject matter. To update on current issues, case law and statutory provisions and to be able to apply the knowledge gained in the better provision of a service to the client.

Satisfying Competency Statement Section: B – Technical Legal Practice

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CONFLICTS OF INTEREST AND THIRD PARTY OBLIGATIONS

In the case of ***Mortgage Express v Bowerman [1996] 2 All ER 836,*** it was held that were there was evidence of a mortgage fraud, in that the value of property had risen enormously in a series of sub-sales, this fact should be notified to the lender. Moreover, such notification would not be in conflict of interest to the borrower as he had an interest in knowing. A failure to disclosure the information gave rise to a claim in negligence.

In this case both solicitor and valuer were held to be negligent. This case may well need to be revisited in the context of Money Laundering where a disclosure of your suspicion might give rise to a tipping-off offence under the **Proceeds of Crime Act 2002**. Disclosure must first be made to NCA. The Law Society, however, suggest that disclosure may be made to the mortgagee (and other solicitors) unless they should be suspected of being implicated in the fraud.

Contrast ***National Home Loans v Giffen, Couch and Archer [1997] 3 All ER 808*****,** where the solicitor had become aware of outstanding arrears on a loan which was meant to be paid off by the mortgage. Here, there was no duty to reveal this information as, unlike Bowerman, it did not affect the value of the property.

See also ***Omega Trust Co. Ltd v Wright Son & Pepper [1996] NPC 189*** for a similar decision.

Nationwide Building Society v Balmer Radmore [1999] SJlB 58

Made clear that in deciding the scope of the solicitor's duty express terms of the retainer must be looked at. The **Bowerman** duty on valuation will apply unless inconsistent with an express duty. Moreover, if information has been obtained not only in respect of the transaction in question but in respect of other dealings, it must be disclosed. It was concluded that information as to the correctness of the valuation, and the bona fides of the valuer must be disclosed.

Contrast ***Bristol and West Building Society v Baden Barnes Groves & Co [1996]*** unreported.

If there is information which has not come into the solicitor's possession in connection with the carrying out of instructions, there is no duty to disclose.

According to **Balmer Radmore** the solicitors and the agents need to be on guard for the following:-

- back-to-back sub-sales
- sudden reduction in purchase price
- direct deposits

All these may give rise to suspicions of Money Laundering and the need to report the client.

The solicitor must report on title;

- Sub-sales;
- Reduction in purchase price;
- Of direct deposits.

The report must be sufficiently clear to the lender and explain the solicitor's reasons as if writing to an

educated lay person.

Mortgage Express v S Newman [2000] PNLR 298

After exchange of contracts, the solicitor discovered the purchase of the property was much less than that originally stated, and that the property seemed to be subject to shorthold tenancies.

She believed that she only needed to establish good title and did not notify the lender.

Held: although negligent the solicitor has not consciously suspected a mortgage fraud and could claim against the SIF Solicitors Indemnity Fund.

Note: However, if the same facts occurred today, however, the solicitor's negligence in failing to spot a mortgage fraud was occurring could amount to a money laundering offence.

This case has been confirmed by the case of ***Leeds & Holbeck Building Society v Clarke [2002]*** unreported. However, the burden of showing fraud can easily be rebutted.

In ***E-Surv v Goldsmith Williams [2015] EWCA 1447*** Surveyors valued a property at £725,000 in spite of the fact that it had recently been purchased for £390,000. The solicitors admitted negligence to the mortgagee in failing to disclose that the seller had not been the registered proprietor for at least 6 months. The surveyors claimed off the solicitors for not disclosing the increase in purchase price. The High Court decided that this was relevant information to provide to the surveyor and any potential for conflict of interest was overridden by the CML Lenders Handbook. (Now UK Finance Mortgage Lender's Handbook)

In this case the court recognised that Mortgage Express v Bowerman (above) was still good law and survived any express provisions in the UK Finance Mortgage Lenders Handbook. Reports may need to be made to the mortgagee and reference made to the valuer even though more than 6 months have passed.

The Court of Appeal confirmed that the solicitor should have reported the increase in price to the lender. However, as E-Surv could not prove that the lender would have changed their mind if the solicitor had so reported, the level of damages was nil.

This may cause particular problems in the current market where property prices have risen steeply over a short period of time.

See Section 5.1.1 of the Lender's Handbook which with exceptions requires you to report to the lender if the borrower has not been a proprietor for six months. The exceptions are personal representatives, mortgage companies in possession, trustees in bankruptcy, liquidators, part exchange with a builder and housing associations exercising their power of sale. The mortgagee may need to be told about unusual sales patterns even if more than six months have passed.

See also 4.2, "You must take reasonable steps to verify that there are no discrepancies between the description of the property as valued and the title and other documents which a reasonably competent conveyancer should obtain, and, if there are, you must tell us immediately."

And 4.4, "We recommend that you should advise the borrower that there may be defects in the property which are not revealed by the inspection carried out by our valuer and there may be omissions or inaccuracies in the report which do not matter to us but which would matter to the borrower. We recommend that, if we send a copy of a valuation report that we have obtained, you should also advise the borrower that the borrower should not rely on the report in deciding whether

to proceed with the purchase and that he obtains his own more detailed report on the condition and value of the property, based on a fuller inspection, to enable him to decide whether the property is suitable for his purposes."

6.4.4 "You must tell us (unless we say differently in part 2) if the contract provides for or you become aware of any arrangement in which there is:

- a cashback to the buyer; or
- part of the price is being satisfied by a non-cash incentive to the buyer or
- any indirect incentive (cash or non cash) or rental guarantee.

Any such arrangement may lead to the mortgage offer being withdrawn or amended."

THE BUILDING SAFETY ACT 2022

Higher-Risk Residential Buildings (England Only)

The Act has also introduced the Building Safety Regulator who will be a part of the Health and Safety Executive. They will have a general role in relation to building safety, but will also be responsible for building control in high risk residential buildings. In England a high risk residential building is one with at least two dwellings which is at 18 metres or more in height or, if less than 18 metres, which has 7 or more storeys. Such a building will have an accountable person who has a legal estate in possession in the common parts or is responsible for repair of the common parts. This will include any Right to Manage Company and any Residents Management Company if there is more than one accountable person then there will be a principal accountable person. A residents' panel must be constituted and the accountable person must listen to health and safety complaints. They will have to produce reports to the Regulator and keep records in relation to health and safety and report any fire safety or structural safety problems that have occurred. Originally, there was meant to be a Building Safety Manager who would be an intermediary between the building safety regulator and the accountable person. This was dropped due to cost. Also, the original Bill provided for a building safety charge whereby any costs could be charged to the long leaseholders. This was also dropped and any charges will now be covered by the service charge.

The accountable person will have access rights to individual flats on giving at least 48 hours' notice. If there is more than one accountable person, there will be a principal accountable person. They will have an interest in possession of the structure and exterior or be responsible for repair and maintenance of the structure or exterior of the building. There are also offences if anyone removes or disturbs a relevant safety item. Any high-risk buildings must be registered with the Building Safety Regulator. This came into force in England on April 6th 2023 and the principal accountable person will have to register the building with the Regulator by October 1st 2023. Guidance suggests that the registration must be approved by the Regulator and key building information provided by this date. The Regulator will then have to approve the registration.

Safety case report summarising major fire and structural hazards and risk management is mandatory for higher-risk buildings. Organisations must also establish a mandatory occurrence reporting system detailing communications with other accountable persons, arrangements for reporting to the Regulator and summaries of incidents.

In England, the provisions came into force on April 6th 2023**. The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations** were introduced into parliament on March 9th 2023. There will be a registration fee of £251 which must be paid on the application. For new builds then the accountable person will commit a criminal offence if they allow anyone into residential occupation before completion certificates are available. This will include adding new residential units and doing work that results in the building becoming Higher-Risk. All existing higher-risk buildings should have been registered with the Regulator by October 1st 2023.

Although the legislation will apply to Wales, the ability to decide on the height of the building has been delegated to the Welsh Government where the consultation came to an end on May 12th 2023. The proposal is that a higher-risk building will have the same definition as in England but may only need to include one dwelling. In November 2023 the Welsh Government announced that the

legislation on Higher-risk Buildings would only apply to the design and construction stage and not to occupation.

S.112 of the Act implies various terms into a residential lease. The Landlord must co-operate in relation to building safety and the Tenant must also co-operate, allow access at a reasonable time on giving 48 hours notice, allow works to be done on the premises, and any building safety costs can be added to the service charge. Law Society Guidance suggests that this should be made clear to the leaseholders and also the fact that they will be liable in elation to a residents management company.

It is suggested that enquiry must be made as to whether registration has occurred for an existing building and whether the Regulator has accepted the application whenever purchasing the reversion of an existing higher-risk building. It is also suggested that there should be an enquiry for new higher-risk buildings as to whether anybody has been allowed into residential occupation prior to the provision of a building control certificate. Enquiry should also be made as to the height of the building and when the building was completed. The register of Higer-risk buildings became available to the public on February 8th 2024 and can be found on the Health and Safety Executive website.

In the absence of residential enquiries it is suggested that the CPSE enquiries may be adapted to deal with this. There is as yet nothing in the Lenders Handbook to deal with this. But if the Higher-risk building has not been registered then the mortgage company must be told. Sections 15.5 and 15.6 will not be relevant unless the Regulator has called for a safety case report.

CPSE 1 Enquiries Version 4.0 Enquiry 15

15.1 Is the Building (or will it be, when fully built and occupied) a "higher-risk" building as defined by section 65 of the BSA?

If the answer is yes, then please answer enquiries 15.2 to 15.7. If the answer is no, then please go to enquiry 16.1 below.

15.2 Who is or are accountable person(s) in relation to the common parts of the Building? Which one of them is the principal accountable person?

15.3 Are you aware of any breach of, alleged breach of or any claim under the BSA, or any regulations made under it, in relation to the Building?

15.4 Please provide a copy of the entry relating to the Building in the register kept under section 78 of the BSA.

15.5 Please provide a copy of the most recent building assessment certificate (if any) relating to the Building.

15.6 Please (a) confirm that the following documents have been compiled and kept up to date; (b) advise where and when they can be inspected; and (c) (where the Buyer will become an accountable person in respect of the Building) confirm that the originals will be handed over on completion:

(i) all safety case reports (section 85)
(ii) all prescribed information (section 88(1))
(iii) all prescribed documents (section 88(2))

(iv) the residents' engagement strategy (section 91)
(v) any request made under section 92, and any information provided in response to such request
(vi) any relevant complaints (section 93)
(vii) any contravention notices (section 96)
(viii) any outstanding requests to enter (section 97).

Note: section references above are to the BSA.

Leaseholder Protections and Relevant Buildings (England Only)

To qualify the building must be at least 11 metres or five storeys in height and have at least two dwellings. This will apply to a self-contained building or part of a building which would be able to be developed separately. Mezzanine floor will only count as a storey if it is at least half the size of the largest storey. The legislation does not apply to enfranchised buildings or Resident Management Companies who own the freehold. The proposal from the Welsh Government is that this provision will not be introduced and leaseholders will rely on remediation orders and remediation contribution orders in relation to defects. This is problematic as the rest of the provisions came into force in Wales on June 28th 2022.

Lender Requirements

The LPE1 forms were changed on January 9th 2023. There are now enquiries as to whether a leaseholder deed of certificate has been served on the landlord and whether the landlord certificate has been served and information as to any outstanding enforcement action.

On January the 9th 2023 the TA 7 Leasehold Property Information form was also changed. It now has a section on service charge liability for safety work, Leaseholder deed of certificate and various other information in relation to the qualifying leaseholder. The TA 13 was also amended to include details of electronic passwords and codes.

Section 5. 14.17 (England only) of the Lenders Handbook has now been changed to make clear that the mortgage company requirements only need to be met in relation to a relevant building as discussed above. There is a link to the Government Guidance on the meaning of a relevant building. Where the security will comprise a leasehold flat you must request the following information from the seller's conveyancer about the safety of the building in which the flat is situated:

- Confirmation as to whether the building has been or will be remediated under the Building Safety Act 2022.
- Copies of any Landlord's Certificates, signed by the Landlord in the form set out in the Building Safety (Leaseholder Protections) (England) Regulations 2022.
- Copies of any executed Leaseholder Deed of Certificate (in the form set out in the Building Safety (Leaseholder Protections) (England) Regulations 2022) and confirmation that they have been submitted by the relevant leaseholder to the landlord.

Not all mortgage companies have individual instructions in relation to relevant buildings. Some mortgage companies have instructions which are unworkable and for the most part require the conveyancer to tell them that the borrower is not a qualifying leaseholder as soon as possible as they may withdrawn the mortgage offer. Being a qualifying leaseholder depends on the status of the leaseholder on February 14th 2022. The then leaseholder will always be a qualifying leaseholder if the premises was the principal home. They can claim for up to three flats but if on February 14th they had more than three dwellings in the United Kingdom they can only claim for their principal home.

GROUND RENT ISSUES

Arnold v Britton [2015] UKSC 36 here 99-year leases of holiday chalets required a service charge to be paid based on the work which was done on the premises plus a yearly sum of £90 which rose by 10% compound interest each year. The consequence of this was that by 2072 the liability would be £554,000 per annum. The Supreme Court confirmed that as this was the clear meaning of the provision they would not be prepared to re-write it. Contrast this with the commercial lease case of ***Monsolar v Woden Park [2021] EWCA 961*** where on a 25-year lease of a solar farm the rent increased by RPI every year but on a strict construction the previous years' increases were also added. The initial rent was £15,000 per annum, but with the strict interpretation the final year's rent would be over £76,000,000 per annum. The Court of Appeal decided that this was a clear mistake and the actual rent would be £30,000 per annum.

The topic of escalating ground rents, in particular in relation to the leasehold houses, has been in the media of late and mortgage companies are refusing mortgage offers.

Be careful where the ground rent exceeds £250 per annum or £1,000 per annum in Greater London. This may create an assured tenancy under the Housing Act 1988. If this is so, then mandatory ground 8 will apply and if there is defined rent arrears at both the dates of service of a notice seeking possession and at the date of any court proceedings the tenant will be evicted. There cannot be forfeiture of an assured tenancy and therefore there is no relief from forfeiture. Recently many mortgage companies have refused to accept this. They may require a mortgagee protection clause and/or insurance. This will also be a problem if the ground rent can double beyond these amounts. It only applies to leases created from 15 January 1989 onwards but this would include lease extensions which constitute a surrender and re-grant. Note also that Part 1 of the Landlord and Tenant Act 1987 and the right of first refusal will not apply to assured tenancies.

The Renters (Reform) Bill 2023-24 intended to solve the above problem by stating that assured premises tenancies could not have a duration of more than 7 years but this fell with the General Election. The Problem has been solved in Wales under the **Renting Homes (Wales) Act 2016** as occupation contracts cannot be for more than 21 years. Unfortunately, many mortgage companies do not realise this.

New build leaseholds of dwellings of more than 21 years, with exceptions such as shared ownership, can only have a peppercorn rent under the **Leasehold Reform (Ground Rent) Act 2022** and some mortgagees expressly include this.

Note: Most mortgage companies now deal with ground rents in Part 2, for instance many mortgagees will not lend if the ground rent is greater than .1% of value for a new build or .2% otherwise. Most will also not lend if the ground rent doubles at less than 20 year intervals.

MORTGAGE REQUIREMENTS

Management Structure and Mortgage Enquiries

5.14.5 You should ensure that responsibility for the insurance, maintenance and repair of the common service is that of:

- the landlord, or
- one or more of the tenants in the building of which the property forms part, or
- the management company – see sub-section 5.15

5.14.6 Where the responsibility for the insurance, maintenance and repair of the common services is that of one or more of the tenants the lease must contain adequate provisions for the enforcement of these obligations by the landlord or management company at the request of the tenant.

5.14.7 In the absence of a provision in the lease that all leases of other flats in the block are in, or will be granted in, substantially similar form, you should take reasonable steps to check that the leases of the other flats are in similar form. If you are unable to do so, you should effect indemnity insurance (see section 9). This is not essential if the landlord is responsible for the maintenance and repair of the main structure.

5.14.8 We do not require enforceability covenants mutual or otherwise for other tenant covenants.

5.14.9 We have no objection to a lease which contains provision for a periodic increase of the ground rent provided that the amount of the increased ground rent is fixed or can be readily established and is reasonable. If you consider any increase in the ground rent may materially affect the value of the property, you must report this to us (see **part 2**).

Note: be careful where the ground rent can increase to more than £250 per annum as this can create an assured tenancy (see earlier).

5.14.10 You should enquire whether the landlord or managing agent foresees any significant increase in the level of the service charge in the reasonably foreseeable future and, if there is, you must report to us (see **part 2**).

5.14.11 If the terms of the lease are unsatisfactory, you must obtain a suitable deed of variation to remedy the defect. We may accept indemnity insurance (see section 9). See **part 2** for our requirements.

5.14.12 You must obtain on completion a clear receipt or other appropriate written confirmation for the last payment of ground rent and service charge from the landlord or managing agents on behalf of the landlord. Check **part 2** to see if it must be sent to us after completion. If confirmation of payment from the landlord cannot be obtained, we are prepared to proceed provided that you are satisfied that the absence of the landlord is common practice in the district where the property is situated, the seller confirms there are no breaches of the terms of the lease, you are satisfied that our security will not be prejudiced by the absence of such a receipt and you provide us with a clear certificate of title.

5.14.13 Notice of the mortgage must be served on the landlord and any management company immediately following completion, whether or not the lease requires it. Please ensure that

you can provide either suitable evidence of the service of notice on the landlord or management company or a receipt of notice. Check **part 2** to see if a receipted copy of the notice or evidence of service must be sent to us after completion.

Note: previously acknowledgement of receipt of the mortgage was required and as a last resort suitable evidence of service. Since December 2014 these are alternatives.

5.14.14 We will accept leases which require the property to be sold on the open market if re-building or reinstatement is frustrated provided the insurance proceeds and the proceeds of sale are shared between the landlord and tenant in proportion to their respective interests.

5.14.15 You must report to us (see **part 2**) if it becomes apparent that the landlord is either absent or insolvent. If we are to lend, we may require indemnity insurance (see section 9). See **part 2** for our requirements.

5.14.16 You must check a certified or official copy of the original lease. In the case of a registered lease where the original lease is now lost, or destroyed by Land Registry, we are prepared to proceed provided you have checked an official copy of the lease from the Land Registry.

SOLAR PANELS

Leases of Roof Space

The lease is a business tenancy within s23 of the **Landlord and Tenant Act 1954** and so contracting out notices must be served. Care should still be taken at the end of the period as unless steps are taken to terminate the lease and rent continues to be paid, a 1954 Act protected business tenancy may be created. Furthermore, the tenant will obviously have exclusive possession of the roof space. The Agreements also tend to exclude s6 to s8 Landlord and Tenant (Covenants) Act 1995, and the landlord homeowner will remain liable even after transferring the property: *See **Avonridge Property Co. v Mashru [2005] UKHL 70***. The lease will also, obviously bind third party purchasers. It would need to be registered substantively at HMLR but would bind in any case as an overriding interest under Schedule 3 Land Registration Act 2002.

Note: In the future when properties are subsequently purchased having had solar panels installed, then be sure that the mortgage company consents and that the lease is satisfactory to both mortgagee and client. In particular, it must be excluded from the Landlord and Tenant Act 1954.

UK Finance: Leasing the roof for solar panels

UK Finance have published guidance for firms seeking to lease roof space to install solar panels on mortgaged properties. We recognise that borrowers may wish to do this both to improve the environmental performance of their homes and to reduce energy bills.

The guidance applies to firms operating in England and Wales and includes:

- background information on the process of seeking consent from the lender to enter into a leasehold agreement with the borrower; and
- a helpful, standardised letter that can be used to seek the lender's consent.
- In getting the consent of lenders, firms wishing to lease roof space to install panels will have to fulfill a series of requirements protecting both the lender and the borrower. These include giving undertakings that:
- no panels will be installed until there has been a proper inspection to ensure this can be done without damaging the property;
- any damage to the property caused in installing, maintaining or removing solar panels will be repaired;
- panels will be removed to allow home-owners to carry out property repairs or improvements if necessary, and any charges for this will only reflect reasonable costs;
- lenders have the right to break the lease if they end up taking possession of the property and solar panels hinder efforts to sell it;
- solar panel equipment is insured by the firms installing it, and the borrower has been advised to inform his or her own insurance company about the new arrangements;
- solar panel equipment, once installed, will be properly maintained;
- all relevant planning consents have been obtained;

- the firm installing the panels is accredited to the Microgeneration Certification Scheme, which should ensure that equipment is properly installed;
- the firm installing the panels has supplied a letter signed by the borrower giving permission to contact the lender for consent;
- full contact details for the solar panel firm have been provided; and
- the lender has been given a chance to see the agreement between the householder and the firm installing the panels.

Once all the requirements are fulfilled, the lender will tell both the householder and solar panel firm that it gives consent. But the firm installing the panels must agree to tell the lender about any relevant changes to its agreement with the householder.

Lenders also recommend that borrowers seek professional advice from a suitably qualified conveyancer on the terms of the lease to install solar panels and any impact it may have on the value of the property.

UK Finance Handbook and Solar Panels

5.20.1 Where a property is subject to a registered lease of roof space for solar PV panels we require you to check that the lease meets the UK Finance minimum requirements. Where you consider it does not, check **part 2** to see whether you must report this to us and for details of any additional requirements.

5.20.2 If, after completion, the borrower informs you of an intention to enter into a lease of roof space relating to energy technologies, you should advise the borrower that they, or the energy technology provider on their behalf, will need to seek consent from us.

5.20.3 UK Finance has issued a set of minimum requirements where a provider/homeowner is seeking lender consent for a lease of roof space for solar PV panels. See **part 2** for our additional requirements relating to these leases.

RENTCHARGES

S.1 of the Rentcharges Act 1977 defines a rentcharge as follows:

Meaning of "rentcharge".

For the purposes of this Act "rentcharge" means any annual or other periodic sum charged on or issuing out of land, except—

a) rent reserved by a lease or tenancy, or

b) any sum payable by way of interest.

In some parts of the country freehold properties are subject to fixed sum rentcharges, a sum of money is paid per annum to the rent owner. In such rentcharges cannot be created since July 22nd 1977 when the Rentcharges Act of that year came into force. Existing fixed sum rentcharges will come to an end on July 22nd 2037 or within 60 years of first becoming payable whichever is the latter. However, estate rentcharges which may include a fixed nominal amount which otherwise are variable and reasonably reflect maintenance, repairs or insurance costs can be created.

Note the **Leasehold and Freehold Reform Act 2024** intends to make residential rentcharges and estate charges subject to a reasonableness test and application to the tribunal**.**

The Problem

S.2 Rentcharges Act 1997 provides the situations where the rentcharges may still be creates. This includes estate rentcharges which are defined as such:

(4) For the purposes of this section "estate rentcharge" means (subject to subsection (5) below) a rentcharge created for the purpose—

(a) of making covenants to be performed by the owner of the land affected by the rentcharge enforceable by the rent owner against the owner for the time being of the land; or

(b) of meeting, or contributing towards, the cost of the performance by the rent owner of covenants for the provision of services, the carrying out of maintenance or repairs, the effecting of insurance or the making of any payment by him for the benefit of the land affected by the rentcharge or for the benefit of that and other land.

(5) A rentcharge of more than a nominal amount shall not be treated as an estate rentcharge for the purposes of this section unless it represents a payment for the performance by the rent owner of any such covenant as is mentioned in subsection (4)(b) above which is reasonable in relation to that covenant.

The **Leasehold and Freehold Reform Act** intends to add to S.2(4)(a) to include improvements as well as repairs maintenance and insurance.

Roberts v Lawton [2016] UKUT 396 (TCC) S.121 (4) of the Law of Property Act 1925 allows the holder of a rentcharge to appoint trustees who will be tenants under a 99 year lease if a rentcharge is not paid within 40 days of being due. This will be the case whether the charge is formally

demanded or not. Here the arrears amounted to between £6 and £15. This was held to be a lease which can be registered at HMLR. The lease will continue even if the arrears are paid. In the present case, the holder of the rentcharge used this fact to hold home owners to a ransom in order for them to pay administration charges. S.121 (4) will apply equally to estate rentcharges. The provision can be excluded but only in the document that creates the rentcharge.

Note also S.121 (3) allows possession of the land by the rent owner under similar circumstances.

Note there is provision in the **Leasehold and Freehold Reform Act 2024** whereby S.121 will not apply to fixed sum rentcharges but will still apply to estate rentcharges.

As above in the future the tribunal will be able to question the reasonableness of work carried on under an estate rentcharge. In relation to S.121 then the legislation defines a regulated rentcharge as being one which cannot be created under **S.2 Rentcharges Act 1977.** This relates to fixed sum rentcharges (historic) only. No claim may be made by the rent owner unless they have first made a demand in prescribed form and then waited 30 days. The form will have to have:

- the name of the rent owner and an address in the UK
- The amount of arrears
- How it has been calculated
- How to pay
- A copy of the instrument creating the rentcharge
- Proof of title of the rent owner. This will be deemed to be so if their title is registered at HMLR.

The changes to enforcement of rentcharges came into force on July 24th 2024.

Some mortgage companies deal with their requirements for rentcharges under section 5.15.2. Many require a mortgagee protection clause or Deed of Variation, but many do not need to be told if there is a resident management company limited by shares.

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