

In this issue of 'Conveyed' we take a look at the difficulties Landlords face with difficult tenants. In addition, we highlight the pitfalls that a flat owner may face when failing to pay service charge or ground rent.

- Losing a Valuable Asset
- Turning a blind eye to your tenant's activities could cost you dearly
- Vital information for First Time Buyers

### Losing a Valuable Asset

Long leaseholders often have the misconception that if they buy a long lease, paying several hundreds of thousands of pounds (and in many cases much more), they cannot lose it. A recent case has said differently.

In the case of *Gibbs v. Lakeside Developments Limited* [2018] EWCA Civ 2074, Mrs Gibbs lost her interest in a long leasehold flat as a result of £1,500 worth of arrears.

Mrs Gibbs had a 999 year lease of a flat in Whitechapel, London but had lived in Hong Kong since 1990. The flat was generally unoccupied after that. Despite this she still had an obligation to pay ground rent, service charges, insurance premiums and other sums due under the lease.

Mrs Gibbs failed to make the payments due under her lease so her landlord issued proceedings against her. In her absence the landlord obtained a Default Judgment for £1,410.62 in relation to unpaid ground rent and insurance premiums. As a result of that Default Judgment, her landlord forfeited her long lease and took back possession of the flat.

In June 2011, the landlord put the flat on the market and Mrs Gibbs became aware soon after that her flat had been repossessed.

In October 2011, Mrs Gibbs issued a claim asking for the Possession Order to be set aside and/or Relief from Forfeiture. In December 2011, the landlord granted a new long leasehold of the flat for a premium of around £125,000.

By the time Mrs Gibbs' claim came to trial she was only claiming the proceeds of sale (less the sums she owed the landlord). Her claim was dismissed because the property had been sold pursuant to a Court Order. Mrs Gibbs then lost her appeal to the Court of Appeal.

The case is a timely reminder that a valuable asset can be easily lost if the long leaseholder does not comply with their obligations under the lease.

### Turning a blind eye to your tenant's activities could cost you dearly

Landlords often have the misconception that they are not liable for the actions of their tenants. They are wrong!

In a recent case, a landlord was convicted of allowing his commercial premises to be used for criminal activity which included the sale of illicit tobacco and alcohol which did not meet UK standards.

The Court said it was clear from the evidence before it that the landlord knew of the criminal activity at the premises because he had been specifically told of it by Trading Standards, but he had failed to take any action against the tenant.

Between 2011 and 2019, Trading Standards had carried out numerous raids at the premises where large quantities of illicit tobacco were seized and those responsible for running the business prosecuted. Despite this, the sale of illicit tobacco continued from the premises.

Trading Standards initially did not want to involve the landlord in its case as he was a man of good character and they tried over a number of years to advise and inform him about what was happening at his premises and the consequences if he failed to do anything about it. The landlord chose not to take that advice presumably because he was getting his rent paid. This is clearly a wrong choice for him to have made and one that has subsequently cost him dearly.

The landlord was found guilty and given an 8 month suspended prison sentence, 150 hours of unpaid work and will be subject to a Proceeds of Crime Hearing where it is intended that some, if not all, of the rent received by the landlord over the previous 6 years be subject to confiscation.

This case is a timely reminder that if a landlord is aware of; or is tipped off by Trading Standards (or anyone else) that there is criminal activity going on in its premises, it is imperative that they take action, by taking steps to forfeit the lease, rather than ignoring the fact, turning a blind eye and keep accepting rent.

## Vital information for First Time Buyers

Even with News Outlets reporting that house prices are stagnant, many first time buyers ("FTBs") still find themselves priced out of the property market. The government have realised this and set up various schemes to assist FTBs looking to get on the housing ladder.

### 1. Help to Buy Equity Loan ("H2B Loan")

A H2B loan\* may be an alternative to FTBs who have considered shared ownership. FTBs with a deposit covering 5% of the property value may obtain a H2B Loan for a further 20%. The H2B Loan should give FTBs a greater range of mortgage options as they only need to obtain a 75% mortgage.

Whilst FTBs will not pay any of the H2B Loan back until they sell/complete their mortgage term (whichever earlier), annual management fees are payable from the outset and interest accrues after 5 years.

It is important to note that FTBs do not pay back the initial loan amount but instead 20% of the property value at the point of repayment.

For example, FTBs can purchase a £200,000 property with a £10,000 deposit, £40,000 provided by way of the H2B Loan and £150,000 provided by way of mortgage. If, on the sale of the property/ end of the mortgage term, the property value has risen to £250,000, the H2B Loan repayment will be £50,000.

## 2. ISAs

All FTBs, including those who benefit from the above, can also benefit from two ISAs which offer bonuses\*.

### 2.1 H2B ISA

FTBs can deposit £3,400 into a H2B ISA in the first year and £2,400 thereafter knowing that they will not only receive competitive interest rates but also a 25% bonus (£3,000) on the first £12,000\* deposited (cannot deposit more than £1,200 in the first month and £200pm thereafter).

If FTBs change their mind and do not want to use a H2B ISA, the money can be withdrawn without the bonus or, more importantly, a penalty.

### 2.2 Lifetime ISA ("LISA")

FTBs looking at properties between £250,000 and £450,000 may consider the LISA more appropriate for their needs\* as £4,000 can be deposited yearly with no monthly deposit limits, whilst benefiting from a 25% bonus (£1,000pa).

If FTBs are unsure on using the money for a property purchase they will however have to wait until they're 60 years old before withdrawing or they face a 25% penalty on the money held in the account (deposit and bonus).

Furthermore, FTBs cannot benefit from both the H2B ISA and LISA bonuses, so chose carefully.

*\*Subject to eligibility criteria - figures may vary for purchases in London.*

If you have any questions about conveyancing or other residential property issues please call Stuart Wickham ([stuart.wickham@taylorwalton.co.uk](mailto:stuart.wickham@taylorwalton.co.uk)) or Tobias Walker ([toby.walker@taylorwalton.co.uk](mailto:toby.walker@taylorwalton.co.uk)). Alternatively, you can call 01582 765111.

For help navigating problems related to property litigation, then please contact James Carpenter ([james.carpenter@taylorwalton.co.uk](mailto:james.carpenter@taylorwalton.co.uk)) or Tracey Taylor ([tracey.taylor@taylorwalton.co.uk](mailto:tracey.taylor@taylorwalton.co.uk)). Alternatively, you can call 01582 731161

The information given in this update was, at the time of publication, believed to be a correct statement of the law. However, readers should seek specific legal advice on matters arising, and no responsibility can be accepted for action taken solely in reliance upon such information.



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