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right to buy – can tenants buy their commercial property?

A recent decision of the House of Lords may have opened the door for thousands of tenants of offices and other properties, originally designed to be used as homes, to be given the right to buy their properties.

The Leasehold Reform Act 1967 gives a long leaseholder of a house the legal right to purchase the freehold according to a set procedure. The Act does not apply to commercial premises – but the House of Lords' decision suggests that in some circumstances commercial tenants may acquire the right to buy the property.

The question turned on whether the premises in question were a 'house'. The Act defines a house as premises which are designed or adapted to be lived in and which can reasonably be called a house.

In the case in point, the building was used for commercial purposes but had originally been designed as a residential property. The Lords considered that the fact that the premises themselves were not habitable was not relevant.

The strict construction of the law meant that since the premises were designed to be lived in, the right to buy applied. It is quite clear from the judgment of Lord Walker that the Lords consider that a property which is of 'mixed' use, having been adapted for residential occupancy, would also qualify as a house for this purpose.

This decision has potentially massive implications for owners and tenants of all sorts of properties which were originally designed as houses.

We are watching with interest to see what the full impact will be. Landlords thinking of giving a long lease for commercial premises which were originally designed as a residential property, should consider the implications this decision has for them. Please contact us for advice on all commercial tenancy matters.

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put it in the lease renewal or lose it

A recent case confirmed the principle that a tenant who has enjoyed property rights that are not within the lease cannot require that they be included when the lease is renewed.

In the case in point, parking rights had been granted by the landlord to the tenant by way of a licence. On renewal, the tenant wanted the rights to be brought into the lease as 'rights enjoyed by the tenant in connection with the holding'. The court did not agree that a right not specifically catered for within the lease was part of the bundle of rights given to the tenant under the lease. The parking right was separate.

It is risky to assume that informal rights or even rights under a formal licence will continue in the same way that rights under a tenancy do.

For advice on any commercial property matter, contact us.

in brief

VAT – time to revoke option?

The 'option to tax' properties for VAT was introduced in 1989 and since the option lasts for a minimum of 20 years, 2009 will be the first year that a long-term property owner who exercised the option in 1989 can revoke it.

The time to start reviewing the cost/benefit of retaining opted status is now.

council's right to deny tenancy upheld

Recent judgments have supported the right of local authorities to refuse to house anyone who they judge to be ineligible for housing by virtue of being guilty of behaviour unacceptable enough to make them unsuitable as a tenant.

Behaviour is unacceptable for this purpose if it is behaviour which would justify an application for an immediate possession order if the person were a tenant.

failure to pay legal fees means deposit lost

Failing to meet all the contractual terms on a property transaction can have serious consequences.

A buyer who, when served with a notice to complete, failed to meet the seller's legal costs – as stipulated in the contract – found that the seller was permitted to rescind the contract and retain the deposit paid on the property.

We can help you control the risk of your property transactions.

loss reduced if cost not real

Where a landlord or tenant breaches their repairing covenants on a let property, the other party is entitled to compensation for the loss they suffer.

Recently, the Court of Appeal had to consider what the sum payable should be when a tenant breached his repairing covenants. When the landlord sought damages, the tenant argued that because the property was 'ripe for development', the sum payable should be based on the reduction in the market value of the freehold as a result of the failure to repair the property, not the (greater) cost of the repairs.

The lower court accepted this line of reasoning and set the damages at £50,000. The landlord appealed.

The Court of Appeal ruled that in the particular circumstances that applied in this case, the judge had been justified in concluding that any purchaser would acquire the premises with a view to redeveloping them. Such a purchaser would not need to undertake all of the repair work and therefore the correct measure of compensation was the reduction in the value of the property due to its lack of repair.