

DRAFT CODE OF PRACTICE PROVISIONS

CHAPTER 1: DEFINITIONS

- 1.1 **Event Fees**, sometimes referred to as exit fees or transfer fees, are fees which are payable on certain events such as resale or sub-letting. The full definition of event fees is given in Appendix A and takes precedence over this definition.
- 1.2 The **Property** is the leasehold property in question.
- 1.3 A **Leaseholder** is any person who owns the lease to the Property.
- 1.4 A **Freeholder** is the owner of the freehold of the Property and includes any agent acting on their behalf.
- 1.5 The **Resident** of the Property is the first person to take up occupation of the Property, as their only or principal home, after the most recent assignment of the lease to the Property.
- 1.6 A **Prospective Buyer** is any person who expresses an interest in the Property with a view to becoming the Leaseholder or the Resident.
- 1.7 The **Prescribed Cap** is the maximum amount of an Event Fee payable pursuant to the provisions in Chapter 2. The full definition of Prescribed Cap is given in Appendix B and takes precedence over this definition.
- 1.8 The **Maximum Rate** is the highest percentage rate at which an Event Fee on sale is chargeable.
- 1.9 The **Period of Occupation** is:
 - (1) For a sub-lease, the term of that sub-lease.
 - (2) For a change of occupancy under 2.1(3), the period of time from the date of such change of occupancy to the next date on which an event listed in 2.1 occurs.

CHAPTER 2: WHEN EVENT FEES MAY BE CHARGED

- 2.1 Event Fees may only be charged on the following events:
- (1) Sale of the Property.
 - (2) Sub-letting of the Property, provided that the Property has ceased to be the Resident's only or principal home.
 - (3) Entering into occupation of the Property by anyone following the death of the Resident.
 - (4) Any event that would fall within (1)-(3) above but for the use of an artificial device to avoid payment of the Event Fee.
- 2.2 Any Event Fee charged under 2.1(2) and 2.1(3) must not be more than the Prescribed Cap.
- 2.3 An event fee must not be charged under 2.1(3) if the person was living in the Property as their only or principal home with the Resident and that person inherits an interest in the Property.

CHAPTER 3: THE FREEHOLDER'S OBLIGATIONS

(1) WHEN THE PROPERTY IS SOLD THROUGH THE FREEHOLDER

Advertisements

- 3.1 Any advertisement that mentions the price for the Property must state that an Event Fee is payable and must provide a general indication of the amount and how the Event Fee will be calculated.

For example, the advertised price might be presented as: £250,000 + 1% on resale.

A more complicated fee could be presented as: £250,000 + 1% on resale in the first year rising to 10% after 10 years.

Disclosure document: timing

- 3.2 Where the Property is being sold off-plan, once the Prospective Buyer expresses interest in a specific Property, but before they reserve a Property, they must be given a disclosure document containing information that is specific to the Property in question.
- 3.3 For all other properties, on the Prospective Buyer's first visit to a Property, a disclosure document containing information that is specific to the Property must be provided.

Disclosure document: contents

- 3.4 The disclosure document must include:
- (1) The address of the Property and the price of the Property;
 - (2) An explanation of Event Fees;
 - (3) A statement that an Event Fee is payable;
 - (4) When the Event Fee is triggered;
 - (5) How the Event Fee is calculated;
 - (6) Who the Event Fee is payable to;
 - (7) Whether any part of the fee goes into the sinking fund and, if so, how much; and
 - (8) Illustrative examples showing how much the Event Fee may be on sale of the Property.

- 3.5 The document must include a statement that the Prospective Buyer should ask the Freeholder about other charges, such as service charges, ground rents and sub-letting fees, which may apply in addition to Event Fees.
- 3.6 If there is more than one option for the payment of Event Fees, the Prospective Buyer must be provided with one disclosure document for each option.

Disclosure document: illustrative examples

- 3.7 The disclosure document must contain illustrative examples showing how much the Event Fee may be on sale. Where there are multiple Event Fees on sale, they must be aggregated and shown as one Event Fee.
- 3.8 The illustrative examples must be calculated on standardised rates of annual property price inflation and at standardised intervals on the basis of the asking price of the Property.
 - (1) The Event Fee must be calculated at the following intervals: up to 1 year, 3 years, 6 years and 10 years after purchase, and the year at which the maximum Event Fee rate will be reached. Where the rate of the fee continues to rise year on year, there must be a statement to this effect.
 - (2) The example must calculate the Event Fee based on the following rates of house price inflation: + 5%, 0%, and - 5%.
 - (3) The document must include a statement that the rates of annual property price inflation shown are indicative only and not intended to forecast the value of the Property.
 - (4) The document must include a statement that property prices may go up or down and may vary from property to property.
- 3.9 The disclosure document must be presented to the Prospective Buyer in the format as set out at Appendix C.

(2) WHERE THE PROPERTY IS SOLD BY THE LEASEHOLDER THROUGH AN ESTATE AGENT

- 3.10 The Freeholder must:
 - (1) Provide the specified information about Event Fees to the Elderly Accommodation Counsel to be included on their database of retirement properties; or
 - (2) Both:
 - (a) Provide their contact details to the Elderly Accommodation Counsel to be listed on their database of retirement properties; and
 - (b) Provide an estate agent with a disclosure document for the Property within two working days of being contacted by the estate agent.

3.11 The specified information about the Event Fee is:

- (1) The address of the Property;
- (2) An explanation of Event Fees;
- (3) A statement that an Event Fee is payable;
- (4) When the Event Fee is triggered;
- (5) How the Event Fee is calculated;
- (6) Who the Event Fee is payable to;
- (7) Whether any part of the fee goes into the sinking fund and, if so, how much; and
- (8) Illustrative examples showing how much the Event Fee may be on sale of the Property.

CHAPTER 4: OTHER PROVISIONS

ESTATE AGENTS

- 4.1 The estate agent must ensure that any advertisement for the Property which mentions the price also contains information about Event Fees. This is enforceable under the Consumer Protection from Unfair Trading Regulations 2008.
- 4.2 The estate agent must provide information about Event Fees and the disclosure document for the Property to the Prospective Buyer. The requirement to provide information about the Event Fee payable on the Property is enforceable under the Consumer Protection from Unfair Trading Regulations 2008.
- 4.3 As a matter of best practice, the estate agent should encourage the Prospective Buyer to make direct contact with the Freeholder.

FREEHOLDERS

- 4.4 As a matter of best practice, the Freeholder should maintain evidence in writing of the provision of information to the Elderly Accommodation Counsel. Where the Freeholder provides the Event Fees information directly to the estate agent, the correspondence should be made, or evidenced, in writing.

RESERVE OR SINKING FUND FEES

- 4.5 As a matter of best practice, where the lease requires Event Fees to be used exclusively for the maintenance, repair or improvement of the development, the fees should be held on trust for the benefit of the residents and leaseholders of the development.

APPENDIX A

DEFINITION OF EVENT FEES

A.1 An Event Fee is a fee payable under a term in a residential lease which requires a Leaseholder to pay a fee or forego a financial benefit on, or in connection with, the happening of a defined event where:

- (1) The event is:
 - (a) Title to the lease vesting or ceasing to vest in any person;
 - (b) A change in the person(s) in occupation of the Property; or
 - (c) Any other event which creates, transfers or extinguishes an interest of a person; and
- (2) The fee is fixed or calculated in accordance with a formula.

SELLING SERVICE FEES

A.2 Any fee payable to the Freeholder or the Freeholder's estate agent where the Leaseholder is required to sell the Property through the Freeholder's estate agent shall be considered an Event Fee.

"EQUITY UPLIFT"

A.3 An obligation to pay a fee includes an obligation to forego a financial benefit normally arising in connection with the defined event in favour of the Freeholder, such as an obligation to re-sell the Property to the Freeholder below market value.

ADMINISTRATION AND SERVICE CHARGES

A.4 Administration charges regulated under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 are not within the definition of Event Fees.

A.5 Service charges regulated under the Landlord and Tenant Act 1985 are not within the definition of Event Fees.

PRACTICAL EFFECT OF THE EVENT FEE

A.6 These provisions apply notwithstanding that the legal burden to pay the fee may be on a party other than the Leaseholder, if the practical effect of the term in the lease is to oblige the Leaseholder to pay the fee.

For example, where the lease states that the assignee will pay the Event Fee, in practice, the obligation to pay the fee lies with the Leaseholder who will be in breach of the lease if the assignee does not pay the Event Fee.

APPENDIX B THE PRESCRIBED CAP

B.1 Subject to B.2 and B.3, the Prescribed Cap is calculated by the following formula:

$$E \times P \times (N \div 3652) = \text{Prescribed Cap}$$

Where:

E = the Event Fee percentage payable on sale (for example, 10% is expressed as 0.1)

P = the purchase price or market value of the Property, whichever is the lower amount

N = the Period of Occupation by anyone other than the Resident (in days)

B.2 Where the percentage rate at which an Event Fee is calculated increases periodically, the Prescribed Cap is zero until the Maximum Rate has been reached.

B.3 Where the percentage rate at which an Event Fee is calculated increases periodically with no Maximum Rate, the Prescribed Cap is zero.

EXAMPLES

R, the Resident, lives in a Property where the lease provides for an Event Fee to be payable to the Freeholder when the Property is sold or sub-let. The purchase price was £100,000. She decides to sub-let the Property after seven years, and sells the Property after 12 years. The following alternative scenarios illustrate whether the Freeholder can charge an Event Fee for sub-letting and the amount of the Prescribed Cap.

- i. R's lease provides for an Event Fee of 10% of the purchase price payable on sale, regardless of the date of that sale. An Event Fee may be charged on sub-letting subject to the Prescribed Cap.

In this example, the Prescribed Cap, which will be payable for the five years that R sub-lets the Property, will be:

$$0.1 \times \text{£}100,000 \times \left(\frac{1825}{3652} \right) = \text{£}4,997.26$$

When R sells the Property after 12 years, the Event Fee of 10% of the purchase price will be chargeable.

- ii. R's lease provides for an Event Fee of 1% of the purchase price payable on sale, increasing by 1% for each year of ownership, up to a Maximum Rate of 10%. No Event Fee shall be chargeable on sub-letting until the Maximum Rate has been reached, 10 years after R signed the lease, because of the application of paragraph B.2. R has been living at the property for seven years. The Event Fee will not be chargeable on sub-letting for another three years. Once the Maximum Rate has been reached (ie after

10 years), an Event Fee may be charged on sub-letting for the final two years subject to the Prescribed Cap.

In this example, the Prescribed Cap will be:

$$0.1 \times \text{£}100,000 \times \frac{730}{3652} = \text{£}1,998.90$$

When R sells the Property after 12 years, the Event Fee of 10% of the purchase price will be chargeable.

- iii. R's lease provides for an Event Fee of 1% of the purchase price payable on sale, increasing by 1% for each year of ownership, with no Maximum Rate. No Event Fee shall be chargeable on sub-letting. The Prescribed Cap is zero because of the application of paragraph B.3.

When R sells the Property after 12 years, the Event Fee of 12% of the purchase price will be chargeable.

APPENDIX C

THE DISCLOSURE DOCUMENT

This document sets out the event fees payable for [property address].

You should also ask the landlord about other charges such as service charges, ground rents, and sub-letting fees, which may apply in addition to event fees.

Purchase price of property:

Event fee payable: X% (sum total of all event fees including any transfer fee and contingency/reserve fund fee).

How it is calculated: (eg on sale price or market value)

Payable on: (eg sale and sub-letting)

The event fee goes to: (name of the landlord)

Sinking/Reserve fund: Y% of the event fee

	Event fee %	Estimated amount of event fee based on rates on annual property price inflation*		
		+ 5%	0%	- 5%
Up to 1 year after purchase	X%			
3 years after purchase	X%			
6 years after purchase	X%			
10 years after purchase	X%			
Maximum rate – n years after purchase; or [Statement that fee continues to rise year on year]	X%			

*These rates of property price inflation are indicative only. Property prices may go up or down and vary from property to property.