



**Law
Commission**
Reforming the law

Commonhold: A Call for Evidence Summary

22 February 2018

INTRODUCTION

- 1.1 The Law Commission has launched a call for evidence to find out why commonhold (a way of owning property in England and Wales) has failed to gain popularity.
- 1.2 Commonhold was introduced in 2002, primarily to provide an alternative form of ownership to residential leasehold. However, fewer than 20 commonholds have been created since the commonhold legislation came into force.
- 1.3 In our call for evidence we discuss the issues which may have created a barrier to commonhold's success and invite observations.
- 1.4 In this summary we provide an overview of the key features of our call for evidence. We explain what commonhold is and what its advantages are. We also explain why we are carrying out a project on commonhold and where our call for evidence fits within our wider project of reform. We then summarise the issues which may have prevented commonhold's success so far.

WHAT IS COMMONHOLD?

- 1.5 Commonhold provides a structure for the ownership and management of separate, interdependent properties. It enables a person to own the freehold of their individual property such as a flat (called a "unit") within a building or development and become a member of a "commonhold association" which owns and manages the shared areas.
- 1.6 By enabling the freehold ownership of flats within a residential block of flats, commonhold provides an alternative to leasehold. Currently, residential leasehold is the main way of owning flats in England and Wales.
- 1.7 Commonhold is equally capable of applying in a commercial context, for instance to regulate relations between individual shops in a retail park or offices in an office block.

WHAT ARE COMMONHOLD'S ADVANTAGES?

- 1.8 Commonhold is presented as having a number of advantages over leasehold:
 - (1) *Freehold ownership.* In a commonhold, interests in the units are capable of lasting forever. A lease, on the other hand, will expire at some point in the future.
 - (2) *Standardisation.* Commonholds have standard rules and regulations which should make conveyancing simpler and cheaper. It should also be easier for homeowners to understand their rights and obligations.
 - (3) *Self-management by the flat owners.* A commonhold is managed by a company made up of the unit owners. The interests of the unit owners and the company which manages the commonhold should therefore be the same. In contrast, where flats are owned as leasehold, the management of the block of flats is often controlled by a landlord who may have different interests from the leaseholders. For instance, the landlord may see leasehold as an investment opportunity or a way of generating income.

OUR CALL FOR EVIDENCE AND OUR COMMONHOLD PROJECT

- 1.9 Our call for evidence is the first step in our project on commonhold. Our commonhold project will look at why commonhold has failed and propose reforms to reinvigorate it.
- 1.10 The Law Commission will focus on the aspects of commonhold law which need to be improved in order for commonhold to succeed. At the same time, Government will separately be considering wider measures to reinvigorate commonhold, such as raising consumer awareness.
- 1.11 Our call for evidence begins with an explanation of commonhold's background. It sets out the legislative history of commonhold and provides an overview of the current law of commonhold. Our call for evidence then discusses the issues which may create a barrier to commonhold's success and invites observations. We also ask a question which addresses wider issues surrounding the reinvigoration of commonhold which are being considered by Government. The call for evidence concludes with some general questions about people's experiences of commonhold and how it compares with leasehold.
- 1.12 Later this year, we will launch a full consultation which will discuss, in detail, the technical legal reforms that may be necessary for commonhold to succeed. The purpose of our call for evidence is to obtain views and evidence which will guide that future consultation.

WHY HAS COMMONHOLD FAILED?

- 1.13 There could be a number of reasons why commonhold has failed to gain popularity. In part, it may be related to a lack of incentives (financial or otherwise) for developers to change their practices and create commonholds. Commonhold's failure may also be related to an unwillingness of mortgage lenders to lend on commonhold units. Additionally, commonhold is a relatively unfamiliar form of ownership and there may be a lack of consumer and sector-wide awareness.
- 1.14 However, these are only part of the problem. Stakeholders have advised us that there are a number of technical legal issues within the current commonhold model which create a barrier to its adoption. These issues are set out in detail in our call for evidence. In our call for evidence we seek to find out whether these issues present a problem in practice and whether there may be other issues not referred to in our call for evidence.
- 1.15 In our consultation paper (to be published later this year) we will present ways of addressing the issues raised in response to our call for evidence. Whilst it may be impossible for any system to resolve all the practical problems associated with occupying shared premises, our aim is to produce a viable and preferred alternative to leasehold.

- 1.16 The technical legal issues which are discussed in our call for evidence fall within three broad categories:

Improving the process of creating or converting to commonhold

- 1.17 We want to ensure that there is an effective way to create new commonhold developments and convert existing buildings which are held as leasehold to commonhold.
- 1.18 We have been told that it should be made easier for existing buildings to be converted to commonhold. The key difficulty in converting at present is that most people who own an interest in the land must consent to the conversion.
- 1.19 As an example, to convert an existing block of flats from leasehold to commonhold, the consent of the freeholder and all leaseholders owning a lease which was granted for over 21 years would need to be provided. Additionally, it would be necessary to obtain the consent of every lender who has a mortgage over any of the flats in the block.

Making commonhold work for homeowners

- 1.20 We are aware of a number of concerns which will need to be addressed if commonhold is to work well for those owning commonhold units as their homes.
- 1.21 Concerns relate to the level of complexity in how a commonhold is run, a lack of consumer protection for homeowners, difficulties in changing the rules which apply to the homeowners and a lack of flexibility in how the costs of running a commonhold are shared.
- 1.22 We have also been told that there needs to be a more effective way for disputes to be resolved within a commonhold and that homeowners risk becoming responsible for all the commonhold's debts if the commonhold comes to an end.

Making commonhold work across the wider property sector

- 1.23 We want to ensure that commonhold law also works for developers, mortgage lenders and across the wider property sector. We have been told that aspects of commonhold law need to be reviewed so that developers' (and others') legitimate needs are met.
- 1.24 In particular, we have been told that there needs to be greater flexibility in how commonholds can be structured. The current commonhold model does not cater well to "mixed-use" developments which combine residential (such as a block of flats) and commercial elements (such as shops or offices).
- 1.25 Another issue is that it is currently impossible for shared ownership leases to exist within commonhold, due to a prohibition on the grant of leases for more than seven years. Shared ownership plays a key role in enabling people on low to moderate incomes to purchase their homes, and developers may be required to include shared ownership properties in new developments in order to obtain planning permission.

1.26 Finally, we are aware that most mortgage lenders are unwilling to lend on commonhold units. This may be due to a lack of certainty over what happens to lenders' security when the commonhold ends. However, there may be other reasons why commonhold is currently unattractive to mortgage lenders. We want to find out what these reasons are and what can be done to improve the security offered by commonhold.

HOW TO GET INVOLVED

1.27 Commonhold has the potential to revolutionise how people own flats in England and Wales and has wider potential for other developments. We are particularly keen to hear from those with experience setting up or living in a commonhold, leaseholders, developers, investors, conveyancers and mortgage lenders. For commonhold to work it will need to work for everyone.

An optional response form is available at www.lawcom.gov.uk/project/residential-leasehold-and-commonhold/.

Alternatively, comments may be sent:

By email to: propertyandtrust@lawcommission.gov.uk

By post to: Rachel Preston, Law Commission, 1st Floor, Tower, 52 Queen Anne's Gate, London, SW1H 9AG.

Tel: 020 3334 5333 / Fax: 020 3334 0201

If you send your comments by post, it would be helpful if, whenever possible, you could also send them electronically.