COMMONHOLD

FREEHOLD FLATS
and freehold ownership of other interdependent buildings

REPORT OF A WORKING GROUP
Chairman: Mr. T. M. Aldridge

Presented to Parliament by the Lord High Chancellor by Command of Her Majesty
July 1987
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PREFACE

TO: THE HONOURABLE MR JUSTICE BELDAM, CHAIRMAN OF THE LAW COMMISSION.

1. On 6 May 1986, the Lord Chancellor, the Right Honourable the Lord Hailsham of St Marylebone, C.H., announced in a written Answer to a Parliamentary Question:


The time has now come to take this forward as an integrated piece of reform. I have therefore asked for the Commission's assistance in setting up a group of officials, headed by a Law Commissioner, to put forward a scheme to regulate relations between the owners of separate properties which lie in close proximity to each other and are interdependent.

The Group will produce detailed proposals for an integrated, technically effective and simple scheme which will meet the problems raised by combined ownership of land and would be suitable for adoption in blocks of flats, blocks of commercial property, and shared residential estates. The scheme would be expected to define the rights and obligations of unit owners and of any management body, so as to ensure that degree of co-operation necessary in cases of combined ownership.

The Group will carry out a running programme of consultation with interested groups, so drawing on the best of outside expertise. The Group aim to recommend a scheme by the end of July 1987.

2. In response to the Lord Chancellor's request, you established this Working Group, which has worked independently of the Law Commission.

3. Our Report sets out the detailed proposals for a scheme for the combined ownership of land as envisaged by the Lord Chancellor. We have adopted the term “commonhold” for this, because it seems to convey both the notion of land ownership and of the element of community of interests and co-operation in management which is intrinsic in the scheme.

4. We have carried out the programme of consultation which the Lord Chancellor required, and details are given in the Report.

5. The Working Group have also consulted within their departments in the course of preparing this Report but the Report does not necessarily represent in every respect the views of the departments as a whole.

6. We wish to record our particular thanks to our Secretary Angela Sydenham, (seconded to the Law Commission from The Polytechnic of North London) and her assistants, first William Jones and later Sally Weston. They ably assisted us throughout our work, and in particular in preparing this Report.
PART I

INTRODUCTION

1.1 This Report proposes a new land ownership scheme, for England and Wales, called commonhold. The purpose of the scheme is to regulate relations between owners of separate properties which lie in close proximity to each other and are interdependent. The scheme is suitable for, but not limited to, residential property. It gives people the chance to own flats freehold, without the present drawbacks, but the scheme can also apply to offices, commercial and industrial premises and other properties.

1.2 Some of the terms used in this Report will be unfamiliar. Certain expressions have been specifically invented; other are used in a particular sense. We have therefore set out a glossary of key terms in Part II of this Report.

BACKGROUND

The Problem

1.3 When the owner of a freehold property enters into a positive obligation connected with his ownership, English law provides no direct way to enforce that obligation against successive owners of the property. For example, the purchaser of a new house built in what was the garden of the neighbouring house may undertake to maintain the fence dividing the two gardens. The owner of the older house, who sold the new one, can oblige the purchaser to do all necessary repairs to the fence. However, when the new house is subsequently sold, he cannot insist that the new owner does that work. In the case of a block of flats, this problem is accentuated. The very stability of a building divided into separate units depends on the proper maintenance and repair both of the individual flats and of the common parts. If either falls into disrepair, that affects the value of all parts of the property and the enjoyment of all the flats. One unit often depends on another for support and shelter. The owner of each therefore needs to be able to enforce the positive obligations undertaken by the others.

1.4 Until now, most satisfactory subdivisions of buildings have had to be organised by the owner of the whole block granting leases of each separate unit within it. This provides a satisfactory solution to the problem of enforcing positive obligations, because each successive owner of the lease is liable to comply with all the obligations which relate to the property and are set out in the lease. However, this leads to further problems. A lease necessarily lasts only for the period for which it is granted. Although this period can be, and often is, as long as 99 years or more, there is a period towards the end of the lease when it is not considered satisfactory security for a mortgage loan. As the period of unmortgageability is generally 40-45 years, this is particularly unsatisfactory in relation to flats, most of which are bought with the aid of a mortgage. Besides this drawback, there is no standard form of lease, with the result that buying and selling leases can add to the cost and delays of conveyancing and some of the leases themselves are not in a satisfactory form.

Solutions

1.5 In July 1965 the Committee on Positive Covenants Affecting Land (the Wilberforce Committee) published a Report (Cmd 2719) advocating that positive covenants should bind successive owners of land. The Committee also recommended that “a scheme similar to that operating under the New South Wales Strata Title Act 1961 ... should be made available by statute for voluntary adoption for the regulation of the mutual rights and obligations of owners of units in blocks of flats and other multiple developments”.

1.6 In January 1984 the Law Commission presented a Report (Law Com. No. 127) entitled Transfer of Land—The Law of Positive and Restrictive Covenants. This Report recommended the creation of a new interest in land—a land obligation, which would be capable of subsisting as a legal interest. The land obligation would impose a burden on the owner of one piece of land, either for the benefit of the owner of another piece or as part of a development scheme, in which case the owners of separate properties within a defined area would each have rights and obligations in relation to the others. The obligations, whether restrictive or positive, would run “with the benefited and burdened land so as to be directly enforceable by and against the current owners of each”.

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1.7 Some of the people who commented on the land obligations proposals suggested that condominium legislation should be introduced in this country. The essential elements of a condominium are separate parts of a building (or separate buildings) individually owned on a freehold basis; a management body composed of all the unit owners; shared ownership of the common parts and mutual rights and obligations imposed by statute. Condominium legislation operates successfully in Canada, the United States and, under the name of strata titles, in Australia and New Zealand. Similar legislation has been in force in Europe since the 1930's and it has since been introduced in many other parts of the world.

1.8 In May 1986, at the request of the Lord Chancellor, the Chairman of the Law Commission set up a Working Party to propose details on which such legislation for England and Wales could be based. This Report is the result.

COMMONHOLDS

The Scheme

1.9 The scheme which this Report proposes can operate independently of the proposals for land obligations. It would however, complement the proposals for land obligations. Only minor amendments, as explained later in the Report, are needed to ensure that there is no unnecessary overlap between the commonhold scheme and land obligations. The latter offer a way to tackle the problem of positive covenants generally. There will be many cases in which it would be inappropriate to adopt the communal management arrangements which are an integral part of a commonhold. In those cases, land obligations would provide a convenient alternative, and the commonhold scheme should not be seen as a substitute for them.

1.10 Commonhold is a new term for a system of land ownership where the emphasis is on co-operation between owners living within a defined area. So long as the commonhold continues, the owner of each unit is the freeholder with exclusive ownership of a specified piece of property (e.g., a flat). In certain circumstances, the commonhold can be ended (see Part XIV). The ownership of the unit will then automatically be converted into a share, fixed in advance, of the ownership of the entire property within the commonhold.

1.11 To keep conveyancing as simple as possible, with the additional benefits of speed and cheapness which that brings, the commonhold system will only be available where the land is registered at HM Land Registry with absolute title. To introduce separate rules to allow commonholds on unregistered land would be unnecessarily complicated, bearing in mind that it is settled Government policy to extend compulsory registration of title to the whole country within the next few years. The way ahead for any new property law must lie with registered title. We do not, however, wish to exclude any property from the commonhold scheme merely because its title is not currently registered and therefore suggest that if an owner intends to create a commonhold, that should be an acceptable ground for applying for voluntary registration of title.

1.12 As soon as a commonhold is registered at the Land Registry, a management association will automatically be created. The members of the association will be the unit owners. The association will own the common parts of the property, including the structural walls of the buildings (except in a case where the document creating the commonhold expressly varies this rule), and will be responsible for their repair and maintenance. The association will also be liable to provide services (e.g., heating, light, lifts, etc.) which will be financed by a service charge payable by the unit owners.

1.13 Statutory constitution rules will govern the conduct of the management association, and statutory regulations the rights and obligations of the unit owners in relation to each other. These regulations will include all the rights which unit owners need for the support of their properties and access to them.

1.14 In making our recommendations, we have constantly borne in mind the need to devise a scheme which is easy to understand and easy to operate. This policy has affected the conclusions we have reached on details. For instance, we have thought it better to devise a single scheme which can apply universally, rather than several schemes to cater for individual circumstances. We have also opted, where possible, for standardisation of regulations and documents.
1.15 There is no need for commonholds to be the compulsory way in which to organise a block of flats, or a similar commercial development. Many properties will clearly be suitable for the commonhold scheme, and others not. It is impossible to tell in advance whether the simplification explained in the last paragraph will be a disincentive to developers to use the scheme in borderline cases, or whether the advantages of commonholds will outweigh the restrictions. Ultimately, the market will determine whether commonhold is adopted as the most advantageous way of owning the development in each particular case.

1.16 Nevertheless, if other circumstances dictate that compulsion would be appropriate in the adoption of the commonhold scheme in particular situations, or for particular types of property, this could be done. For example, it could be available if the owners of the leases of all flats in a block were given the right to purchase the freehold from their common landlord. Or, it could be made the model for all future developments of flats.

THE ADVANTAGES

Automatic Rights and Obligations

1.17 A small number of developments of freehold flats already exist. Generally, they have proved less than satisfactory, mainly because as explained above, it has been impossible to provide adequate means of ensuring that the whole property is properly maintained and repaired and such flats are difficult to sell as financial institutions are reluctant to lend on them. The commonhold system will solve these problems by statutory regulations. The rights which will be enjoyed by the unit owner will be automatic and standard. His position will not depend on the skill and negotiating power of his particular lawyer, or—even more uncertainly—of the lawyer who represented a former owner.

Ownership of a share in the site

1.18 One disadvantage of freehold flats is that if a building is totally destroyed then all that the unit owner has (unless he is the owner of a ground floor unit) is the ownership of a block of air. Under the commonhold scheme all unit owners will have a proportionate share in the site itself.

Freehold rather than Leasehold

1.19 Although for the reasons explained above, we now have many multi-ownership leasehold developments, people often find it difficult to understand why they should not be able to obtain a freehold when they buy a flat. They resent continuing to pay a ground rent, even though it may not be a high one “for nothing”. The foreign purchaser or investor in commercial units also finds difficulty in our leasehold system. Freehold units will give more consumer satisfaction, as they do in other countries.

Mortgageability

1.20 The security of a building society, or any other lender, rests on its ability, in the final analysis, to sell the mortgaged property and recoup the amount of its loan as well as outstanding interest and expenses. Building societies are lending, and therefore putting at risk, other people’s money, that of their investors. They therefore rightly act with caution, and are legally obliged to do so. The result, as we pointed out earlier, is that leases which are coming towards expiry cease to be mortgageable. Someone may happily buy a 55 year lease, thinking it will outlast his lifetime, but if he wants to move 30 years later and seeks to sell his flat he may have difficulty. If on the other hand, the flat is a freehold unit in a commonhold, the legal interest will not expire and it will, subject always to the physical state of the property, permanently provide a good security for a loan.

Democratic Management

1.21 One major problem with leases is that decisions on, and the provision of, repairs, services and other matters are often in the hands of the landlord whose interests may be opposed to those of the tenants. Indeed, the landlord may have ceased to have any real interest in the property at all. In a commonhold, the management of the property will be in the hands of a democratically run commonhold association, composed of the unit owners themselves. The interests of the unit owners and the commonhold association are identical.
Protection for Minorities and Majorities

1.22 Fundamental decisions affecting a commonhold require a resolution supported by a unanimous vote. This protects the interests of minorities. However it is also important that a few recalcitrant unit owners should not be able to hinder the effective management of the commonhold. There are therefore provisions for the majority to make an application to the court where the vote in favour of a resolution is at least 80%. As it is only where there is a substantial majority that an application can be made to the court this will reduce the amount of court work necessary. We therefore do not expect commonholds to create too heavy a demand on court resources.

Simplified Conveyancing

1.23 Commonholds, with their standard forms and regulations, will make conveyancing simpler and cheaper. By way of illustration, we have included an example of a typical set of commonhold documents in Appendix B. At present, the purchaser of leasehold property has no automatic right to see evidence of the freeholder’s title, nor in some cases, superior leases. (There will be, however, a limited right under The Landlord and Tenant Act 1987 for a residential tenant to inspect the register at the Land Registry to ascertain the name and address of his landlord). There are cases in which it transpires that a landlord has no right to grant the lease, or that the property is subject to some right in favour of a third party which the tenant had no means to discover. The commonhold scheme, by giving satisfactory freehold ownership of units, eliminates these drawbacks.

1.24 We are aware of two inescapable limitations of the commonhold scheme: the human factor, and the physical wasting nature of buildings. Neither commonholds, nor any other system, can solve all the problems inherent in people living close together. Commonholds will only work if people co-operate in abiding by regulations and participating in management. Again, no legal arrangements can prolong the life of a building. However, we hope that the commonhold scheme will give a framework within which co-operation is likely to be achieved, and that this will maximise the care taken in repairing and maintaining buildings.

CONSULTATION

1.25 The Law Commission consulted fully in the course of the preparation of its Report on Positive and Restrictive Covenants, and the Lord Chancellor’s Department carried out further limited consultation after that Report was published. We have therefore confined ourselves to consulting a selected group of interested bodies on mainly technical questions. Those whom we consulted are listed in Appendix A. We have carefully considered all the suggestions which they made, and are most grateful to them for their help. Naturally on some matters we have received conflicting suggestions and we have exercised our judgment to formulate what we believe will be seen as a practical and acceptable scheme.
## Part II

### Glossary

This is a brief explanation of the special terms used in this Report. They are explained more fully in the later Parts.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Built rule</td>
<td>A rule that all parts of a commonhold must be structurally complete before units are transferred by the promoter.</td>
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<tr>
<td>Commonhold</td>
<td>Property which is divided into freehold units, possibly but not necessarily with some collectively used property as well, managed as a whole under the proposed Commonhold Act.</td>
</tr>
<tr>
<td>Commonhold association</td>
<td>An incorporated association of which members are the owners of all units in one commonhold, but no one other than those owners. The association manages that commonhold, providing services and collecting service charges, owns the common parts and takes over the whole property as trustee for the owners if the commonhold comes to an end.</td>
</tr>
<tr>
<td>Commonhold association constitution register</td>
<td>The Land Registry record of matters relating to an association, e.g. the commonhold association's registered address, changes in regulations made after the registration of the commonhold declaration, and any resolutions to wind up the commonhold association.</td>
</tr>
<tr>
<td>Commonhold declaration</td>
<td>The formal document, usually incorporating a plan, used to establish the commonhold and registered at the Land Registry. It defines the extent of the individual units and the rights and responsibilities of the owners.</td>
</tr>
<tr>
<td>Common parts</td>
<td>All those parts of the property within the commonhold which do not form part of a unit. They include both structural parts of buildings and areas set aside for communal use. The commonhold declaration may identify the common parts of that commonhold, or the promoter may rely on the definition in the Commonhold Act.</td>
</tr>
<tr>
<td>Grounded rule</td>
<td>A rule that if a commonhold is established on a particular site it must include the whole of every building on that site.</td>
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<tr>
<td>Lien</td>
<td>The security which the commonhold association automatically has, charging any arrears of service charge on the unit for which the money should have been paid. It gives the association the powers of a mortgagee.</td>
</tr>
<tr>
<td>Ownership share</td>
<td>The proportion of the value of the whole commonhold which is allocated to an individual owner. This is the share to which he is entitled if the commonhold ends.</td>
</tr>
<tr>
<td>Promoter</td>
<td>The property owner who sets up the commonhold by making the commonhold declaration.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>Regulations</td>
<td>The rights and obligations which unit owners have, as a result of owning property, which will be laid down by statutory instrument. They can be varied or supplemented by the commonhold declaration or subsequently by resolution of the commonhold association.</td>
</tr>
<tr>
<td>Service charge proportion</td>
<td>The proportion of the expenditure of the commonhold association on services and management which a unit owner is liable to pay.</td>
</tr>
<tr>
<td>Unit</td>
<td>Part of a commonhold, owned freehold. The ownership is governed by the Commonhold Act and regulations of that commonhold.</td>
</tr>
<tr>
<td>Unit owner</td>
<td>The freehold owner of a unit in a commonhold. A unit owner is automatically a member of the commonhold association, which will keep a register of members. The owner is also entitled to be registered at the Land Registry as proprietor of the unit.</td>
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PART III

ESTABLISHING A COMMONHOLD IN A NEW DEVELOPMENT

GENERAL PRINCIPLES

3.1 The commonhold scheme allows any type of building, or more than one building, to be divided into separately owned units. Normally, there will be communal facilities provided for the owners of the units. We recommend that restrictions on establishing a commonhold should be kept to a minimum, so that anyone developing a new property who wishes to create a commonhold will find that he can do so without modifying the way in which he wishes to build. All the same, it is essential that some basic rules be observed relating to the legal title and the buildings within the commonhold. These are explained below.

3.2 Commonhold offers a new system of property ownership which a person developing a building may choose to use if it appears to be the best way to sell it. No doubt he will be influenced both by the extent to which it is suitable for a particular property, and by how popular commonhold ownership proves to be.

3.3 It would, on the other hand, be quite possible to make the adoption of commonhold compulsory for future new buildings which are owned as individual units. It was strongly represented to us, principally by consumer interests, that such a rule would be desirable in relation to residential flats. There is a widely-held view that the long leasehold system which is now almost universally used for selling flats, is inherently unsatisfactory for that purpose. This is partly because owners do not appreciate that they are buying a lease which has a limited life-span, and that when the period expires they will have no saleable asset, even though the flat may still be physically perfectly satisfactory. More particularly, it is difficult to obtain a mortgage loan on a lease during the last 40 years, and therefore owners of flats face the prospect of great problems in selling their property, because many flats are in practice only bought by people who do so with the help of a mortgage. While we see the force of these points, and overcoming these problems is indeed amongst the major recommendations for adopting the commonhold scheme, we consider it is not for us to recommend that its adoption be made compulsory in relation to all future developments or developments in any specific category. That element can be added to the scheme without changing any of the details of it. This Report can therefore apply whether or not it is decided that it must, rather than it may, apply to new properties.

3.4 Additional considerations apply when an existing property is being converted into a commonhold. These are dealt with in Part IV.

TITLE

3.5 A commonhold can only be established on freehold land. It would be possible to have a scheme which allowed one to be established on leasehold property, but this would mean that the units would have to be held on lease, rather than being freehold, and many of the major advantages of the scheme would be lost.

3.6 It is established Government policy that the system of registration of title be extended to the whole of the country as soon as possible. This system, in comparison to the traditional conveyancing system, provides a means of recording the ownership of property and of transferring it, which is simple, quick and cheap. We wish to embrace these virtues for the commonhold scheme and therefore propose that a commonhold must have a title registered at HM Land Registry. Not only will full information regarding the property be registered, but also the essential information about the commonhold association will be recorded there.

3.7 At the moment, there are still some areas of the country where registration of title when land changes hands is not yet compulsory. Even there, however, certain residential, industrial and commercial developments may be voluntarily registered, and there is also compulsory registration of houses and flats sold under the right to buy scheme. We recommend that a developer should be able to create a commonhold on unregistered land in a non-compulsory area. As a preliminary step he would need, and will be entitled to, apply for voluntary registration.
3.8 Freehold property can be registered at the Land Registry with three classes of title. The most secure is absolute title, and it is also by far the most common. We propose that only those who have established absolute title should be able to create a commonhold. The reason for this is that the owner of a commonhold unit will have a direct interest in other parts of the property in the event that the commonhold comes to an end. He will therefore wish to be assured that every unit in the commonhold is owned on a secure basis, but it should not be necessary when buying a unit to have to investigate the title of any other unit. This would increase the cost of a purchase quite unnecessarily. A rule which ensures that all commonhold units are held with an absolute title is a guarantee to purchasers, allowing them to confine their investigations and enquires to their own unit.

3.9 Once a purchaser is registered as the owner of a commonhold unit, he will have a freehold legal estate. This is to all intents and purposes the same as the traditional freehold, with only three differences. First, as owner of that property he enjoys certain rights over other parts of the building, and has duties to owners of other parts of it. Secondly, he becomes a member of the commonhold association and has to comply with its constitution rules. Thirdly, should the commonhold come to an end, his freehold interest in one unit is automatically converted into an equitable share of the whole development. The amount of his ownership share is fixed from the outset by the commonhold declaration.

BUILDING

Number of Units

3.10 The primary use of the commonhold scheme is for subdivided buildings, but it can also apply to a group of detached buildings where a management body would be useful. The scheme is appropriate where there are a number of units which are in some way interdependent. It may be that they are physically joined, or it may be that their occupiers use the same common facilities. In any event, there must necessarily be at least two units. It may be thought that it would not be worthwhile to establish a commonhold with only two units. In Australia, however, there are substantial high-rise office blocks which have been divided into two units and are subject to their strata titles legislation (which is equivalent to commonhold). We therefore recommend that the minimum number of units for a commonhold should be two. We see no reason why there should be any top limit to the number of units in any particular scheme, and, as we previously explained, we are anxious to impose as few restrictive qualifications as possible. We therefore recommend that there should be no maximum number of units in a commonhold scheme.

Use of Buildings

3.11 The commonhold scheme can be employed for a building put to any use, e.g. shopping centres, industrial premises, residential developments. In some circumstances, there may be mixed-use developments, e.g. shops at ground level with flats above. We suggest that legislation should not impose any restrictions on the use to which commonhold buildings are put although we recognise that, in response to market forces, promoters may impose their own restrictions. Naturally, town and country planning law will apply to commonhold buildings just as it applies to all property, and the owners of commonhold units will have to comply with the restrictions on use imposed by planning law.

Whole Buildings?

3.12 A question to which we have given much thought, and which exercised the minds of those whom we consulted, is whether there should be a rule which prevents a developer creating a commonhold from part only of a building, divided horizontally. Put another way, should there be a rule that the site of a commonhold should be designated on the ground and that everything built on that site must then be included? This has been called "the grounded rule".

3.13 Our general principle, that restrictive qualifications for the creation of a commonhold should be kept to a minimum, suggests that there should be no grounded rule. It would be possible to rely upon market forces to ensure that only suitable property was included in a commonhold development. Further, the possibility of dividing the building into more than one separate commonhold, or of making only part of it a commonhold, would allow single-use commonholds in a building where there were different uses. In this way, a building with individual office suites on the lower floors and
flats above could be two commonholds, one for the office units and the other for the flats. Dividing uses may well reduce disputes between unit owners about services and facilities, because the owners of different types of property will have different requirements and expectations.

3.14 There are, however, a number of powerful practical arguments in favour of imposing a grounded rule:

(a) Without any restriction at all, what was included in a commonhold might not be a logical and viable property, making it easy and economic to manage. Also, an essential part of the scheme is that if the commonhold comes to an end, the property can be redeveloped or rebuilt. This could not be guaranteed without some restrictions limiting commonholds to a viable property. We have sought some other general rule, apart from the grounded rule, which could ensure that the property included in the commonhold was satisfactory, but neither we nor any of those whom we consulted have been able to formulate one.

(b) The drawbacks of the present law, which prevent the satisfactory freehold ownership of part only of a building, would apply with equal force to a commonhold development and so would not be legally satisfactory unless the land obligations scheme was also enacted.

(c) The Report of the Committee of Enquiry on the Management of Privately Owned Blocks of Flats (the Nugee Committee) pointed to the dangers of "pepper-potting" freehold flats in a block (i.e. having freehold flats dotted about amongst other flats owned on a different system). "It would create a new variant of mixed blocks, which, as the evidence from our survey shows, are frequently associated with problems of management" (para. 7.9.11). We think that similar difficulties would arise if pepper-potting were permitted for commercial or other types of property.

(d) Two types of complication would be likely if a commonhold which did not include the whole of the building came to an end. The first complication is legal. One of the advantages of a commonhold is that if it comes to an end the interests of all the unit owners have been settled in advance so that there should not be disputes or delays arising from competing claims. However, if other parts of the same building, all of which might, e.g. have been destroyed by fire, are owned on a different basis, the advantage of having the position settled in advance is lost.

(e) The second complication when a commonhold ends relates to the rights needed for rebuilding. Even if the commonhold consists of a cohesive part of the property, say the top ten floors of a high-rise building, extensive and complicated rights over the rest of the property might be needed to rebuild it. In some other countries, a public office has the responsibility of ensuring that the rights granted to the owners of commonhold units in these circumstances will be adequate. We do not believe that public intervention of this type would be justifiable or acceptable here. Not only is there the difficulty of funding such a public office, but any vetting procedure would inevitably cause delays in establishing a commonhold (see Part XV of the Report for the arguments for and against a Commonhold Commission). On the other hand, it would be difficult and expensive for the individual unit owner, or his advisers, to make sufficient enquiries and investigations to ensure that the position was satisfactory.

3.15 We have therefore come to the conclusion that commonholds should be subject to the grounded rule, i.e., a commonhold cannot be validly created unless it includes all buildings on the area of land which the promoter includes in the commonhold. Because it is necessary to register the title to a commonhold at HM Land Registry, there will be no difficulty in ensuring that this rule is observed. It will not be possible to register a commonhold if any relevant part of the property is not included; and once it has been registered, it will only be possible to own and deal with property on that site in accordance with the commonhold legislation.

The Built Rule

3.16 Another matter of difficulty has proved to be whether all the buildings in the commonhold should be structurally complete before any individual unit is transferred to a unit owner ("the built rule"). To have an inflexible built rule prevents phased developments, where the developer transfers some properties and they are occupied by their new owners, while other parts of the same development are still being built.
3.17 The arguments in favour of imposing a built rule are mostly questions of consumer protection. In the early years, after the introduction of the new and unfamiliar scheme, this protection may be more than usually important. These are the arguments in favour of the built rule:

(a) The purchaser of a unit may well have been attracted to the development by the common facilities which were advertised as part of it, and could have decided to buy for that reason alone. If they have to be in existence before the purchase is completed, that is an important guarantee. Certainly, if there were no built rule, the unit owners who bought early might have contractual rights to insist that the facilities were provided; but if the developer becomes insolvent, those rights might become worthless.

(b) The financial viability of a commonhold depends on the cost of maintaining and running the common facilities being shared between all the unit owners. If fewer units than originally planned are built, the charges which each faces will be higher than they should have been. This changes the bargain, and if it drives the service charges too high, could threaten the financial stability of the commonhold. At the other extreme, building more units than was originally planned could reduce the service charge, but could so overload the facilities that the benefits which owners hoped to enjoy are considerably reduced.

(c) There can be greater accuracy in conveyancing if the physical boundaries of the units have been built before the units are transferred. The plan of the development can be checked against boundaries. Owners of units which are freehold, and therefore to be owned permanently, should have as great a guarantee as possible of the accuracy of the documents defining what they own.

3.18 The major disadvantage of the built rule is in the financing of the development. The promoter is not able to use the proceeds of sale of the early units to finance the construction of the later ones. This is likely to result in commonholds being a more expensive type of property ownership, as the additional cost of financing the development would no doubt be reflected in the sale price of the units. Or worse, the consequence might be to discourage promoters from setting up commonholds altogether. Another unsatisfactory result of applying the built rule to a large development is likely to be that units which are completed early remain unoccupied until all the work is finished. Empty properties tend to deteriorate, and to leave some units unused when they could satisfactorily be occupied would be a waste of resources.

3.19 To balance the need to accommodate promoters and the importance of protecting the consumer, we have devised a phased development scheme, i.e. a method which allows units to be built and sold in stages, which a promoter can opt to employ. In many cases this will be unnecessary. There may be situations, however, when a promoter will want to avail himself of this option. We have tried to keep the phasing provisions as simple as possible, but they inevitably add a complication to the commonhold scheme.

The Built Rule Where There is no Phasing

3.20 Where a promoter decides not to build his development in phases, the simple built rule will apply. This means that no unit can be transferred until all the units and common facilities have been completed.

3.21 The built rule would not go as far as to require all the units to be ready for immediate occupation. Final finishes and decorations are not required. Rather, all the structural work must be finished, and the services installed. The registration of transfers of individual units will be prohibited until the rule has been complied with and the Chief Land Registrar will be empowered to enter on the register of the promoter's title such restrictions as he considers necessary to enforce compliance with the rule. It is hoped that it will be possible to make arrangements under which, in most cases, the Chief Land Registrar will be able to rely on a certificate to the effect that the rule has been complied with, given by such persons as might be prescribed, for example, a qualified surveyor. In such cases, the restriction would be removed when such a certificate was lodged with the Registry. We recommend that the Chief Land Registrar should be given power to rely on such certificates as sufficient evidence of compliance with the rule.
3.22 We should emphasize that the built rule does not prevent the sale of units (in the sense of entering into a binding contract) before the properties are complete. All that is restricted is the final transfer of legal ownership. In many cases, the promoter's ability to enter into contracts to sell units will give him the chance to finance the construction of later units. Further, it is still possible to sell the whole property, e.g. where another builder takes over a half-finished development; only transfers of individual units are prohibited.

THE PHASING PROPOSALS

3.23 In framing our phasing proposals, we sought to incorporate reasonable safeguards for purchasers of units, relating to these matters:

(a) A purchaser will not only want to know what facilities are going to be provided for him, but also when they will be available. If it were possible to postpone all the attractive common facilities to the end of the largest development, unit owners would be deprived of them for a considerable time, while the promoter would in effect already have been paid for them.

(b) The continuing work on the commonhold will cause inconvenience to early purchasers. It is reasonable they should be warned about how long it is likely to last.

(c) The built rule, even in a modified form, provides important safeguards. They could be completely undermined if there were no restrictions on the number of phases, because, to take an extreme case, each unit could be made a separate phase.

(d) Until units are available for sale, and therefore for separate ownership, no service charge contributions should be paid in respect of them; conversely they should not have any commonhold association votes.

3.24 Rather than building a development in one stage, the promoter can do it in up to four separate phases. He will have to complete the phases according to a timetable set out in the original declaration. The first phase must contain at least 25% of the intended units and the common facilities for those units must be built in that phase or the second phase. Common facilities in subsequent phases must also be completed in the same phase as the units, or the following one. Where the building of the common facilities is postponed to the following phase, that following phase must itself contain 25% of the intended units. This rule prevents a promoter using the phasing proposals solely as a means of delaying the building of the facilities.

3.25 Each phase must be completed before a transfer of a unit within that particular phase can take place. In other words, we propose a modified form of built rule in allowing a promoter to build his development in phases. He is not compelled to build and finance the whole development before any sales are made, but at the same time the purchaser has some protection. The unit owner knows that his unit exists in a viable part of the development, even if the completion of the rest of the phases occurs later in accordance with the commonhold declaration.

3.26 To guarantee that viability, the grounded rule applies to each phase. This means that it will not be possible to have part of a building in one phase and another part in a subsequent phase. Were the grounded rule not to apply, complications could arise on rebuilding following the ending of the commonhold, when part of the building would be vested in the commonhold association and part in the promoter.

3.27 Evidence of compliance with the built rule as explained in paragraph 3.21 is required for each phase. Once HM Land Registry have received the necessary evidence for the first phase, units within that phase can be transferred. Initially, it is only those units (and any common parts) which will be governed by the commonhold association. The remaining property covered by the commonhold declaration is not at that stage capable of being transferred in separate units. It remains vested in the promoter, but is subject to the provisions of the Commonhold Act. Subsequent phases are released for transfer in units once evidence of compliance with the built rule in respect of them has been lodged at HM Land Registry.

3.28 The lodging at the Land Registry of evidence of compliance with the built rule has these important consequences for the property in the phase to which it relates:

(a) the promoter is entitled to sell separate units;
(b) after the sale of the first unit the common parts become the property of the commonhold association;
(c) service charge contributions must be paid in respect of the units, and the votes allocated to those units can be exercised at commonhold association meetings. The amount of the contributions and the number of votes are specified in the commonhold declaration;
(d) if the commonhold ends, all the property in that phase, and in any earlier phase, vests in the commonhold association on behalf of the unit owners, in the same proportion as the ownership shares allocated by the commonhold declaration. Before lodging of evidence of compliance with the built rule, the ending of the commonhold does not change the ownership of the property in that phase, which remains vested in the promoter.

3.29 On completion of each phase, the part of the commonhold managed by the commonhold association becomes a bigger entity. Although each unit owner’s ownership share will not vary, it will be a proportionately smaller part of the commonhold. Sav a development is built in two phases, and 30% of the shares are allocated to the first phase and 70% to the second, a purchaser whose ownership share is 5 will initially be entitled to a 5/30 interest. Once the second phase is complete, he will still have his ownership share of 5, but it will then be a 5/100 interest.

3.30 The promoter is the owner of all unsold units of a completed phase. He is liable for the service charge contributions in respect of those units, but he can also exercise the voting rights. This means, in the example given in 3.29 above, assuming that votes are allocated in the same proportions as ownership shares, that once the promoter lodges evidence of compliance with the built rule in respect of the second phase, he can out-vote the original unit owners in the first phase. The owner’s safeguard here is that in fundamental decisions a unanimous vote is required or, failing that, at least an 80% vote and a court order.

3.31 Where a promoter does not construct later phases in accordance with the commonhold declaration, the commonhold association or the individual unit owners could seek a mandatory injunction to oblige him to do so, or sue for damages. This, of course, does not solve the problem where the promoter is insolvent. Once commonholds are a familiar form of property ownership, we hope some form of insurance will be available to cover this event.

3.32 To an extent, the consumer protection recommendations inherent in our phasing proposals are arbitrary. In practice, they may prove too stringent or they may need to be strengthened. We have aimed to provide a framework for protection which can be varied once there is some experience of commonholds and it becomes apparent what, if any, are the drawbacks.

SUMMARY OF QUALIFICATIONS

3.33 In summary, these are the qualifications with which a newly-built development will have to comply if its promoter wishes to make it into a commonhold:
(a) the land on which it is built is freehold;
(b) the title to the land is registered at HM Land Registry with an absolute title;
(c) there must be one or more buildings on the land, and it or they must be divided into at least two units which will be owned separately;
(d) all buildings on the land in question must be included in the commonhold. In addition where there is a phased development, the property in any phase must include all buildings on that land;
(e) if the development is to be phased:
   (i) there must be no more than four phases;
   (ii) the first must consist of at least 25% of the units;
   (iii) the facilities to be enjoyed by any unit must be included in the same or the next phase. Any phase which includes facilities serving units in a previous phase must itself include at least 25% of the units;
(f) the whole development, or as the case may be the whole phase, must be structurally complete before any units are transferred to their owners.

PROCEDURE WHERE THERE IS NO PHASING

3.34 We are grateful to the Land Registry for their suggestions on procedure. It is not intended to set out the precise procedures and forms which will ultimately be adopted but merely to give readers an idea of how commonholds will be registered. Examples of entries which might appear on the promoter's title, the unit owner's title and the common parts title are given in Appendix B. There is also a specimen Commonhold Association Constitution Register.

3.35 A commonhold is created by registration of the commonhold declaration at HM Land Registry. When that registration is completed, the commonhold association is automatically established. Details of the association, including the address for service of documents on the association, are entered on a special Commonhold Association Constitution Register. Once evidence of compliance with the built rule has been lodged, the promoter is free to transfer the individual units to the new freehold owners.

3.36 The first step for the promoter is to make his application to HM Land Registry. He lodges his land certificate and any other documents necessary to establish his title, any consents to the creation of the commonhold which may be required from owners of subsidiary interests in the property (see Part IV) and a commonhold declaration. It will not be necessary, or indeed advisable, for a promoter to wait to make his application until the property is constructed. Compliance with the built rule can be lodged later. Therefore, a promoter who makes his application as soon as his development plans are settled, will suffer no delay from the registration formalities when he comes to complete his sales.

3.37 We recommend that the form of commonhold declaration should be prescribed. This will have two advantages in removing difficulties and delays in registering a commonhold. First, it should ensure that the promoter supplies HM Land Registry at the outset with all the information which they require. Secondly, it will make the process of checking the documents easier. The declaration will need to give particulars of:

(a) the number of units in the commonhold, which will have to be defined on a plan;
(b) the votes, ownership shares and service charge contributions of each unit owner;
(c) any variations of the standard rights and obligations of unit owners.

An example of how the prescribed form might look is given in Appendix B.

3.38 The result of this application, but without evidence of compliance with the built rule, is that HM Land Registry will make various entries on the promoter's title. In particular there will be a note to tell anyone examining the title that the commonhold scheme now applies to that property. It will be along these lines:

The land in this title is a commonhold scheme established by a commonhold declaration dated 15 February 1988 made by ABC Builders PLC. The commonhold scheme is governed by the Commonhold Act 1988 and by any orders made thereunder. The commonhold association is Commonhold Association No 1CR. The land in the title has the benefit of and is subject to the rights and obligations imposed under the Act and orders as varied [by the commonhold declaration and] by any regulations entered on the register of the commonhold association. (1.3.1988)

Another entry on the register will be a restriction to stop any disposition of a unit before the evidence of compliance with the built rule has been lodged with HM Land Registry. Entry number 3 on the Proprietorship Register of the promoter's title in Appendix B illustrates a possible form for the restriction where a Surveyor's Certificate is to be relied on. Further restrictions will ensure that any disposition or dealing takes place in accordance with the Commonhold Act.

3.39 At this stage, the promoter of the commonhold development has a duty to construct the development in accordance with the declaration which he has lodged. Necessarily, the Commonhold Act will need to include provisions to authorise variations, but those variations will have to be registered, so that the form of the development, and
particularly the boundaries of the units, are apparent from inspecting the register. Until any of the units have been sold, it will be open to the promoter to change his mind and take his property out of the commonhold scheme. In that case, he will have to apply to cancel the entries on the register.

3.40 To remove the restriction on dispositions of whole units, and thereby allow the first unit, and later units, to be transferred, evidence of compliance with the built rule must be lodged at HM Land Registry. Where a surveyor's certificate is to be relied on the surveyor will certify that the development has been completed (to the extent that the Act requires) in accordance with a commonhold declaration. The surveyor must be qualified, and regulations can prescribe what qualifications will be acceptable. We do not consider that it is necessary to require that he be independent of the promoter. The certificate can be lodged at HM Land Registry either by the promoter or by the first purchaser, as is convenient in the circumstances.

3.41 The effect of lodging evidence of compliance with the built rule is to allow the commonhold to begin to operate. It is then possible to transfer units. Once the first unit has been transferred, ownership of any common parts vests automatically in the commonhold association. The Land Registry will remove the common parts from the promoter's title to a new registered title of which the association will be registered as proprietor.

PROCEDURE WHERE THERE IS PHASING

3.42 As explained in para. 3.36, the promoter must make an application to HM Land Registry to register his commonhold. He lodges his land certificate, and any other documents necessary to establish his title, any consent to the creation of the commonhold from owners with subsidiary interests, and a commonhold declaration.

3.43 A commonhold declaration for a phased development will give the following particulars:
(a) the number of phases proposed in each development;
(b) the units and facilities comprised in each phase;
(c) the dates of commencement and completion of each phase;
(d) the total number of shares in the completed development;
(e) the votes, ownership shares and service charge contribution of each owner by phases;
(f) any rights reserved to the promoter until completion of the development;
(g) any variation of the standard rights and obligations of unit owners.

3.44 An example of the proposed prescribed commonhold declaration for phased developments is given in Appendix B. On registration of the commonhold declaration, the Registry will enter the note specified in paragraph 3.38 and enter a restriction to ensure compliance with the built rule applicable to phased developments.

3.45 The effect of lodging evidence of compliance with the built rule for the first phase is:
(a) units within that phase can be transferred;
(b) after the transfer of the first unit the common parts, if any, in that phase will vest in the commonhold association;
(c) the commonhold association will be given a title for those common parts.

3.46 The effect of lodging evidence of compliance with the built rule of the second phase is:
(a) the property within the second phase will become part of the commonhold;
(b) units within that second phase can be transferred;
(c) after the sale of the first unit in the second phase the common parts, if any, in the second phase will vest in the commonhold association;
(d) the title of the commonhold association will be amended to include such common parts.
3.47 The effect of lodging evidence of compliance with the built rule for any third or fourth phases will have the same effect for those phases as explained above in relation to the second phase.

SUMMARISED REGISTRATION TIMETABLE

3.48 The promoter registers commonhold declaration. The effect is:
(a) entries will be made on promoter’s title to ensure that the Commonhold Act requirements are observed;
(b) the Commonhold Association Constitution Register will be opened.

3.49 The promoter or first purchaser lodges evidence of compliance with the built rule. The effect is:
(a) units in the commonhold can be transferred; or
(b) where it is a phased development units in the phase to which the evidence refers can be transferred.

3.50 The first purchaser applies to register. The effect is:
(a) the first unit title register is opened;
(b) the commonhold association’s common parts title is opened.

TITLE

3.51 Any purchaser from the promoter will be entitled to have office copies of:
(a) the promoter’s title;
(b) the commonhold declaration;
(c) the common parts title (except where (i) purchaser is the first purchaser from the promoter or (ii) there are no common parts);
(d) the Commonhold Association Constitution Register.

3.52 Any purchaser from a unit owner will be entitled to have office copies of:
(a) the commonhold declaration;
(b) the unit owner’s title;
(c) the common parts title (except where there are no common parts);
(d) the Commonhold Association Constitution Register.
PART IV
CONVERTING AN EXISTING DEVELOPMENT INTO A COMMONHOLD

GENERAL PRINCIPLES
4.1 It will be possible to convert the ownership of an existing building, or buildings, whether vacant or occupied, into a commonhold.

4.2 The advantages which the commonhold scheme offers in such cases are the same as in a new development, namely automatic rights and obligations fully enforceable between individual unit owners, a standardised framework for organising services and maintenance, and the freehold ownership of units which therefore retain their marketability throughout the life of the building. Where there are already a number of people interested in the development whether as freeholders or leaseholders, the negotiation and agreement on the financial terms of conversion to a commonhold may take time, but we believe the advantages of conversion to commonhold will generally make this worthwhile.

4.3 There are already a number of developments of freehold flats, the legal documentation for which is often complicated and less than satisfactory. Conversion into a commonhold offers the opportunity to place these developments on a sound permanent legal basis. Commonhold ownership may well become the standard way to own a flat, and once the existing freehold developments have been converted, the owners of those flats will benefit from the fact that purchasers are familiar with the system.

4.4 In a leasehold block, where the landlord is prepared to co-operate and to give up his interest, be it only for a consideration, the leaseholders will also readily be able to convert the property into a commonhold.

4.5 Where the whole of the existing property is vacant the present owner can create a commonhold. Qualifications and procedure in this case will generally follow those for a new development, as explained in Part III. If the property is already divided into units, it will be possible for the evidence of compliance with the built rule to be lodged immediately, but if physical conversion work is needed, the evidence will have to follow that.

COMPULSION
4.6 The problems encountered by leaseholders of privately owned flats were highlighted by the Nugee Report. These problems led a number of those whom we consulted to suggest that leaseholders of flats should be able to insist on the conversion of their leases into freeholds within a commonhold, even against the opposition of the landlord. A few went further, and suggested that all long leases of flats could compulsorily be converted.

4.7 We do not consider that it is for us to express a view on the desirability of compulsion. As in the case of new developments, the commonhold scheme for existing properties can proceed satisfactorily without compulsion, but on the other hand compulsion can be added without difficulty or any need to change its principles.

4.8 If a degree of compulsory conversion is decided upon, the following points should be considered:

(a) The freeholder, who is compelled to sell his interest, should be paid the market value of his interest. None of those whom we consulted suggested any deviation from this principle.

(b) The grounded rule, as explained in Part III, should apply to any commonhold created in this way, so as to avoid the problems of pepper-potting. This necessarily means that the right to convert a leasehold to a freehold property would not apply to individual flats, but only to complete blocks.

(c) In any block it might well be that a small minority of leaseholders had no interest in converting the property to a commonhold. If the majority in favour of conversion is substantial, the minority should not unreasonably be able to object. The rights of the minority could be safeguarded by requiring an application to the court before they were obliged to join in the conversion. For a further discussion of this proposal see para. 4.13.
(d) One of the reasons why a leaseholder might not wish to convert to freehold in a commonhold development is that he could not afford his share of the price which would have to be paid to purchase the landlord's interest. Arrangements should therefore be made to ensure that mortgage loans would normally be available. It should be possible to restrict payments under such a mortgage to the amount of the ground rent which would no longer be payable, the balance of capital and interest due under the mortgage being accumulated and payable when the unit was sold.

CONSENTS

4.9 Everyone with an interest in the property which is to be converted into a commonhold must consent, unless their interests will remain unchanged after the conversion. To take examples: a lender who has a mortgage on a lease of a unit must consent, because the conversion will result in the surrender of the lease and therefore the disappearance of his security; on the other hand, no consent will be needed from a person entitled to the benefit of an easement, restrictive covenant or land obligation, because those interests will continue to affect the property in the same way even after it is a commonhold. Again, those entitled to overriding interests (those interests adverse to the title of a property owner which bind third parties (except tenants who are considered in Part X) even though they are not recorded on the register) will not need to consent. It would be difficult to ascertain the identity of everyone entitled to an overriding interest, but it is unnecessary to do so. To the extent that those interests subsist, they will continue to be binding.

Freehold Developments

4.10 Where the units are already held on a freehold basis, consents will be required from the following:
(a) all the individual freeholders;
(b) the mortgagees of those freeholders. It should not be difficult to arrange to transfer the mortgages to the new commonhold units;
(c) tenants of any of the existing units (see para. 4.12 below);
(d) the mortgagees of those tenants;
(e) those entitled to other interests which are protected on the land register (or by registration as land charges) whose position might be altered by the conversion. These interests would include rights under the Matrimonial Homes Act 1983, equitable mortgages and contracts for the purchase of land.

Leasehold Developments

4.11 Where the units are currently leasehold, consents will be required from the following:
(a) the freeholder (unless the Act allows leaseholders to acquire the freeholder's interest without his consent);
(b) the freeholder's mortgagee. The freeholder's overall interest in the whole property will cease to exist after conversion, so any outstanding mortgage will need to be redeemed. As long as it is, the mortgagee will not be justified in withholding consent. Where the freeholder is in reality the entire body of leaseholders—e.g. a company whose shares are owned by the leaseholders—the mortgage could, by negotiation, be varied so that it is secured on the individual units after conversion;
(c) the leaseholders of the units;
(d) the leaseholders' mortgagees. As the leases will no longer exist, following conversion, the mortgages will have to be redeemed or transferred to the commonhold units;
(e) existing sub-tenants (see para. 4.12 below);
(f) mortgagees of existing sub-tenants;
(g) those entitled to registered interests whose position might be altered by the conversion (see the previous paragraph).
EXISTING TENANTS AND SUB-TENANTS

4.12 Tenants to whom part of a property, which it is proposed to convert into a commonhold, have been let either by the freeholder or long leaseholder, will have to consent to the conversion. It might be thought that consent of tenants who pay a rent, but have not paid any capital sum to buy their leases, would be unnecessary. Certainly, while the commonhold continues, the position of the tenants is unaltered. The terms of their leases still apply, although slight modifications might prove necessary to ensure that the tenant’s obligations are consistent with the requirements of the commonhold. However, for a commonhold to succeed it is essential that those who occupy the units should give positive support. This is more likely if the tenants have given consent. Another important reason for requiring their approval is that when a commonhold comes to an end, contractual tenancies will also terminate (see Part X—The Position of Tenants). The commonhold will usually only end when the physical life of the building has finished. Nevertheless, since its termination could prejudice the position of existing tenants, they should agree to the conversion.

4.13 It is possible that a minority of tenants might object to the conversion, and it is undesirable that if they do so unreasonably they should be in a position to block the conversion. Accordingly, if consent is forthcoming from tenants in at least 80% of the units, those promoting the commonhold can apply to the court to dispense with the consents of the objecting tenants. The court will have power to make such orders as it thinks fit, including power to order payment of compensation.

PROCEDURE

4.14 The procedure for conversion to a commonhold will in essence be similar to that for the creation of a commonhold in a new building. A commonhold declaration will be required, for which a plan showing the boundaries of the units will have to be prepared, and a surveyor's certificate will be needed to confirm its accuracy. The documents of title to be lodged at the Land Registry will include all outstanding land certificates and charge certificates relating to parts of the property to be incorporated into the commonhold. They will also need to be sent the consents, or proof of any court order to dispense with them, so that they can check that these requirements have been observed.
PART V
BUYING A UNIT

GENERAL PRINCIPLES

5.1 Our intention is that, as far as possible, the procedure for buying a commonhold unit will be the same as for buying any other property. This keeps the need to become familiar with new rules to a minimum, and slots commonhold purchases into a procedure which is generally recognised to give purchasers all proper protection.

5.2 Some have suggested to us that there should be additional safeguards when commonholds are sold, particularly for the first time, but we cannot see that special privileges for the purchasers and owners of properties which happen to be owned on this system are either justified or necessary. The possible additional types of protection relate first to the structure of the buildings, and secondly to the documentation.

5.3 In connection with the structure, the suggestion is that before division into commonhold units there should be inspection and approval by some public authority. Both new developments and conversions would, of course, be subject to the building regulations which apply to all properties. The fact that the building is to be owned in separate units under a new ownership scheme will not change their requirements, and does not seem to us to justify higher or different standards. It is true that in buying a commonhold unit, an owner acquires an interest in the whole property, and could be prejudiced by a defect or disrepair in part of the property at some distance from his unit. It is, however, impracticable to provide a guarantee of the structure. Any survey will inevitably rapidly become obsolete, and unless repeated could be more of a trap to the unwary purchaser than a help.

5.4 The suggested intervention by an outside regulatory body to ensure that documentation was satisfactory could have a number of objectives. It could ensure that a unit owner would have the rights he would need in all circumstances, including rebuilding after damage or destruction, that the management arrangements were comprehensive and satisfactory and that provisions were made on other important topics, such as insurance. This seems unnecessary, because part of the essence of the commonhold scheme is the greatest possible standardisation of the documents. All basic rights which a unit owner is likely to need are automatically given to him. These rights can be varied, but the commonhold declaration has to be framed in such a way that the changes to the standard form are immediately obvious. Constitutional rules of the commonhold association are also standard, and they cannot be varied. We consider that basic standard forms, with the possibility of adapting them to new particular circumstances, is the best combination of flexibility and protection for purchasers. To insist on preliminary vetting by some outside agency is likely to impose unacceptable delays on the process of establishing a commonhold.

5.5 Before buying a commonhold unit, a prudent purchaser will need to make all the searches and enquiries which are usual before buying any property, and those which are generally made before acquiring one which is subject to outside management. Although in some other countries, there are elaborate requirements of disclosure by sellers of units, and particularly by promoters of developments, we do not believe that any extra rules should be needed here. In England and Wales, we already have extensive experience of buying and selling flats, and there seem to be no special abuses in connection with selling them which need new statutory control.

EXTENT OF UNIT

5.6 Each unit is given a number by the commonhold declaration, and that number will identify it on the plans lodged at the Land Registry. The precise position of boundaries of the unit will be defined in the Commonhold Act, unless the declaration imposes a different rule. The Act will provide that any structural walls, ceilings and floors below decorative level will be part of the common parts, and therefore owned by the commonhold association and not belong to the unit owner. The promoter of the commonhold can, however, decide to vary this rule, and fix his own boundaries for the units and the common parts. Those variations will be recorded in the commonhold declaration. The effect of
having rules in the Act which apply unless the declaration lays down different ones is that there will, for every commonhold, necessarily be a precise definition of where the boundaries run.

PURCHASE FROM THE PROMOTER

5.7 We use the term “promoter” to emphasize that the person who launches a commonhold will not necessarily be a builder or a developer. The promoter might already own a building which he decides to subdivide for the first time, or which he previously let in separate units but now wishes to sell. Or, he may buy a building in order to convert it and resell on a commonhold basis. The term covers all these circumstances.

5.8 A commonhold may also be promoted by all the owners of freehold flats in an existing block combining to change their present ownership scheme into a commonhold. Together, they would be the promoter of that commonhold, and would have to arrange to make the necessary application to HM Land Registry and comply with any other formalities. However, in those circumstances there would not normally be any purchase of a unit from “the promoter”, which is what concerns us here.

5.9 Before contracts are exchanged, the intending purchaser will want details of the property from the promoter, and in particular financial details about the commonhold association. He will want to know:

(a) the amount of the reserve fund, how it is built up and replaced, and on what it is to be spent;

(b) details of the insurance policy and the cover it gives;

(c) the liability of the owner of his unit for service charges, both the likely amount and how it is calculated;

(d) the ownership share attributable to his unit.

5.10 In addition to the usual details of ownership which the promoter will have to supply, the purchaser will also need general details about the commonhold and the association. They will be registered at the Land Registry, and it would be convenient to have a rule that the promoter supplies office copies of this information. This will show the number of units in the commonhold, with a plan showing its extent, and the votes, ownership shares and service charge contributions allocated to each unit. From this, the buyer will be able to see whether the proportions attributable to the unit in which he is interested are fair. After the transfer of the first unit any common parts are owned by the commonhold association, and the title to them will be registered, and deduced by the promoter to the purchaser. This is the purchaser’s guarantee that he will indeed be able to use the common parts which he has understood will be provided. Also, registered particulars will include an address for the service of documents on the commonhold association and will record any variations of the standard regulations which set out the obligations owed by all the unit owners to each other.

5.11 We canvassed the suggestion that there should be a prescribed form of contract for use on the sale of a commonhold unit. We finally rejected the idea for three reasons. First, contracts are essentially a private matter between the parties. Their terms are infinitely various and for the most part will not be concerned with the special legal requirements of the commonhold scheme. Secondly, although there have been complaints about other documents in relation to flats, particularly leases, there does not seem to have been any discontent with sale contracts. Thirdly, difficulties would inevitably occur where people purported to enter into a contract to sell a commonhold unit, but used the wrong form or completed it inaccurately.

5.12 Until the first sale of any particular unit has been completed, it will not have a separate title, but will merely form part of the promoter’s original title. Completion of the transaction therefore proceeds in the same way as the purchase of part of any other larger title, except that in the case of the commonhold the only part which can be separately transferred is a complete unit, or more than one. Apart from the search required to update the information about the promoter’s title, the purchaser will also need to make a search for current information relating to the commonhold association.

5.13 To ensure that transfers of part of the promoter’s title are restricted to the commonhold units which have already been designated, a special form of transfer could usefully be prescribed, and an example of such a form is shown in Appendix B.
5.14 After registration, the purchaser's unit will have a separate title, with its own title number, and the purchaser will receive a land certificate (or a charge certificate will go to his mortgagee). General details of the commonhold will be available to the purchaser from the Commonhold Association Constitution Register, but this will be registered separately. In addition where there are common parts vested in the commonhold association there will be a separate common parts title.

5.15 Where an existing block of freehold flats is converted to commonhold ownership, all the current owners are, together, effectively the promoter. For the conversion, all their title deeds have to be lodged at the Land Registry, and in exchange a land or charge certificate will be issued for each unit to its owner. The commonhold association will receive a land certificate in respect of the common parts. The position is then the same as when a promoter has disposed of all the units in a commonhold. Later dealings with individual units will take the form of a purchase from a unit owner.

PURCHASE FROM A UNIT OWNER

5.16 A unit owner has a freehold title, and his powers of disposition should not be curtailed more than strictly necessary. There is, therefore, no question of the commonhold association having to consent before the owner is allowed to dispose of his unit. However, in some circumstances, restrictions may be placed on the use to which a unit may be put which could have the effect of limiting dispositions. One example is a development expressly intended for occupation by the elderly. This purpose can be achieved by imposing a special regulation, in the original commonhold declaration, requiring that every owner of the unit not only uses it in a particular way but also satisfies certain qualifications. Nevertheless, it is not the intention that sales or leases should have to have prior sanction.

5.17 A special requirement of the purchaser of a commonhold unit will be to reassure himself about the financial stability of the commonhold. He can do this by obtaining replies to a standard form of enquiry sent to the vendor (see Appendix B Form VII). This form requests:

(a) a copy of the latest accounts;
(b) up-to-date details of any reserve funds (which may well have changed since the accounts were prepared);
(c) the amount of the current service charge payable for that unit;
(d) the amount of any service charge arrears for that unit (which the buyer will want the seller to pay) and on any other units (which could prejudice the financial viability of the association);
(e) information about any unusual service charge demands which are anticipated (some which are either unusual in their nature or amount, and have either actually been spent but not yet charged to unit owners, or which it is planned to spend);
(f) details of current or threatened litigation;
(g) details of disputes about the use of the common parts;
(h) details of the insurance;
(i) information on any proposals to terminate the commonhold.

5.18 Most of the answers the vendor will have to obtain from the commonhold association who will be obliged to give the information at the request of the unit owner or his mortgagee. The commonhold association which is slow in providing that information, or does not reply at all, will cause problems to both the seller and the buyer of a unit. In large developments, managing agents may well be employed, and we hope there will be no problems there. In small commonholds the association will be run by the unit owners themselves. They may be busy people, or unaccustomed to dealing with enquiries of this sort. We want to encourage people to serve on commonhold association committees, and for this reason think it would be wrong to impose criminal penalties if they fail to give prompt and adequate replies. (Some other countries do impose such sanctions). Bearing in mind that the seller of a unit will be a member of the commonhold association, we believe it should be possible to rely on his making sure that the necessary action is taken.

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5.19 In some places, the rule is that a certificate given by an association concerning outstanding service charge contributions is conclusive, so that the purchaser never has to pay any larger amount. This rule is superficially attractive for purchasers, but if in fact they have been seriously misled, the result will be a material shortfall in the income of the association. If that threatens the stability of the association, the purchaser is in as much difficulty as the other unit owners. That rule seems unsatisfactory, and we suggest that no special provision should be made. The purchaser will be responsible for all charges properly made on the owner of his unit, and if these exceed what he was led to believe would be the case, then he will have the usual range of legal remedies—e.g., fraud, innocent misrepresentation, negligence, estoppel—against those who misled him. Where a unit owner successfully sues the commonhold association the court should have power to order that the unit owner should not be liable to contribute to the association’s costs.

5.20 Information from the Land Registry which the purchaser will require, both about the unit and about the association, will be essentially the same as in the case of a purchase from the promoter (para. 5.10 above).

5.21 Immediately before completing the purchase, the purchaser will make the usual search in the Land Registry to ensure that the details he has about the title to the unit are still correct. This gives him a period of priority during which to register his purchase. He will be able to make a similar search of the records relating to the commonhold association. However, although this will reveal any changes made since the date of the copies with which he was supplied, it will not confer any priority. This is for two reasons. First, later entries would not be ones over which he could sensibly be given any priority. For example, if a resolution of the association changing the regulations governing the obligations of unit owners to each other was to be registered, he could not be given a priority which exempted him from the common system of mutual rights and duties. (He should be able to discover from the seller whether any such change is proposed). Again, if part of the common parts has been sold, the transaction could not sensibly be reversed merely because it was not registered before a particular transfer of a unit. The second reason for not conferring priority is a practical one. In a large development, there could be a constant stream of dealings with different units, and the management of the different overlapping priority periods would be difficult, without yielding any advantage.

AFTER THE PURCHASE

5.22 The commonhold association will need to have an up-to-date record of who owns every unit. This is essential for calling and conducting association meetings and for collecting service charges. In addition, it is clearly important to be able to identify who, in relation to each unit, has the obligations to repair and comply with the other general requirements. Accordingly, the vendor will have an obligation to notify the association as soon as completion has taken place. Although the formal transfer of ownership is only finally effective when the purchaser is registered as proprietor at the Land Registry, this may involve some delay, and in practice effective ownership, and usually occupation, of the unit will change hands when the contract is completed and the money passes. The sanction to encourage the vendor to notify the association promptly is that, until that notification, he remains liable to pay the service charge and comply with the other obligations of the unit owner. It may well also be that the purchaser will wish to ensure that notification has been given, because until it is he will be unable to vote at meetings of the association.
PART VI

POWERS OF A UNIT OWNER

GENERAL PRINCIPLES

6.1 The powers of the owner of a commonhold unit in relation to his property should be, as near as possible, the same as any other freeholder in respect of his property.

6.2 All the same, the unit owner must accept some limitations, which arise inevitably from the fact that units in a commonhold are interdependent. Owning a flat, e.g., carries with it some duties, regardless of whether the ownership is freehold or leasehold. A unit owner must accept that he should not act in a way which prejudices the enjoyment or value of the other units. That qualification aside, the commonhold scheme aims to equate ownership of a commonhold unit with owning any other freehold.

POWERS

Sale

6.3 A unit owner is entirely free to sell the complete commonhold unit. Unlike a leaseholder, who may have to obtain his landlord's consent to assigning the lease, the unit owner will not have to obtain the commonhold association's agreement to any sale. The only difference from the normal form of freehold ownership will be that he has to notify the association of the change of ownership, once the sale has been completed.

6.4 A unit owner cannot, however, normally sell a part of his unit. That sort of sale would mean an adjustment of the voting rights, service charge contributions and ownership shares within the commonhold, because the number of units would have been increased. To rearrange these matters after a subdivision would not necessarily simply be a matter of dividing the shares attributable to the owner's original unit. If, say, the owner of a unit occupied as a single dwelling subdivides it into four, each occupied by a separate household, there would be a greater strain on the common facilities. Between them, therefore, the owners of the newly-created smaller units possibly ought to pay a greater service charge than was paid by the original unit owner. This type of sub-division would considerably complicate the administration of a commonhold, and would involuntarily change the proportionate obligations of the other owners, and indeed the degree of enjoyment which they might expect from some of the common facilities. Accordingly, one owner is not to be entitled to force this position on the other owners.

6.5 In some limited circumstances, it will nevertheless be possible to sell part only of a unit. For example, this would occur where there was a compulsory purchase order relating to part of a unit, after which there would have to be a rearrangement of unit boundaries, and, if appropriate, votes, service charge proportions and ownership shares. There could also be a formal variation of the commonhold, (see Part XIII). This would require the unanimous consent of the members of the commonhold association, or an application to court.

Leasing

6.6 As a freeholder, the unit owner will be free to grant a lease of his property, and will not require the consent of the commonhold association. It is important that the association should know who is in occupation of units (this applies particularly in relation to service charges, see Part IX of the Report), so again the owner will have to give notice to the association.

6.7 On the termination of the commonhold, freehold interests in the units automatically vest in the commonhold association which then holds the entire site of the commonhold upon trust for the unit owners and other persons interested in the units. When this vesting takes place, any contractual leases granted by the unit owners will determine so that the freehold vests in the association free from any such lease. The ending of leases of commonhold units when the commonhold terminates is a matter of practical importance. The ending of a commonhold is intended to facilitate the redevelopment of property which has been seriously damaged, has become uneconomic to maintain or which the owners

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wish to sell or rebuild for other reasons. If the leases of some units did not end the redevelopment would be impeded or prevented. This would be unfair to the owner-occupiers who had vacated for that purpose, bearing in mind that they had no control over the lettings. That would be a case where the powers of one unit owner to let as a freeholder would have seriously prejudiced the value of another owner’s unit. Further, the suggestion that some units, the ones which are tenanted, but not others should continue to be occupied after the commonhold comes to an end, would make the economic management and maintenance of the block impracticable.

6.8 The impact of this rule, that the lease of a commonhold unit cannot survive the termination of the commonhold, on the various forms of security of tenure which statute gives is discussed in Part X of the Report—The Position of Tenants.

Easements, Restrictive Covenants and Land Obligations

6.9 The unit owner’s rights and obligations in relation to other unit owners will be covered in detail by regulations. All the same, he is entitled to enter into other individual arrangements with other unit owners relating to his property. Such rights will not survive the commonhold. The beneficiary of the rights, being himself another unit owner, will not need the rights after the termination.

6.10 A unit owner could acquire an interest by presumed grant against another unit owner. This could arise where there has been use of a particular right for at least 20 years. Such a right would also end with the commonhold as the land with the benefit and the land subject to the burden will be merged when it is vested in the commonhold association.

6.11 Rights cannot be acquired by a unit owner over common parts by long use. Any particular or general rights a unit owner has over common property will be conferred on him by the Commonhold Act or regulations. Any continuing use forbidden by the regulations can be restrained notwithstanding long use.

6.12 A unit owner may also grant rights to someone outside the commonhold, for the benefit of other property. Problems arise in relation to the duration of those rights. If they last beyond the commonhold, their existence can prejudice the value of the whole property, which is then shared by all unit owners. On the other hand, the adjoining owner may have little use for a right which can unexpectedly come to an end for a reason not connected with his property. We think it is necessary, therefore, for such rights to be able to continue after the termination of the commonhold, but there must be safeguards for other unit owners. These can be guaranteed by requiring that the commonhold association consents in advance to the grant of the right, but any capital sum paid for the right, is paid to the association, rather than the individual unit owner. Any sums paid to the commonhold association in respect of an easement or right, will normally be because of the diminution in value of the commonhold. Payments would be made to the association on behalf of the members, although not necessarily in pre-determined proportions. A right granted without the association’s consent is perfectly valid until the commonhold ends.

6.13 If outsiders obtain rights informally through long use according to the principles of the general law such rights will survive the commonhold. This is explained more fully in para. 12.5.

Adverse Possession

6.14 An owner of land can lose title to it if a squatter takes possession and the owner does not reclaim his land within a specified time, usually 12 years. A unit owner, however, will not be permitted to obtain title in this way either against another unit owner or against the commonhold association. This should cause no injustice. Commonholds are based on registered land, with the units and common parts shown clearly on plans. There should therefore be no misunderstandings over boundaries. Moreover a unit owner has chosen to enter into a commonhold and so can be presumed to know and abide by its rules.
6.15 Nor will the commonhold association be able to acquire a unit owner's title by adverse possession. Not only might it lead to the oppression of a unit owner but it could alter the economic structure of the commonhold. A substantial addition to the common parts could increase the expenses for all the unit owners.

6.16 The arguments against a unit owner or the commonhold association obtaining a title by adverse possession clearly do not apply to outsiders. Their position with regard to adverse possession is discussed in Part XII of the Report—The Position of Third Parties.
PART VII

RIGHTS AND OBLIGATIONS OF UNIT OWNERS BETWEEN THEMSELVES

GENERAL PRINCIPLES

7.1 The fundamental structure of the commonhold scheme will be statutory. This means that the Commonhold Act will contain the provisions which govern the type of ownership which unit owners enjoy, the role of the commonhold association and how a commonhold is established. It will also regulate more detailed matters, e.g. boundaries between units and the common parts, service charges, reserve funds, liens for unpaid service charges, and how a commonhold comes to an end.

7.2 The Act will also lay down the important principle that the rights and obligations which each unit owner owes to the others attach to the unit. That is to say, when someone becomes owner of a unit, he automatically enjoys the benefit of the obligations undertaken by other unit owners, simply by becoming owner of his unit. Conversely, the fact of his ownership immediately makes him liable to carry out the duties relating to that unit. No documentation, or transfer of the benefit and burden of those obligations, is required to achieve that. Statute confers the benefit and imposes the liability. This is essential to avoid the existing difficulties in the law relating to the transfer of many obligations to successors in title. On the other hand, once a unit owner parts with his unit, he has no further liability in relation to it, although he is not absolved from responsibilities which accrued while he was still owner.

7.3 We recommend that the detailed contents of the rights and obligations enjoyed and undertaken by unit owners should be laid down by statutory instrument, rather than by the Act itself. Experience may show that they should be adjusted, and the need for amendments may stem from changes in methods of construction and new forms of development. It will be easier and quicker to take these into account if it is not necessary to promote a new Act. Besides, putting these regulations into a single statutory instrument will make them more readily available, in a less bulky form, to individual unit owners than if they were part of the main Act. We are also proposing that the rules relating to the management of the commonhold association should be laid down by statutory instrument; these are discussed separately in Part VIII of the Report.

7.4 The fact that the rules by which unit owners have to abide are standard has been seen as a major attraction of condominium schemes in other countries. Once people become familiar with the regulations, there is a greater understanding of the whole system. The same basic rules will apply to all commonholds, so that an owner familiar with them in one commonhold will find the same arrangements if he moves to another. There is a further advantage in having the rights and obligations set out in a statutory instrument. There will be considerable savings of time and cost in conveyancing. At present, the equivalent terms are set out at length in individual leases, each of which has to be prepared, negotiated between landlord and tenant, and read and explained in detail every time the lease changes hands. Much of this repetitious work will no longer be needed, and the possibility of errors in preparing lengthy documents will be reduced or eliminated. Finally, the standardisation will obviate the need for the Land Registry to register separate sets of regulations for each commonhold.

7.5 We do not intend that these regulations should be inflexible. The circumstances and the types of property to which they will apply will be so many and various that it would not be possible to draft regulations which could satisfactorily apply to all of them. Accordingly, it will be possible for the promoter of a commonhold to vary the regulations when preparing the initial commonhold declaration. At a later stage, unit owners will themselves be able to make variations. This will be possible if they are all in agreement, or if 80% of the votes are cast in favour and the court so orders.

7.6 If the regulations for a particular commonhold differ from the standard ones it is important that this is immediately obvious to everyone involved. For this reason, it will be a requirement that variations in the commonhold declaration are worded to show what changes have been made, rather than setting out alternative regulations which might be lengthy. This will focus attention upon the alterations, and allow people to consider whether or not they are acceptable. Also, it avoids the danger that when trying to provide an alternative comprehensive set of regulations something is inadvertently omitted.
A second important aspect of ensuring that people know about what regulations apply to a particular commonhold is that all variations to the standard regulations must be registered at the Land Registry. This will happen automatically with the initial commonhold declaration, but later changes as a result of the votes of unit owners will only take effect once they are registered.

7.7 Although the standard rights and obligations of unit owners are important, we also consider that they must be kept to a minimum. A unit owner is a freeholder, and this makes many of the tenants' covenants frequently found in leases, even those granted for long periods, inappropriate. For instance, we do not recommend regulations to cover the keeping of animals or the use of television and radio sets and record players after certain hours, although they could be added if the commonhold association desired. A unit owner will have the duty which the law casts on every property owner not to use his property in such a way that it unreasonably interferes with the use of someone else's. Again, there will be no obligation on the owner of a commonhold unit to decorate the inside of it. Outside decoration can affect the value of all units in a property, but will be the duty of the commonhold association. Repairs, even of individual units, can be important to maintain the stability of the whole building. However, interior decoration of a unit is a matter of no concern to anybody but the unit owner.

7.8 The principle that the regulations do not need to cover activities forbidden by the general law, and therefore should not do so, goes further. It means that there will be no regulations against causing damage to the common parts or obstructing access or drains. Restrictions on these lines are frequently found in leases, and that is reasonable because it gives the landlord a right of forfeiture when the tenant is seriously in breach of his obligations. However, there is no question of the forfeiture of the freehold interest of the owner of a commonhold unit. Accordingly the repetition of the general law obligations in the commonhold regulations would not offer any advantage.

CONTENT OF STATUTORY REGULATIONS

7.9 We set out here the outline of the basic regulations which will apply to all commonholds, in the absence of any special variation by the promoter in the commonhold declaration, or of a later vote by the unit owners. There are obvious advantages in making some regulations incapable of variation. This should be borne in mind when they are drafted.

Support and Protection

7.10 A unit owner has the right to have his unit supported and protected from weather penetration by other parts of the development and by the land on which it is built. Necessarily, this right must be qualified to allow rebuilding where appropriate.

Access to Unit

7.11 The unit owner, and everyone whom he authorises, will have the right to gain access to the unit over any common parts (i.e. both paths and drives outside a building, and stairs, lifts and passages inside a building). In a case where there needs to be some restriction (e.g. goods deliveries by a particular route, or separating paths for pedestrians and drives for vehicles) a variation to the regulation can be registered. It is important that any restriction on something as fundamental as the right of access to a unit should be registered so that it is readily apparent to an intending purchaser.

Other Common Facilities

7.12 In a commonhold where other facilities are provided in the common parts, a unit owner will have the right to use them at all times. If there is a need for restriction, say on the use of a squash court or laundry room between certain hours, the decisions will have to be taken by the commonhold association. This is better than having such details fixed in regulations for the association will be able to vary them as necessary. Unit owners should be allowed to bring their guests onto the common parts, the possibility of abuse would again have to be dealt with by the commonhold association as a whole.
Services

7.13 A unit owner has the right to have services used in the unit connected to the mains, through both other units and common parts. The converse will apply, obliging a unit owner to allow services which run to and from other units to pass through his. This is necessary to allow for supplies of fuel and water, drainage and for other things such as telephone installations and cable television.

Inspection and Emergency Action

7.14 The commonhold association and other unit owners will have rights, in an emergency, to inspect a unit and to take such action as is necessary to protect another unit owner's property or the common parts.

Alterations and Additions

7.15 The unit owner has a duty not to do anything which would prejudice the structure of the building, whether by damaging it or by overloading it. He is entitled to make internal alterations and additions which neither affect the structure nor the common parts. His freedom to do work is limited only in cases which either will or could affect the interests of others. A unit owner will need the consent of the commonhold association for any alterations or additions which will affect the common parts.

Defects

7.16 Unit owners are under an obligation to report to the commonhold association any defect in the unit or in the common parts.

Repairs

7.17 The unit owner has a duty to repair his unit, to the extent that any defect might prejudice the remainder of the building. The commonhold association has a residual power, if the unit owner does not do what he should, to do the work and charge the defaulting owner.

Improper Use

7.18 The unit owner may not use his unit for dangerous or offensive purposes, nor to cause annoyance to the owners or occupiers of other units. Also, he is forbidden to do anything which may prejudice the insurance policy effected by the commonhold association, and has a positive obligation to comply with the policy conditions. The effect of such a provision is that the insurance policy is not invalidated by the activity of an individual unit owner unless the commonhold association is aware that the unit owner is in breach of one (or more) of the conditions of the policy. Where the association has no such notice the insurance company will pay an indemnity for any loss covered by the policy but will be able to proceed against the defaulting owner.

ADDITIONAL REGULATIONS

7.19 In spite of what we said above about keeping the regulations to a minimum, we recognise that in some commonholds additional regulations will be required, to ensure that they are used for the purpose envisaged, to maintain the value of units or for the general convenience of owners and occupiers. Because these will not be matters needed in the majority of cases, it is not appropriate that they should be included in regulations which have general application. They may be added to the general regulations in the same way that variations are made. To illustrate the flexibility of the commonhold scheme, we give some examples of areas which these additional regulations might cover:

(a) the use to which a unit may be put; for example to provide for a development for the elderly;
(b) security regulations, e.g. the use of entry phones, locking up, porterage;
(c) behaviour standards, such as noise, particularly in the common parts, after certain hours and insulating floors to minimise sound carrying;
(d) the use of particular facilities, e.g. banning unaccompanied children from lifts;
(e) regulating the use of common facilities, such as parking, one-way traffic systems and rubbish disposal.

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7.20 Despite this general freedom to add to the standard regulations, there are two types of regulation which we recommend it should not be possible lawfully to impose:

(a) a regulation which directly or indirectly discriminates on the ground of sex, colour, race, nationality or ethnic or national origin, in the use or occupation of the unit or the use of the common parts or any common facilities. We are not certain that the general legislation against such discrimination would cover all regulations it would be possible to make governing a commonhold, and we consider that for the avoidance of any doubt these anti-discrimination provisions should be expressly extended to commonholds;

(b) a regulation which restricts the right of a unit owner to dispose of his unit, whether outright, by lease, by mortgage or any other way. The control of dispositions is a common characteristic of the leasehold system, and incompatible with freehold ownership. The owner of a commonhold unit is not at liberty to dispose of the freehold of part of his unit separately from the remainder, but this restriction is a necessary control to allow the commonhold system to continue to operate as it is intended to do.

DETACHED BUILDINGS

7.21 It may well be that many of the standard regulations will not be wholly appropriate for a commonhold composed of a number of detached buildings, each forming one of the units. We considered whether there should be a separate set of statutory regulations for such a case, but decided that we should not recommend this. The main reasons for this are to keep the scheme as simple as possible, and a recognition that although a commonhold of detached buildings is perfectly possible it is unlikely that a scheme will be needed in many such cases. The fact that there is no separate set of prescribed regulations for this case need not deter a promoter from adopting a commonhold, because he can always modify the regulations to suit the particular case.

ENFORCEMENT

Who should be bound?

7.22 Two questions arise in considering who should be bound by regulations. First, does every regulation relate to every unit, and secondly, do people besides the owner of the unit have to comply?

7.23 The statutory regulations will apply to units "to the extent that they are appropriate". A formula such as this avoids the need to have regulations which expressly apply to some units and not others. For example, there will be buildings in which some units need the use of a lift and others do not. A regulation giving access to the units will therefore apply so as to give the right to use the lift to those going to a unit for which the use of the lift is appropriate, but will not, automatically, apply to other units.

7.24 The regulations would be less than effective in ensuring that units were used appropriately, and unnecessary damage to the building was avoided, if they only bound the freehold owners. For this reason, tenants and other occupiers will also be bound. This effect will be automatic, whether or not the matters are mentioned in the lease or agreement which gives them the right to be in the unit. Unit owners, their tenants and other occupiers, will have a duty to use their best endeavours to ensure that visitors to the unit also abide by the regulations.

Who can enforce?

7.25 The commonhold association will have the right to enforce all the regulations. This will apply not only to enforcement against unit owners, who are members of the association, but also to tenants and other occupiers of units even though the association has no direct contract with them. We do not consider, however, that it would be satisfactory to leave enforcement of the regulations exclusively in the hands of the association. There may be disputes between members of the association. Committee members may be amongst those in default, or the majority may be apathetic. For the individual unit owner, something important may be at stake, e.g. if there is a question of the use of services within his unit. For this reason, an individual owner who suffers prejudice because a regulation has been broken will also have a right to enforce it.
Similarly, tenants and other occupiers who are bound by the regulations will also have the right to enforce them. Their interest in the unit may be somewhat limited. This will not, however, reduce their right to enforce the regulations against others in breach, but in practice they will not do so when it is unreasonable because the remedies available to them will be restricted proportionately with their interest.

Remedies

Breach of a regulation will give rise to an action for damages, (i.e. money compensation), or an injunction, (i.e. an order to cease the action which breaks the regulation). It will not be possible for a unit owner to have his interest removed from him because of breaches of the regulations, however persistent, although nonpayment of service charge can result in the commonhold association exercising its lien (see para. 9.27). Financial compensation in the form of damages will, in accordance with the general law, be limited to the amount needed to indemnify whoever brings the enforcement action. An injunction to stop further breaches of the regulations may often be the appropriate remedy, but this is discretionary, and will not be granted by a court if it is unreasonable. Where the person seeking to enforce the regulation has himself only a limited interest in the property, e.g. a lease for a short period, this could well reduce the amount of damages awarded to him, or make the grant of an injunction inappropriate.
PART VIII
COMMONHOLD ASSOCIATIONS

GENERAL PRINCIPLES

8.1 The commonhold association has a central part to play in the commonhold scheme. Composed of the owners of the units in the commonhold, it is responsible for organising the common services and facilities, owns any common parts of the property and when the commonhold comes to an end owns the whole property on behalf of the unit owners. As an integral part of the scheme, the association necessarily continues in existence throughout the life of the commonhold. It comes into being when the commonhold is created, and is wound up only when the commonhold ends and all the property has been disposed of. The details of the procedure on winding up are in Part XIV of the Report, Termination of the Commonhold.

8.2 When a purchaser takes a transfer of a unit he is entitled to become a member of the commonhold association. The vendor, however, will remain liable for service charges until the association receives notice of the transfer. It will therefore be in the interests of the vendor to give such a notice. The purchaser's title will only be perfected when he is registered as proprietor at the Land Registry. Where there is a discrepancy between the name given to the association and the new registered proprietor of the unit the association will have a power to amend its register of members.

8.3 There are three important aspects to what a unit owner acquires, in addition to his freehold. They are: first, his voting rights at commonhold association meetings; secondly his liability to pay service charge contributions; and thirdly the proportion of the value of the whole property which will be his if the commonhold comes to an end. The amount of each of these rights is specified in the commonhold declaration, filed when the commonhold is founded.

8.4 For simplicity, the Act will provide that voting rights, service charge liabilities and ownership shares will be linked to the same percentage, unless some contrary intention is expressed. It will be open to the promoter when he draws up the commonhold declaration to calculate each matter separately. Voting rights and contribution obligations will therefore not automatically be the same as a unit owner's percentage of ownership in the scheme. This will, in particular, permit units with different requirements for services—because of their position within the development, or because they are put to different uses—to have to pay additional service charges, even where it seems unfair that they should be entitled to a larger ownership share.

8.5 We have considered whether there should be statutory rules regulating the basis of these rights and liabilities. In some other countries service charge liabilities have to be allocated, e.g., in the proportions of the floor area of the individual units. We have concluded, however, that there is no single method which is necessarily fair in all cases; e.g., two units may be identical, but one on the ground floor would have no need to use the lift, while it might be essential for access to one on the top floor. For this reason we consider that the allocation is best left to the promoter, who is in a position to take into account all the circumstances. However, there will be every reason for his making the allocation as fair as he can, because there would obviously be difficulty in disposing of any unit which was unduly burdened.

8.6 The full facts about the rights and liabilities attached to each of the units will be readily available from the commonhold declaration lodged at the Land Registry. Anyone proposing to acquire a unit would expect to obtain a full copy of this declaration, so that he would have all the information. This is an important safeguard. In some leasehold developments, service charge contributions have been found to add up to more than 100%, so that the landlord makes a profit on the services. Normally, a leaseholder, who only sees his own lease, has no means of discovering this. With commonholds, there would be a danger, were it not for disclosure, that the share entitlement to the whole property on termination would exceed 100%. The shares would then have to be scaled down, with the result that no one would receive as much as he expected. Disclosure should avoid all these difficulties.
The commonhold association will be a corporate body, that is to say, it has a legal personality separate from that of its members, can own property, sue and be sued. The name we have chosen is intended to emphasize the common co-operative interest of the unit owners. As it is different from other established bodies, anyone dealing with a commonhold association, will immediately be alerted to the nature of it. Legislation will protect the name “commonhold association”, allowing it only to be applied to this type of body.

Each commonhold association will have a number by which it is known, e.g. “commonhold association no. 1 CR”. The Land Registry will allocate the number when first registering the commonhold.

Every commonhold association will have an address in England and Wales at which documents can be served on it, and this will be recorded at the Land Registry. That information will be publicly available. Often, the address will be an address of a property within the commonhold, but it need not be. Where convenient, the address will be displayed on the premises of the commonhold.

Members of a commonhold association will have the benefit of “restricted liability”, which is something like the limited liability which is familiar in the context of companies, but does not go quite so far. When a commonhold association incurs a liability, that debt is primarily owed by the association, and any creditor seeking to enforce a liability must do so against the association. If the assets of the association are not sufficient to pay the debt, but only in that event, the members will have some liability. To the extent that a judgment against the association is not satisfied, it will be enforceable against the members, each of whom will be liable for the proportion of the outstanding sum which is the same as his service charge contribution proportion.

A member of a limited company whose shares are fully paid has no liability for the company’s debts. The ultimate sanction of a creditor who has not been paid is to put the company into liquidation. To have an equivalent procedure for commonhold associations would undermine the scheme, because it is always necessary for every commonhold development to have a central body to organise the services, and for the other purposes outlined above. If therefore, creditors are to be deprived of their major weapon against the association, it seems proper that the members should back it up. Besides the association is, in effect, a co-operative of all the members and they have undertaken a liability to contribute to its outgoings. However, if all members were liable for the association’s debts without limit, those with greater resources could find themselves in the position of subsidising less well-off members. As it will not be possible for a unit owner to choose who his fellow unit owners are going to be, this would be an unfair burden. Therefore, although a creditor who is put into a position of enforcing a debt against individual unit owners will find it more troublesome than normal debt enforcement, it seems to us to be a reasonable compromise. Any outsider considering making a contract with a commonhold association will be warned of the position by the fact that the association has the “commonhold association” name.

It will be seen that the form of commonhold association which we are proposing is distinct and different from a limited company. Indeed, it will not be subject to the companies legislation. The reason is that this legislation is not in general appropriate. In the first place, as we have explained, it is important that it should not be possible for an association to be wound up while the commonhold with which it is linked continues. Secondly, the detailed regulatory legislation which is appropriate for trading companies is not needed here. Thirdly, it is unlikely that, at least in the case of many small commonholds, unit owners would comply with all the detailed requirements laid down for companies, and it is probably not reasonable to suggest that they should. We are informed that the equivalent companies, formed of long leaseholders, which at present run leasehold developments, tend to be lax in filing returns and complying with other Companies Act duties. This causes administrative and enforcement difficulties, but without real gain. A simpler regime is appropriate for commonholds.
8.13 The purposes for which a commonhold association is established are limited, as explained above. They will not be authorised to engage in any trade, and are not there to make a profit. We are of the view that commonhold associations fall outside the scope of the European Community Directives about company law, with which the rules we have outlined would otherwise be incompatible. However, further consideration will have to be given as to whether it will be necessary to put this beyond doubt, by specific reference in the Act to the fact that the commonhold association is non-profit making and non-profit seeking.

STRUCTURE OF ASSOCIATION

8.14 The ultimate authority in a commonhold association is vested in general meetings of the association, at which all members are entitled to attend and take part. The number of votes which each has at a meeting is the number allocated to the unit they own, as shown in the commonhold declaration. Where a unit is jointly owned, both or all the joint owners are members of the association, but, between them, they only have the votes allocated to that unit. The votes are to be cast by the first of the owners on the register if he is present, otherwise by the second, etc.

8.15 Many associations will be too large for it to be convenient for all decisions to be taken by general meetings. If a development has more than six units in it, the association must elect a committee, composed of members of the association, to which the running of the association is delegated, subject to the general supervision and direction of general meetings. More details about the committee are given below, para. 8.48.

8.16 Every association will have a Chairman and a Secretary. Where there is a committee, they are elected by the committee, otherwise they are elected by a general meeting. An association may find it convenient to have other officers, e.g. a Treasurer, but this will not be a statutory requirement.

8.17 We see the democratic involvement of unit owners in the management of the commonhold as an important part of the scheme. It is for that reason that joint owners of a unit are all made full members of the association, which contrasts with the position of joint shareholders in a company. Also, it is the reason why it will be a statutory requirement that members of the management committee must be unit owners, which is unlike the position of the directors in most companies, who do not have to be shareholders. Like companies, however, commonhold associations will have to have annual general meetings, so that even where the everyday management of the association’s affairs is in the hands of a committee, there will be regular chances for members to obtain information and influence what happens.

8.18 Although a commonhold association is a corporate body, we do not think it is necessary to provide that it has a seal. There are unlikely to be many documents on which it would need to use one, and any simplification in its management is welcome. The Act will therefore provide that where a deed is required, the formalities will be satisfied by the signature of two members of the management committee or, where there is no committee, two members of the association.

8.19 Detailed rules will be needed for the internal conduct of the business of a commonhold association, e.g. the election of officers, calling meetings, conduct of meetings and the casting of votes. Because the objects and general structure of all commonhold associations will be the same, we believe that these rules can be standard. We recommend that they be promulgated by statutory instrument under the authority of the Act. We see no reason why it should be necessary to vary them in any individual case. This total standardisation would reduce the need for documentation on the formation of a commonhold, because no constitution document will be needed and none need be registered, and should aid the understanding of the scheme, because once a person is familiar with the details of the running of one commonhold association the same rules will hold good for all others. We have prepared a suggested draft of such rules, by way of illustration, and these are appended to the Report (see Appendix C).

DUTIES OF THE COMMONHOLD ASSOCIATION

8.20 The legislation will set out the duties of the commonhold association. It is important that positive duties should be imposed on the association, in contrast to merely
giving it powers. This allows any unit owner to rely on the specified functions being carried out, because if they are not any aggrieved owner could apply to the court to enforce the duties. To the extent that an association has only a power to do something, the unit owners with a majority of the votes will be able to prevent that being done even if one of the minority considers it to be vital.

**Duty to administer and manage**

8.21 The overriding duty of the association is the administration of its affairs and the management of the common property which it owns. More detailed duties are dealt with below, but many come within this general heading. The general duty is to administer and manage the commonhold within the terms of the legislation, in accordance with the wishes of the unit owners and in their best interests. An essential part of the function of administering the association itself is a duty to keep an up-to-date register of current unit owners and, as far as possible, a list of current occupiers of the units.

**Duty to enforce compliance with the Act and regulations**

8.22 The association has a duty to ensure that the unit owners, their tenants and other occupiers of units comply both with the Commonhold Act and with regulations made under it. The rights and obligations of unit owners between themselves will be contained in statutory instruments (see Part VII of the Report).

**Duty to convene meetings**

8.23 The association rules provide for annual general meetings, and the calling of other general meetings when the committee or members require. There is a duty to call these meetings, and to conduct them in accordance with the rules.

**Duty in relation to service charges**

8.24 In order to comply with its duties to supply services, set out below, the association will need to raise service charges. For this purpose it must:

(a) assess the total amount needed for the current year, and assess individual contributions in accordance with the proportions set out in the commonhold declaration;

(b) collect the money from individual unit owners;

(c) ensure that it is spent on services and any surplus deposited in a designated bank account or otherwise invested in accordance with the power given to the association (see para. 8.46 (f) below) against future liabilities;

(d) collect and bank contributions to any reserve fund.

Service charges are dealt with more fully in Part IX of the Report.

**Duty to maintain and hold reserve funds**

8.25 The association has a duty to maintain adequate reserve funds. These are held by the commonhold association as trustee. The funds are to be used for specified purposes. The association's duty is, as far as possible, to maintain adequate reserve funds and to spend them on the specified purposes as need arises. These funds are dealt with further in Part IX of the Report.

**Duty to hold and repair common parts**

8.26 The commonhold association has a duty to hold the land designated as common parts of the property and is responsible for ensuring that those common parts are kept in repair. Repair here includes replacement, reasonable refurbishment and necessary improvement work. For these purposes, the association has the power to enter any part of the property both for inspection and for carrying out the work. The commonhold association is not allowed to own any unit.

8.27 Generally, the common parts of a building will include:

(a) structural walls and other structural supports;

(b) the roof;

(c) the foundations;
(d) parts of the property not included in any unit;
(e) walls forming part of the boundary of a unit, even if not structural;
(f) floors and ceilings dividing a unit from another unit or common parts, but not any floors or ceilings wholly within a unit (which will be the responsibility of the unit owner) unless they come within (a) above;
(g) fixed plant and appliances serving the common parts and move than one unit, wherever situated within the property (e.g. water tanks, lifts, boilers, septic tanks etc.);
(h) pipes, wires, etc., which connect with the common facilities whether in a unit or outside it (see para. 8.29).

8.28 When a promoter files the commonhold declaration, it is open to him to define the boundaries of the units in a different way from the standard rule (see para. 5.6). In doing so, he will, in respect of that development, add to or reduce the amount included in the common parts.

8.29 By including in para. 8.26(h) pipes and service systems (electricity, gas, sewage etc.) which are connected to common facilities the commonhold association is made responsible for their repair even if the pipes, wires etc. are within the unit. This could be seen as an infringement of the right of the unit owner as freeholder. However, we have borne in mind, in making this recommendation, that neglecting repair of such pipes or wires, or repairing them inadequately, could cause damage to other units. Anything which exclusively serves one unit, independently of the common facilities, is that unit owner’s responsibility. There may be a good case for varying the responsibilities for repair in specific properties because of the way in which such services are provided. What is important is that there should be a fall-back position and, in order that there should be as little departure as possible from the standard rules and regulations, that the fall-back position should correspond with the general practice for allocating responsibility for repair of services with a communal element. If at the time when the Commonhold Act is passed the general practice on repairs differs from what we have suggested then the duty should be altered accordingly.

8.30 The question arises whether unit owners should be allowed to do repairs which are the association’s responsibility. If unit owners are permitted to repair or decorate the common parts, we see danger of badly done repairs causing damage to the property. It is true that a responsible householder will readily undertake small running repairs, and in many ways it would be welcome if unit owners were prepared to do this both to common parts in their units and elsewhere in the building. However, this is a case where account must be taken of the fact that the units are freehold properties which are interdependent. An owner who makes an inadequate repair not only puts his own property at risk, but that of others. On balance, therefore, we think that individual initiative should not be encouraged in this connection and that the association should have the exclusive right, as well as the duty, to repair the common parts. It would therefore be able to restrain other owners from doing the work. However, there would be the right to repair in an emergency. Any unit owner causing damage to the common parts (as defined in para. 8.27 or as varied by the commonhold declaration), either deliberately or negligently, will bear the cost of any repairs.

Duty to decorate

8.31 The commonhold association is responsible for decorating the common parts which are not inside a unit. This includes all outside decoration, and what is needed inside to halls, passages, etc. We do not suggest that detailed decorating obligations, stipulating what materials should be used and when the work should be done (which are familiar in leases) should apply to commonholds. What is appropriate will vary from property to property. Moreover, commonhold is a form of permanent ownership, and judging by past experience, decorating techniques which are now current will be out of date in a few decades.

Duty to maintain

8.32 The association’s duty to repair and to decorate is extended to maintenance, which includes cleaning, heating and lighting the common parts, providing furniture and other
equipment and keeping it up to standard, and servicing boilers and lifts. The common parts outside may require cultivation, tending, tidying, signposting and regulation, and all this is included.

**Duty to keep accounts**

8.33 The association has to keep proper books of accounts, and prepare a revenue account and balance sheet. For this purpose, paragraphs 1 and 2 of Schedule 3 to the Housing Association Act 1985 (which impose similar duties on housing associations) can usefully be adapted and incorporated into the commonhold legislation. Members will be entitled to copies of the annual accounts, with their notices of the annual general meeting. In addition, members have the right to inspect and take copies of documents in the hands of the association.

**Duty to arrange an audit**

8.34 The accounts of a commonhold which has more than six units must have an annual professional audit, and the association is bound to arrange this. Smaller commonholds must have an independent audit of their accounts every year unless the association agrees otherwise.

**Duty to insure**

8.35 Adequate insurance is an essential for any commonhold. Many would consider it the wise precaution for every property owner, but in the case of a detached property in which no one else has an interest, the owner is free to make his own choice. This is another example of the effect of the interdependence of commonhold units, where lack of insurance would prejudice more than one owner and firm rules need to be laid down, both to make sure that reasonable precautions are taken and also so that all concerned know and agree the standard of those precautions. The Building Societies Association in its report "Leaseholds—Time for a Change?" emphasized the inadequacy of the insurance provisions in many existing leasehold developments. This indicates that insurance arrangements cannot satisfactorily be left to voluntary agreement, and we therefore recommend that there be statutory requirements.

**Property insurance**

8.36 Where the whole property within a commonhold is put to a single use, there will be one insurance policy covering damage to all insurable property within the common parts and to all the units. This is generally considered the best way to insure, but may not be possible in a mixed-use development. If there have to be separate policies, they should normally be taken out with the same insurance company. When a claim has been made, the association’s primary obligation will be to spend that money on rebuilding. Neither a unit owner nor any mortgagee will be able to insist on receiving the money itself. In the case of total destruction or very substantial damage there will, however, be the option of bringing the commonhold to an end (see Part XIV).

8.37 To ensure as far as possible that the insurance cover is adequate, regulations in a statutory instrument will lay down the cover which the policy must give. The risks against which cover is available change from time to time, and the regulations will need to be amended as appropriate. The financial limit of the cover cannot be precisely laid down. The regulations can, however, provide that it must be adequate to include the full rebuilding cost, site clearance and professional fees, ideally index-linked.

8.38 Insurance will also be needed against consequential loss. In commercial developments, this would be cover against loss of profits, and other losses caused by the interruption of business but we consider it would be appropriate for unit owners to effect this insurance themselves, as they now would. In the case of residential units, even those within a mixed use development, cover is needed against the cost of accommodation during rebuilding, and this would best be included in the commonhold’s property insurance. The reasons why this cover is needed are:

(a) unit owners will often not be able to afford to rehouse themselves, particularly when they are committed to continuing to pay mortgage instalments and commonhold service charges even while their home is uninhabitable;

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(b) the general provision in the Act that the insurance money will have to be spent on reinstatement means that a single unit owner does not have the option of taking the insurance money, selling the site and buying somewhere else to live;

(c) a flat can be unusable even if it is not itself damaged: damage to the access or services to it can have this effect;

(d) in a commonhold, there is no landlord to provide alternative accommodation or buy out the interest of the unit owner;

(e) rebuilding a large block of flats can take a considerable time.

8.39 At the moment, adequate cover to pay for the cost of alternative accommodation during rebuilding flats is not generally available, although we do know of one policy under which it is offered. Some cover forms part of many household contents policies, although it will often not provide sufficient to cover all expenses.

8.40 It is obviously important that any claim under the commonhold association policy should not be prejudiced by individual units having taken out their own insurance policies which duplicate or overlap the cover given by the general policy. They will therefore be forbidden to effect such policies but, of course, will be fully entitled to insure the contents of their units. Nor will they be stopped from effecting specialist insurance, such as separate insurance for plate glass, which is common in the case of shops.

Third party insurance

8.41 In addition to property insurance a commonhold association will be required to take out third party insurance. This will cover liability for injury to any person on the common parts and also public liability for damage which is created inside the commonhold but where the effects are felt outside. This is essential, because the association is unlikely to have sufficient funds to satisfy any claim, so that in the absence of insurance, the injured person would have to take action against the individual unit owners, and because of the restricted liability (explained above: para. 8.10) they would only be able to recover full compensation if all owners were able to pay their shares. The absence of insurance would be unfair in two ways. First, visitors to the commonhold property would not be sure of obtaining compensation without difficulty, if at all. Secondly, because claims would be payable by members of the commonhold association at the date of any judgment against it (rather than by those who were members at the date of the injury, because it might not later be possible to trace them), the units might become unmarketable while a claim was pending because prospective buyers would in effect be faced with the prospect of buying a law suit. There can, however, be no sanction for failure of the commonhold association to take out such insurance because the insurance may be unavailable to that particular commonhold. If it were thought desirable a sanction could be imposed where the duty of the association was merely to use its “best endeavours” to secure such insurance.

8.42 To ensure that the third party insurance is effective in providing protection for visitors, there would be an additional duty on the association to make all necessary claims against insurers.

Duty to supply information

8.43 As we have explained, in para. 5.16, the prospective purchaser of a commonhold unit will need certain information about the financial affairs of the commonhold, so that he can be sure that his affairs are properly conducted and can judge his likely liability for services, etc., in the future. The commonhold association will be under an obligation to answer enquiries from unit owners or their mortgagees, when made on a standard form (see Appendix B Form VII). There is a possibility that the association might divulge information which some unit owners would consider undesirable. It would, however, be unrealistic to impose an obligation of secrecy on the commonhold association and indeed it would be a departure from the general principles of law to do so. There is no law, for instance, which prevents a trader from disclosing his customer’s debts.

Duties when the commonhold ends

8.44 When the commonhold ends, the commonhold association becomes the owner of the legal estate of the entire property, both the common parts and all the units, on behalf of the unit owners. The liquidator appointed by the association will have a duty to sell the
property and deposit the proceeds in a separate bank account. After paying all the debts, charges and expenses, the liquidator must distribute the net sum to the unit owners in the proportions recorded in the commonhold declaration. If any of the mortgages on the individual units remain outstanding, sums owed to the mortgagees are discharged from that unit owner's share, before he is paid.

8.45 As an alternative on ending the commonhold, it would be possible for all the unit owners to resolve to rebuild the property and create a new commonhold. As the association is holding the money as trustee on behalf of the unit owners, it is bound to follow any directions which they may give, so that money might, as an alternative, be paid in promoting the new commonhold. If that decision was not unanimous, those who dissented would be entitled to their proportion without question, and only those who agreed would have their money devoted to the new project.

POWERS OF THE COMMONHOLD ASSOCIATION

8.46 As well as duties the commonhold association will have the following powers:

(a) to employ staff and supply them with accommodation and equipment where necessary;
(b) to employ contractors and advisers;
(c) to make contracts for the supply of material and services;
(d) with the approval of a specified majority of members to sell, exchange, lease and grant licences and other rights over land forming part of the common parts;
(e) with the approval of a specific majority of members to purchase or otherwise acquire for any estate or interest any land to be held as common parts;
(f) to invest money of the commonhold association not immediately required in such manner as may from time to time be determined and to hold sell or otherwise deal with such investments;
(g) to embark on renovations and improvements (subject to obtaining the support of the necessary majority);
(h) to bring proceedings against third parties and unit owners (e.g. for damage to the building or for non-payment of contributions to the service charges);
(i) to borrow money in order to carry out its functions but not to mortgage the common parts as security for a loan;
(j) to carry on any other activity which may seem to the association to be conducive for the efficient performance of the duties of the association and to further the aims of the commonhold.

MANAGEMENT COMMITTEE

8.47 Some commonhold associations will be too big to allow all the members satisfactorily to conduct its everyday business. A management committee is elected to administer it in such a case, in the same way as a board of directors manages the affairs of a company. A management committee is obligatory when the commonhold consists of more than six units, and a smaller association can elect one if it wishes. The rules (in Appendix C) deal with the powers, appointment, disqualification, removal, expenses and proceedings of the management committee.

8.48 Membership of management committees will be limited to members of the association, i.e. unit owners, to encourage the involvement of people in the management of their own property. With a limited field from which to recruit, it is important that no unit owner be discouraged from serving on a committee, through fear of unreasonably incurring legal liability from failing in his duties. Many unit owners will not have any specialist knowledge or management skills, and those who do may be wary of volunteering their services if too high a standard of care and skill is expected of them. On the other hand, it is obviously important that a reasonable standard should be required, because committee members are delegated to look after not only their own property but other people's. We recommend that the standard required should be limited in this way:
Every committee member is required, in carrying out his duties, to exercise the degree of skill and care which may reasonably be expected of the owner of a freehold house, who has received no special instruction or training, when conducting his own affairs in relation to that house.

8.49 Although this standard, modelled on the ordinary unskilled property owner, will apply in all cases, even where the committee member in question is in fact a knowledgeable professional person, it will not limit the responsibility of anyone offering a professional service to the association. If a committee member undertakes to exercise his particular professional skills for the benefit of the association, then the normal standards of professional competence will apply, even if he does not charge fees.

8.50 The association rules set out in Appendix C provide that a committee member should have an indemnity in defending any proceedings “in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the association.” This is a strictly limited indemnity provision, but we do not consider that it will cause injustice, bearing in mind that the standard of duty imposed on committee members is limited. It is unlikely that an association would have sufficient funds to pay any large indemnity, and we are advised by the Association of British Insurers that it would be difficult, if not impossible, to obtain insurance cover to provide indemnity for amateur managers at reasonable cost, if at all. If something which a committee member does, as part of his committee duties, causes injury to anyone on the common parts, it will be covered by the association’s third party insurance.

MANAGING AGENTS

8.51 The duties of a commonhold association will be carried out much more effectively if managing agents are employed. In the case of large developments it will clearly be worthwhile to have managing agents and we hope that they will also be employed in smaller developments. The members of the association will then have the benefit of professional expertise and will be relieved of many of the day to day running responsibilities. This could be especially important where the members are elderly or are absent for much of the time. On the other hand we do not propose that it should be compulsory to appoint managing agents. One reason for this is that it is difficult to define who qualifies as a suitable managing agent. There is no separate profession of managing agents in this country, and even a qualified surveyor may have no expertise in management. Another reason is that it might be an unnecessary imposition. In some case, unit owners will be able, willing and competent to manage the association, and it would not be sensible to insist that they spend money on employing outsiders to do so.

PROMOTERS

8.52 When a commonhold is first established, the promoter will necessarily have all the votes in the association. Sales of units may not be brisk, and he may remain in the majority for a considerable period. Some decisions of the association will be reserved for unanimous vote, so that as soon as there is one other unit owner the promoter will not necessarily be able to have his way in those matters. In other cases, the decision is by a majority, and the promoter will effectively be able to take those decisions without consultation. His object may be simply to achieve swift sales of units. This lack of long-term perspective may cause conflict, and be against the best interests of the management of the property.

8.53 We rejected the idea of having a voting system weighted against the promoter, which applies in some other countries. There are two principal reasons. First, any system is liable to abuse. If the restrictions apply only to the promoter, he can transfer units to an associate, so that it falsely appears that he no longer controls the association. Or, in the contract for selling the units, the promoter can arrange to control the votes that purchasers would otherwise have, by power of attorney or proxy. Secondly, there is no evidence in this country of abuse by promoters of leasehold developments where the same problems could, at least in theory, arise. There is no reason to suppose that abuse is more likely, or that its consequences would be worse, in relation to commonholds. As we have explained, we aim
to depart as little as possible from practices already established and familiar in other areas of property law. An approach to commonholds which was too restrictive would simply deter promoters from using this scheme.

8.54 A promoter who postpones the calling of the first annual general meeting of the association can prevent control of the property passing to the unit owners. There would be no opportunity to elect a committee of management. This would certainly be an abuse, and the rules therefore make provision against it. The first annual general meeting is to be held within 90 days from the sale of units of which the owners are entitled to 50% of the votes, (or of the first phase in a phased development) or—if it is sooner—within 180 days of the sale of the first unit. The second possibility deals with the situation where the sales are slow. This does not mean that at the first annual general meeting the control will pass from the promoter. What it does is to allow the early purchasers a chance to express their views and obtain information and discussion.

8.55 There is another area of concern in the transition between the period of control by the promoter and control by unit owners. This concerns the so-called "sweetheart contracts". These are contracts which the commonhold association enters into during the period when it is under the control of the promoter and which benefit the promoter (perhaps unreasonably), and the future members of the association find that they are automatically bound by them. Examples of such contracts might be: a long-term management agreement with a managing agent subsidiary of the promoter; an agreement to use facilities the existence of which have been used to promote the commonhold (e.g., a tennis court) but which are on land which the promoter owns outside the commonhold. These contracts may be totally proper and unexceptional, or they may be unreasonably onerous. It is necessary to ensure that the association continues to have the benefit of reasonable contracts, while not being burdened by unreasonable ones.

8.56 The Act will for this reason provide that for a period of 6 months after the first annual general meeting at which the majority of votes are not in the hands of the promoter (which could be some time after the commonhold is established) contracts entered into earlier by the association will be voidable. That is to say, the association will have the right to cancel the contracts, but they will not automatically be void. In a case where both parties consider the contract to be beneficial, and therefore want it to continue, no action would have to be taken. A firm and reasonably short limit on the time during which the association has the option to cancel is only fair to those dealing with the association who have a right to know as soon as possible where they stand. A contractor who wished to protect himself if in fact the association exercised its power to avoid the contract could call on the promoter to enter into an indemnity in this event.

8.57 Where there is a phased development it is possible for the promoter to escape to be in control of the association once the first-phase units have been sold, but once again be in control when the second phase is completed. However for reasons of simplicity we recommend that once the association has escaped from control of the promoter the "sweetheart contract" rule should not be reimposed.
PART IX

SERVICE CHARGES AND RESERVE FUNDS

GENERAL PRINCIPLES

9.1 For a commonhold to be successful, it is essential that its management be on a sound financial basis. All the funds necessary to finance the provision of services have to be collected by the commonhold association from unit owners. This means there must be an efficient and effective system for assessing, collecting and enforcing payments of service charges. This should be backed by a reserve fund, built up from service charge contributions and maintained by the commonhold association, to prevent difficulties caused by fluctuations in the cost of services. Another important reason for a reserve fund is to ensure that money is available for major items of expenditure, such as a new roof, which cannot be met out of the current year’s service charges. (See para. 9.8).

9.2 In some states in America, the first purchasers of condominium units have to deposit a sum which gives the management corporations some initial working capital. Although the suggestion was made to us that we should follow this example, we know of no similar requirement made when leasehold developments are launched in this country. Because this does not appear to have created difficulty, we do not propose that there should be such a requirement for commonholds. Requiring money to be deposited in that way would increase the purchase price of commonhold units and make them less attractive.

9.3 There may be occasions when a commonhold association temporarily has insufficient funds, and it will then be entitled to borrow money. However, it will not have power to give security for loans. The only land which an association owns is the common parts. If they were mortgaged, and the mortgagee exercised his power of sale, the whole commonhold would be put at risk because it would be deprived of its vital facilities. Rights over the common parts are an integral part of the interest a unit owner has. Besides, it will often be the case that the common parts by themselves—e.g., merely a drive, hall and staircase—would not be saleable, and therefore not a satisfactory security. What an association could borrow against is the right to collect future service charges.

SERVICE CHARGE CONTRIBUTIONS

9.4 The amount of service charge contribution allocated to each unit is stated in the commonhold declaration. We pointed out, in Part VIII of the Report, that market forces are likely to influence this allocation to ensure that it is fair. Normally, the allocations will not be varied after the commonhold has been established, although it is possible in limited circumstances as set out in Part XIII of the Report.

9.5 There are many cases in which, within a single commonhold, there will be some services and facilities which some of the owners enjoy but others do not e.g., the owner of a unit on the ground floor may not need to use the lift and stairs; in a mixed-use development residential owners may scarcely use the delivery area which is regularly used by commercial owners, etc. It would be possible to have separate service charge calculations in respect of any facility which is not used equally by all owners, dividing the costs of them between only those owners who benefit, or in the proportion they use the facilities. Carried to a logical conclusion in a complex development, this can produce the need for a considerable number of separate calculations. In the interests of simplicity, there will be no such differential charges in commonholds. However, the position that different owners will enjoy different benefits from the services will be fully taken into account when the contributions are fixed at the start of the commonhold.

9.6 The commonhold association may sometimes be able to show that particular expenses it faces are caused exclusively by one or more identifiable unit owners. An example might be repairs to a service road or a parade of shops where only one shop is served by heavy lorries, the others being visited by light cars and vans. Apart from the difficulty in practice of deciding whether particular expenses have in fact been incurred for the benefit only of a few units—could a roof repair be said to benefit only the units on the top floor?—the basis of commonhold ownership demands that all general expenses of the whole property should be shared. The only exception is a unit owner who deliberately causes damage. He must pay the whole of the cost, and cannot have it shared by inclusion in the service charge.
9.7 One of the expenses which a commonhold association will sometimes have to face is the cost of taking or defending legal proceedings in a dispute between one owner and the association. Clearly, it would be unfair on a unit owner who is successful in an action against the association if he had to pay a contribution towards expenses incurred by the unsuccessful association. Circumstances may vary considerably, and we therefore recommend that when judgment is given against an association in favour of a unit owner the court should have a discretion to exempt the unit owner from contributing to some or all of the cost of satisfying the judgment.

RESERVE FUNDS

The Need

9.8 Although the cost of many items included in a service charge will be predictable and regular—e.g. costs of cleaning, lighting, heating etc.—others are disproportionately large and only incurred occasionally. Of these, some seldom have to be faced, e.g. replacing a lift or roof-refurbishment, while others arise regularly although not every year—e.g. outside decoration. If this work is to be undertaken promptly when required, there must either be a disproportionate demand on those who then happen to be owners, or reserve funds built up over the years. The Report of the Committee of Inquiry on the Management of Privately Owned Blocks of Flats (1985), the Nugee Committee, stressed the importance of reserve funds for this type of expenditure. The Landlord and Tenant Act 1987, gives effect to the proposals and provides for reserve funds to be held by a landlord or third party on trust for the tenants. Under the commonhold legislation the Commonhold Association will hold reserve funds on trust for all the unit owners.

9.9 The need is not limited to residential developments. It is true that some owners of commercial and industrial commonhold units will be well able to meet the irregular sized service charge demands and less willing to deposit money against future commitments. All the same there are many small businesses which suffer cash flow and solvency problems and find unexpected demands difficult to cope with.

9.10 The majority of those whom we consulted on this problem considered that all commonholds of whatever type should be backed by reserve funds. This is our recommendation, because we think there are two particularly important reasons for it in commonholds:

(a) Third parties who supply materials and services to a commonhold association need reassurance that there are sufficient funds to pay them. Without a reserve fund, the association is unlikely to have substantial realisable assets.

(b) The unit owners themselves have to be sure that there are funds for the regular maintenance of the buildings and other facilities. Maintenance not only affects the fabric of the property, but also the value of the individual units. No unit owner has the power to choose who shall purchase other units, and cannot check a purchaser’s creditworthiness. The control which some landlords exercise over the identity of assignees of leases is incompatible with freehold ownership. Reserve funds therefore reduce the chance of undue prejudice to other unit owners by one of their number being unable to pay his service charge contribution promptly. We discuss the ways of enforcing payment of service charges below (paras. 9.21-9.27), but enforcement cannot be instantaneous, and the larger the sum the longer it is likely to take.

Specified Purposes

9.11 The purposes for which reserve funds can be used will be prescribed by regulation. The commonhold declaration can add to these purposes, and others can be added later by unanimous decision of the commonhold association. Where there is no unanimity but at least 80% of the votes are cast in favour, the majority can apply to the court for approval.

9.12 Expenses within the specified purposes are payable from the reserve fund, but no payments can be made for any other purpose. This provides a guarantee that funds will be available when needed. On the other hand, when the association faces a bill for one of the specified purposes, it must be paid from the reserve fund, to the extent that the fund is large enough, so that unit owners do not face the prospect of having to pay twice, once in advance to a reserve fund and again when the bill is presented because the majority feels the reserve fund should be kept for other contingent liabilities.
The Amount

9.13 Obviously, it is impossible accurately to forecast in advance what money will be needed for future expenses. In some countries, reserve funds are built up by a charge which is a fixed percentage of the annual service charge. Applying such a rule to all developments produces some funds which are completely inadequate and others which are unjustifiably large. We therefore recommend that a commonhold association has a duty to maintain a reserve fund which it reasonably considers adequate. When the commonhold is established, a surveyor could certify what he considers will be adequate, and the sum should be reviewed at regular intervals. This seems to be the only way in which a reasonable relationship between the size of the fund and the likely calls upon it can be maintained. The progress of the reserve fund may well be something which unit owners will wish to review at annual general meetings of the commonhold association.

Tax

9.14 There are different tax implications for tax payers in different situations and we appreciate that for some taxpayers there are disadvantages in reserve funds. This is a general problem, not confined to commonholds. Our recommendations suggest what we believe are the best rules for those who participate in commonholds, but cannot take account of existing and future tax consequences. It may well not be appropriate for commonholds to be accorded any special tax treatment, but if as a result of the establishment of the commonhold scheme the use of reserve funds becomes more widespread, their taxation consequences may need to be reconsidered.

Apportionment

9.15 When a unit in an existing leasehold development is sold, there are often conveyancing difficulties over the apportionment of a share in the reserve fund. Assuming a specified sum is attributable to that unit, should it be reflected in the price, so that the buyer pays the seller for the benefit he acquires? There is no single practice adopted abroad when selling units, and negotiations seem to depend on whether the balance of the reserve fund is viewed as payment for use already enjoyed or advance payment for future facilities. We see no need to adopt any particular rule, and suggest that it be left as a matter of bargain between parties.

9.16 In the case of a leasehold development, there is also difficulty when the building is finally demolished, because of the competing interests of the freeholder and the leaseholders. By contrast, when a commonhold ends the matter is simple. The commonhold association then holds the reserve fund on trust for the unit owners in the shares, fixed in advance, in which they own all the property. (See para. 10.34 for the position where a tenant is entitled to part of his unit owner’s share).

ENFORCEMENT

Who should be liable?

9.17 If the commonhold association cannot collect service charges, it will not be able to carry out its duties to supply services, insure the property, and repair and maintain the structure of the buildings and common parts. Even if some unit owners pay, the default of others will put the association in jeopardy. This is the reason for extending liability from freeholders to tenants.

The Freeholder

9.18 The freeholder is primarily liable for service charges, and remains so even after he lets his unit. He may, of course, stipulate in the lease that the tenant should pay him, as landlord, a sum for service charges. When a unit is sold, the seller will continue to be liable for future service charges until notice of the change of ownership is received by the commonhold association. The buyer will be jointly and severally liable for any outstanding service charge with former owners, i.e. the original debtor and any intermediate owners. The usefulness of this provision is not so much the additional assurance of payment which it gives to the association, but rather the pressure that any purchaser is likely to exert on a seller to ensure that all arrears are cleared before the sale is completed.
Tenants

9.19 A tenant with a lease of 21 years or over of a unit is also liable to pay the service charge to the commonhold association, although of course an association is not entitled to the same amount from more than one person. Where a tenant has to discharge a liability which should be borne by the landlord he will be able to claim such sum from the landlord, (see para. 9.26 for the methods of obtaining reimbursement). The reason for imposing liability on such tenants is first that they will often be the ones enjoying the benefit of the services, but more importantly, the possibility which we have already mentioned that a commonhold association may not be able to recover what is due from the freeholder landlord. Clearly, with short leases there is a danger of injustice to the tenants, particularly where the service charge in question includes payment for a major item of expenditure such as the repair of the roof. We therefore recommend that they should not be liable for service charges except insofar as there is a direction from the commonhold association to divert their rent, (see para. 10.13 below). We do not think that injustice will be caused. Tenants of long leases normally have professional advice and make inquiries which will reveal that the property is in a commonhold and that there is potential liability, (see generally Part X of the Report—The Position of Tenants).

Other Occupiers

9.20 We do not consider it possible or appropriate to make licencees and others occupying units on informal arrangements liable for service charges. On the other hand the deduction from rent provisions (see 9.24 below) will be equally applicable to tenants and licencees.

How should payment be enforced?

9.21 Service charge contributions will be a debt which the unit owner owes to the association. Its amount will be quantified by a notice from the association to the owner, which will make that sum due. If it is not paid, the association will be able to sue for it as any other creditor can, and will have the normal remedies for enforcement of any judgment in its favour.

Interest on arrears

9.22 An owner who is in arrears in payment of service charge for more than one month after it is due, will automatically be liable to pay interest on those arrears. This is not intended as a penalty, although it will give an incentive to pay promptly, but as compensation to the other unit owners. To be realistic, the interest rate will have to vary from time to time, and therefore be prescribed by regulation. It could be linked to the rate of interest payable on judgment debts.

Distress

9.23 The remedy of distress would not automatically be available for recovery of service charge arrears. We do not recommend that it should be extended to this situation.

Deduction from rent

9.24 When a unit is let on a short lease or licence and the agreement makes the landlord liable to pay the service charge, the commonhold association will have the power, if it is not paid, to direct the tenant to deduct the amount of the outstanding service charge from the rent which he normally pays to the landlord. The sum, which represents the service charge arrears, will be paid to the commonhold association and only the balance of the rent, after such deduction, will be paid to the landlord. The same will apply if the owner has granted a licence to occupy the unit. This type of remedy, diverting rent to make payments which the landlord should have made, is available to head landlords under the Law of Distress (Amendment) Act 1908 and to rating authorities under the General Rate Act 1967. This remedy is only possible where the occupier pays rent on a regular basis, and cannot apply where he has paid a lump sum in advance.

9.25 A fair rent can be registered under the Rent Act 1977 and can include an element for services supplied by the landlord, but it may be registered on the basis that a variable service charge is payable in addition. In either case, the calculation of what the tenant has to pay for services may result in a smaller sum than the owner has to pay the commonhold.
association. One reason for this is that the landlord cannot charge his tenant with the cost of complying with the repairing responsibilities which statute places on the landlord. When the service charge payable to the association is greater than the tenant has to pay, the landlord will have to meet the difference.

9.26 In the case of long leases where the landlord's failure to pay the service charge to the association results in the tenant having to pay, and if the amount exceeds his rent, the tenant will have the right to sue his landlord for reimbursement.

Lien

9.27 The commonhold association has a lien for all arrears of service charge. There will be an entry on the Land Register that the unit is subject to any outstanding service charge, (see Entry Number 1 in Charges Register of specimen unit title Appendix B). This operates as a charge on the unit of the owner who is in arrear, giving the association the power, in the last resort, to sell the unit to pay off the arrears. The lien is a first charge on the unit. If the unit has to be sold, after payment of the arrears and all expenses incurred, the balance of the proceeds of sale go to pay off other mortgages, with the residue going to the unit owner.

9.28 Although the lien has priority over any mortgage, this provision is in the interests of the mortgagees. Non-payment of service charges undermines the mortgagee's security, but if he were to exercise his remedy of selling the unit he would not obtain a realistic price for it, if indeed the property were marketable at all, while service charges were outstanding. In the case of building societies and other commercial lenders, it is possible that they will have several loans secured on different units within the same development. Any disadvantage in having their interest postponed to a lien on one unit is offset by the additional protection which they have in relation to other units, through an efficient system of obtaining payment of service charges. It also gives more protection than that enjoyed by the mortgagee of a lease whose interest is terminated where a landlord forfeits the lease on breach of covenant by the lessee.

9.29 The Building Societies Act 1986 defines certain mortgage loans as class 1 advances, and limits the number of other advances which societies may make. The class 1 advance is where there is no other mortgage on the land outstanding in favour of someone other than the society, unless the other mortgage is redeemed or postponed to the basic security. It would clearly be unsatisfactory for building societies if what had been a class 1 advance could suddenly be taken out of that class because a lien arises in favour of the commonhold association. However, because a lien for service charge arrears will not in fact prejudice the society which has made a loan on that unit, provision should be made to ensure that building society advances can be made on commonhold units in the usual way. Class 1 advances will have to be redefined to include advances on security of a commonhold unit, notwithstanding that it may potentially be, or actually is, subject to a service charge lien in favour of the commonhold association.

9.30 Where the unit is let and the commonhold association has a lien for service charge arrears, the position of the tenant depends on the length of his lease. Where his lease is for under 21 years the commonhold association can only sell the unit subject to his interest. In the case of a lease for 21 years and over the commonhold association has an automatic lien not only on the freehold interest but also on the long lease. These liens will be protected by registration on both the freehold and leasehold titles. The association will be able to sell the freehold free of the lease as the liens take priority over any other interests. This is essential if the lien is to provide real security for the association, because there will be cases in which the reversion is sufficiently devalued by the terms of the lease to make it virtually worthless. Had the tenant not been aware in advance of the position, it would be unjust if his interest could cease if the association had to sell the unit to recover service charge arrears. However, the tenant will have been made aware of the position, either when the property was converted into a commonhold (because his consent is needed: see paras. 4.10 and 4.11), or when the commonhold unit was let to him, when the prescribed notice has to be given (see para. 10.8). That notice will state that the property is within a commonhold, and explain the consequences of non-payment of service charges as well as the position when the commonhold ends.
PART X

THE POSITION OF TENANTS

GENERAL PRINCIPLES

10.1 This has proved the most difficult part of our scheme to formulate, as we have had to reconcile several conflicting principles. The freehold unit owner should as nearly as possible be in the same position as any other freeholder. It should not therefore be necessary for him to obtain the consent of the commonhold association before letting his unit. On the other hand, because units are interdependent the actions of the unit owner (or his lack of action) may affect the other units and the value of the whole site. This is particularly so in the case of interests granted to tenants which may hinder the redevelopment of the commonhold property. All the same, to deprive tenants of their established rights, just because their landlords are unit owners, would be singularly unjust.

10.2 We have therefore introduced a new principle of compensation. Where a tenancy is prematurely determined because a commonhold is brought to an end the tenant will be entitled to compensation (see para 10.34).

CONVERSION TO A COMMONHOLD

10.3 As mentioned in para. 4.12, all existing tenants and sub-tenants will have to consent to the conversion of an existing property into a commonhold or their consent will have to be dispensed with by court order. Although the leases and tenancy agreements will continue, there are a number of reasons to require their consent:

(a) the effect of termination (see below);
(b) the terms of the lease may be modified, because it is necessary for tenants to comply with the standard regulations (which affect both unit owners and occupiers);
(c) the potential liability for service charges (see below);
(d) management and support of the system should be made easier if occupiers have positively consented.

10.4 It is possible that a minority of tenants might object to conversion to commonhold. It is not desirable that they should be in a position to block the conversion if their objections are unreasonable. Accordingly, we make the following recommendation. If the tenants of no more than 20% of all the existing units object to conversion, those promoting the commonhold can apply to the court to dispense with the consent of the objecting tenants. The court will consider whether the tenant is being reasonable in objecting, taking into account his personal circumstances in the light of the special incidents which arise when he becomes a tenant within a commonhold. It should be emphasised first that where the objectors occupy more than 20% of the units there can be no conversion or application to the court at all and secondly that in the case of multiple lettings of a unit the refusal of any one tenant to consent will mean that the tenants of that unit have not consented.

10.5 The security of tenure afforded to tenants under the various statutory provisions will continue and will not be affected by their landlords becoming unit owners in a commonhold. However, tenants could be adversely affected by (a) and (b) in para. 10.3 above. If it is considered that a forceful landlord seeking to convert to commonhold might be able to obtain "a consent" which was not genuine, legislation could provide that a court order would always be necessary where a tenant had statutory protection.

NEW LETTINGS AFTER A COMMONHOLD IS ESTABLISHED

10.6 Where leases and tenancies are granted after the creation of the commonhold, the tenants will be aware that the property forms part of a commonhold (see para. 10.8) and of their position on non-payment of service charges and on termination. If they do not like the consequences of being part of a commonhold, they are free not to enter into the lease or tenancy agreement.

10.7 One of the consequences of being part of the commonhold is that the regulations, governing mutual relations between unit owners, affect occupiers of the units, and therefore tenants. Accordingly, if, as may often be likely, the use to which a unit may be put, what alterations if any can be made to the fabric etc., are governed by the regulations,
those rules will apply to tenants even if there is nothing in the lease or tenancy agreement to that effect. It should be explained that while the main body of commonhold regulations will be standard, the promoter of a commonhold development will be at liberty to amend and supplement the regulations (and indeed they can be varied subsequently by a resolution of the commonhold association; see Part XIII). This arrangement should not result in any injustice, because there will be free access to details of the regulations which apply from Land Registry records. No amendment to the regulations in respect of a particular commonhold will be valid until registered.

10.8 To ensure that tenants know that the unit forms part of a commonhold, a unit owner will, before letting, be obliged to give the tenant a prescribed form of notice to inform him and set out the main consequences. Failure to do so will not invalidate the letting, but will entitle the tenant to obtain compensation from the landlord should he suffer loss as a result.

10.9 Besides giving notice to the tenant, the unit owner must also inform the commonhold association of any letting. It is important that the association knows who are the current occupiers of the units, particularly in connection with the collection of service charges. It is also in the tenant's interest that the association be informed, in case he needs to claim compensation if his lease be prematurely ended by the termination of the commonhold (see paras. 10.34-10.40).

SERVICE CHARGES

10.10 As stressed in Part IX, the whole financial stability of the commonhold depends on the prompt and efficient collection of service charges. The primary obligation to pay the charge rests on the freehold unit owner. There may, however, be situations where the unit owner defaults and it is impossible to collect the money from him. An example is where a non-resident unit owner grants a long lease at a low rent (either at a premium or as part of a family arrangement). To guard against this event some provision is needed to enable the commonhold association to obtain its money.

10.11 Where rent or any other sum is payable by a tenant or licensee (and there need be no distinction between the two for this purpose) to a unit owner as landlord or licensor, the commonhold association will have the power to direct that some or all of the money be paid to the association, instead of to the unit owner. Notice containing that direction will only cover money due but not yet paid. Anything paid in advance to the unit owner is not affected, and the tenant is therefore not liable to pay for a second time. The effect of the association giving a notice containing a direction will be:

(a) the tenant or licensee must comply with the direction as regards future payments;
(b) failure to comply will mean that the occupier does not obtain a good discharge. The money is still owed to the association, which can sue for it;
(c) where he does comply, by paying the association, the occupier receives a good discharge (i.e. it is legally equivalent to his paying his landlord.) Therefore, there is no possibility of the unit owner forfeiting the lease or agreement for non-payment of rent.

10.12 It may of course turn out that the rent or money payment diverted to the association is not sufficient to discharge the unit owner's service charge liabilities. Whether or not the tenant's liability is limited to the amount of his rent depends on the length of his lease. Our proposals are different for short-term leases and for long leases. For this purpose, a long lease is one granted for a period exceeding 21 years. This distinction is accepted for other purposes, and is particularly appropriate for commonholds as the system is based on registered land. With minor exceptions, only leases which exceed 21 years can be registered. An original tenant of a long lease, or the purchaser of one, will therefore be aware of the standard registered lien (see below) which gives the commonhold association the power of sale over a unit whose owner defaults in the payment of service charges.

SHORT-TERM LEASES

10.13 Tenants of leases for up to 21 years will only be liable to the commonhold association for service charges to the extent of the rent, service charges and any other payments which they agreed to make to their landlord under the lease or tenancy agreement. In most cases, this should be sufficient to cover current service charge liability.
For instance, in the case of Rent Act tenancies it is anticipated that the fair rent registered by the rent officer (which can include any liability for services) will generally be higher than the service charge payable to the commonhold association.

10.14 If, after the diversion of the rent to the commonhold association, there are still outstanding service charge arrears, the association can exercise its lien against the unit owner’s freehold interest. This gives it a mortgagee’s power to sell the unit, and any sale will be subject to existing tenancies. Where the tenancy has Rent Act protection, the value of the reversion will obviously be reduced, but nevertheless, the sale should provide enough money to pay off the arrears. Future service charges will then be the responsibility of the new unit owner.

LONG LEASES

10.15 The liability of tenants of leases of over 21 years for payment of service charges due to the commonhold association would not be restricted in this way. They will be liable for the full amount of the charge, even where it exceeds the rent. We do not consider that this is unduly hard on such tenants. Most people who propose to take a long lease will have professional legal advice. On investigating title it will be obvious that the lease is granted out of commonhold property and the landlord is also obliged to give notice of this fact (see para. 10.8). The competent adviser will point out the consequences which follow from being part of the commonhold, including the residual liability for service charges. In many cases a unit owner granting a long lease will pass on the burden of the service charge to the tenant. As part of the bargain, the tenant may often insist on the unit owner giving him a proxy so that he can exercise the unit owner’s vote at commonhold association meetings, including those at which decisions on service charges are made.

10.16 The commonhold association’s lien, securing service charge arrears, will attach not only to the freehold interest in a unit and also to any leasehold interest created by a long lease. If neither the unit owner nor his long leasehold tenant pays the service charge, it will be open to the commonhold association to exercise the lien after giving appropriate advance notice. This will enable them to sell the freehold unit free from the lease, so that the purchaser will be able to take occupation. This arrangement follows logically from the tenant having full liability for the service charge. However, the tenant’s responsibility is, effectively, only as guarantor for the unit owner, so that where he pays what the unit owner should have paid he will be able to claim it back from his landlord (see para. 9.26), unless the bargain between the parties is that the tenant pays.

TERMINATION OF THE COMMONHOLD

10.17 Cases when the commonhold is brought to an end will be extremely rare. Nevertheless, it is obviously important that when this does happen, there should be satisfactory safeguards for tenants. We do not recommend that it should be necessary to obtain the consent of sitting tenants before bringing a commonhold to an end, and the reasons are explained in para. 14.6.

10.18 The important point is that when a commonhold is brought to an end it will almost always be for a purpose which requires that vacant possession be given of the whole property, whether for re-development or for sale. If a unit has been let, whether on a long lease or a short tenancy, the owner of the unit will not normally be entitled to possession until the letting ends. Given that unit owners have complete freedom to let, it could be that, in a block of reasonable size, a time would never come when all units were unlet so that the commonhold could be satisfactorily ended. This undermines the freedom of unit owners to adopt one option in dealing with their properties—ending the commonhold—which may, in a particular case, be the logical and proper one. In effect, the action of the unit owner who lets his unit stymies his fellow unit owners. We have concluded that it is proper to maintain the freedom of action of unit owners, as freeholders, to decide that the commonhold must be ended. This means that contractual leases and tenancies must end when that decision is implemented. The registration of the resolution to terminate the commonhold will have that effect. However, it is also right that the tenants should not be unduly prejudiced, and we therefore recommend two safeguards: first, they will receive advance warning of what could happen, (see para. 10.8), and secondly if it does they will be compensated (see para. 10.34).
10.19 If the tenants have statutory protection then whether or not the commonhold association will be able to obtain vacant possession depends on why the commonhold is ended. It is likely that there will be three main cases in which a commonhold ends. First, the commonhold system may not prove suitable for a particular development. The units would then be converted back to the traditional form of tenure. Secondly, the unit owners, or the commonhold association on their behalf, might sell the entire development on a non-commonhold basis. We think this will be very rare. Thirdly, demolition or reconstruction may be necessary. In the first two cases, tenants with security of tenure should be able to remain. This would avoid the possibility of commonholds being deliberately terminated simply in order to obtain vacant possession. In the third case, demolition or reconstruction of the premises, security of tenure should end. This ground already justifies terminating most security rights. The maintenance and improvement of the housing stock and other buildings is prejudiced if security of tenure prevents redevelopment.

10.20 The need for demolition or reconstruction of the premises in this context refers to the commonhold as a whole and not just the individual unit. This is to avoid a situation where one unit does not need to be reconstructed, but its existence could prevent the beneficial redevelopment of the commonhold.

10.21 We must now consider the application of these principles to the various forms of statutory protection, the rules of which vary.

10.22 Protected and statutory tenants under the Rent Act 1977. The landlord must give the prescribed notice to the tenant at the start of the tenancy. Once the resolution to terminate the commonhold is registered, the tenant automatically becomes a statutory tenant. The commonhold association can then apply for a possession order, provided there is a genuine intention to demolish or reconstruct the premises. A new mandatory ground for possession will have to be added to the Rent Act 1977, which will be similar to the existing ones, e.g. where an owner-occupier lets and is entitled to possession from the tenant provided he has given a preliminary warning notice and also wants the property back for his own use, or for certain other purposes.

10.23 Protected occupiers and statutory tenants under the Rent (Agriculture) Act 1976. The prescribed warning notice must be served on the tenant at the beginning of the tenancy, as in the case of Rent Act tenants. If the occupier is still employed in agriculture when the commonhold comes to an end, his employer is under a duty to rehouse him. If the occupier, or his successor, has become a statutory tenant, the commonhold association will have to obtain a possession order, having proved a genuine intention to demolish or reconstruct. A new mandatory ground for possession will have to be added to the Rent (Agriculture) Act 1976. The Act already prescribes mandatory grounds for possession which are similar to those under the Rent Act.

10.24 Restricted contracts. Again, a unit owner who lets his unit should give the prescribed warning notice to the tenant at the beginning of the tenancy. When a restricted contract comes to an end, the tenant only has limited protection. Termination resulting from the end of a commonhold will not therefore create particular difficulty. The commonhold association will be able to apply for possession, which, in accordance with the provisions which already apply, the court will be able to postpone for up to 3 months. The Act will need to equate the position of the commonhold association with that of a resident landlord, on whose behalf it will effectively be acting.

10.25 Secure tenancies. There is no reason in principle why local authorities and other public sector landlords should not be unit owners, so that when they let their properties secure tenancies are created. Here again, they should be obliged to give a warning notice to the tenant at the outset of the consequences of the ending of the commonhold. When it comes to an end, the commonhold association will be entitled to possession for the purposes of redevelopment. This will be the equivalent of the existing ground for possession by a landlord who wishes to redevelop and provides alternative accommodation. In the case of a former commonhold the commonhold association will have the power to seek possession but it is the former landlord who will be obliged to offer the alternative accommodation. Of course technically as the commonhold association
becomes the landlord on termination the tenants are no longer secure tenants for they do not have a public sector landlord. However, as the commonhold association represents the interests of the former unit owners we recommend that the tenancy shall be deemed to remain secure.

10.26 Many secure tenants now have a statutory right to buy their homes. In the case of a flat, this is a right to buy a long lease. Where the flat is part of a commonhold, the present law can and should be applied to allow them to purchase the freehold, with the established rights to a discount on the price, a mortgage and the alternative of a shared ownership lease.

10.27 The detailed implications of how commonholds are to be applied to secure tenants and their right to buy needs to be considered. One suggestion is that a tenant who loses his right to buy on the determination of his secure tenancy shall be entitled to compensation on the basis that this right is preserved.

10.28 *Long Tenancies.* When a long tenancy at a low rent of a property within certain rateable value limits comes to an end, the tenant has the right to a statutory tenancy under the Landlord and Tenant Act 1954 Part I. The landlord already has the right to possession where, for the purposes of re-development after the termination of the tenancy, the landlord proposes to demolish or reconstruct the whole or a substantial part of the relevant premises. This could apply in the case of the termination as a result of the ending of the commonhold. The Act would need to be adapted so that the lease ends when the commonhold terminates and to allow the commonhold association to obtain possession.

10.29 *Extended leases.* The tenant under a long lease at a low rent of a house can, if certain conditions are satisfied, claim a 50-year extension of the lease under the Leasehold Reform Act 1967. Again, the landlord has an overriding right to defeat the claim, or to end any extended lease already granted, “on the ground that for purposes of redevelopment he proposes to demolish or reconstruct the whole or a substantial part of the house and premises”. The new Act would need to specify that a right to possession arose when the commonhold ended, and could be exercised by the commonhold association.

10.30 *Business tenancies.* Under the Landlord and Tenant Act 1954 Part II most business tenancies can be ended, on or after the contractual term date, by between 6 and 12 months notice. The landlord can resist a claim to a new tenancy if he “intends to demolish or reconstruct the premises ... or to carry out substantial work of reconstruction”. The tenant then has a right to compensation. As long as it is clear that the termination of the commonhold ends the contractual tenancy, the commonhold association would be able to exercise the landlord’s right. The prescribed notice, given at the beginning of the tenancy, would warn the tenant that his lease might end prematurely. The tenant’s right to compensation need not be prejudiced.

10.31 *Assured tenancies.* Assured tenancies are granted by an “approved body” and relate to residential properties, but are governed by the legislation relating to business tenancies, adapted for the purpose. The recommendations set out in the previous paragraph can therefore apply to them.

10.32 *Agricultural holdings.* The aim of the agricultural holdings legislation is to encourage the efficient and economic use of agricultural land for the business of agriculture. A tenant farmer often has long-term commitments, and will not be able to obtain an adequate return from his investment of money and labour without security of tenure. For this reason, simply to give a tenant a prescribed warning notice, and then allow the commonhold association to obtain possession if the buildings were to be reconstructed or demolished, undermines this policy. The tenant’s main interest may be in the land, rather than the buildings, but they will nevertheless generally form a single economic unit. The building in question might, e.g., be part of a barn used for farming purposes. It seems unlikely that there will be many cases where a commonhold will be appropriate to divide the ownership of such buildings. But it would cause injustice to allow commonholds to be used for the sole purpose of avoiding the provisions of the Agricultural Holdings Act 1986. It would be possible to stipulate that there cannot be a commonhold where any part of the land is used for agriculture, but there are two objections to this. First, it is against our recommended policy of providing a land ownership system which can be applied to any kind of property. Secondly, it is possible that the use of land within a commonhold development could be changed to agriculture at a later date.
10.33 For these reasons, we recommend that special rules should apply to a commonhold unit which is let to a tenant who enjoys the protection of the 1986 Act. As before, the unit owner, as landlord, should give the prescribed notice, and the termination of the commonhold should end the contractual tenancy. The commonhold association should then be able to apply to the Agricultural Lands Tribunal for possession, on the ground that the buildings are to be reconstructed or demolished. The Tribunal will only grant possession if it is fair and reasonable to do so, and on such terms as it thinks fit. The tenant should be entitled to compensation, in accordance with the existing provisions of the Agricultural Holdings Act.

COMPENSATION

10.34 When a commonhold comes to an end, a unit owner is entitled to a predetermined portion of the value of the whole development, his ownership share. When the share is converted into money, either through sale or a payment under an insurance policy, the commonhold association is under a duty to distribute the net sum to the unit owner, after payment of any outstanding mortgages, liens and expenses. Where the property was let at the time of the registration of the resolution to end the commonhold, that net sum must be divided between the unit owner and his tenant. The unit owner is entitled to the amount which the property would fetch on the open market, at a time immediately before the resolution is passed, and subject to the tenancy. The tenant is entitled to the balance, and that is his compensation for losing his interest in the property.

10.35 With this formula for calculating compensation, there is no need to distinguish between the various types of tenancy. Where, for example, there is a short letting, the tenant's interest will only have a marginal effect, if any, on the market value. It is unlikely in those circumstances that the tenant will receive any compensation. The position will be quite the reverse where a long lease had 80 years to run at the date the commonhold ended.

10.36 In assessing the compensation due to tenants with statutory protection, the effect that ending the commonhold has in providing a ground for possession will be ignored. Fair provision will also be needed for tenants who previously enjoyed the right to buy.

10.37 Difficulties can occur if the commonhold association has no notice of the tenant's interest. This will not be a problem where the lease was originally granted for over 21 years as it will have been registered at the Land Registry. In other cases, the commonhold association will only be bound to make a compensation payment to a tenant where a notice of the letting has been given to the association. As mentioned in para. 10.9, it will be the duty of the unit owner to inform the association, and the tenant will have an interest in ensuring that this is done.

10.38 Although it is the commonhold association which has to pay the compensation to the tenant, it should be emphasized that it does so out of the net amount from the unit owner's ownership share. It is theoretically possible that the unit owner's secured debts created before the lease which take priority over it would be so great that the net amount of the share would be insufficient to pay the tenant all that he would otherwise get. The association's liability is, however, limited to that net share. If it paid more, the balance would have to come out of other unit owners' shares, which would be unjust.

10.39 A shortfall in a unit's share, resulting in underpayment of a tenant's compensation, is most unlikely. The debts secured against the unit owner's freehold interest are not likely to exceed the market value of that share—if only because in normal circumstances it will not be good security for any greater sum—and therefore the balances due to the tenant should generally be available without difficulty.

10.40 It should be made clear that the compensation is in addition to sums payable to tenants under other Acts. Other provisions compensate for the loss of goodwill, improvements etc; this compensation is for the loss of a tenant's property rights.
PART XI

POSITION OF MORTGAGEES

GENERAL PRINCIPLES

11.1 It is essential that commonhold units should provide satisfactory security for mortgage lenders. Many unit owners will only be able to buy if they have the help of a loan. The commonhold scheme must therefore be seen as practical by building societies, banks and other commercial lenders. They have therefore been included amongst the organisations whom we have consulted.

11.2 The Building Societies Association, in its report *Leaseholds—Time for Change?*, advocated a system similar to the strata title system which exists in New South Wales. The fundamental structure of commonholds is essentially similar, although necessarily there have been some adaptions to cope with the law and particular needs of England and Wales.

11.3 We have sought to ensure, as far as possible, that the procedure for taking a mortgage on a commonhold unit shall be no different from the procedure in relation to any other frehold property.

SECURITY

11.4 A unit owner is fully entitled to mortgage his unit, in the same way as the owner of any other frehold property. A lender can therefore take a mortgage of a unit in the way in which he is accustomed to doing. The Land Registry will issue him with a charge certificate as evidence of his interest with the land certificate being retained.

11.5 As well as registering the mortgage at the Land Registry, the lender should give notice of his interest to the commonhold association. This ensures that when an important resolution is to be proposed at a meeting, the mortgagee will receive notice of it.

11.6 If any service charges payable by the owner of a unit are in arrears, the commonhold association will have a lien for them. This is a charge which takes priority over a mortgage on the unit, even if the mortgage was created first. The reasons for this are set out in para. 9.28. All that need be repeated here is, that it is in the interests of mortgagees that there should be an effective way to enforce payment of service charges. In a normal case, however, service charge arrears will probably be discharged by the mortgagee and added to the mortgage debt. It will not be necessary to resort to the ultimate sanction of selling the unit. To encourage the practical resolution of these problems, the commonhold association will have to give the mortgagee notice of any arrears outstanding for more than one month. The association will not be able to take action under its lien for a further three months.

11.7 The commonhold association has no power to mortgage the common parts as security for a loan. This rule benefits mortgagees. First, in many cases the common parts will not provide satisfactory security for a mortgage, because they would not be readily saleable on their own (see para. 9.3). Secondly, (as also mentioned in that paragraph) the owner of a unit automatically has rights over the common parts. These rights ensure that the unit can satisfactorily be used and do much to maintain its value. Mortgagees of individual units therefore need to be assured that the rights over the common parts are not put at risk.

INSURANCE

11.8 Those who lend on commonhold units will wish to be sure that they are properly insured. Insurance is the responsibility of the commonhold association (see para. 8.35), and a satisfactory level of insurance is guaranteed by minimum insurance requirements which will be contained in regulations prescribed by statutory instrument.

11.9 The aim will be to have a single insurance policy to cover all the units and the common parts in any commonhold (see para. 8.36). This is favoured by the Building Societies Association, who stress the interdependence of units and common parts. It follows that a mortgagee will not be able to insist that individual unit owners take out their own insurance. Duplicate cover will be forbidden by legislation, to ensure that if a claim arises the amount payable to the commonhold association is not reduced and there is no complication in putting forward the claim.
11.10 The commonhold association has a duty to note the interests of mortgagees who notify it of their mortgage, and to supply details of the insurance cover. If a claim arises, insurance proceeds will be paid to the association, not to individual unit owners nor to their mortgagees. The association has the duty to repair and reinstate any units and common parts which are damaged. Neither unit owners nor their mortgagees have the option to take the money instead. However, where the damage is substantial, the members of the association can opt to end the commonhold completely, rather than rebuild. In that situation, there are safeguards for mortgagees, which are discussed below.

11.11 At present, mortgagees often give notice of their interest direct to the insurance company. There are two reasons why this is not appropriate for commonholds. First, as explained above, any money paid under the policy will only be paid to the commonhold association. Secondly, a cautious insurance company, wishing to avoid involvement in any dispute, could well insist on paying the claim with a cheque in favour of the commonhold association, all unit owners and all their mortgagees. This would be a considerable practical inconvenience, and could effectively freeze the money and prevent the rebuilding which would be in the general interest. Mortgagees have greater protection in a commonhold by their power to participate in the management.

MANAGEMENT

11.12 The day-to-day management of a commonhold is in the hands of the unit owners themselves, and it is important that the emphasis should be on co-operative participation. All the same, some decisions will affect mortgagees’ security. They will need the opportunity to participate in those decisions, and therefore to have notice of the meetings at which they are to be taken.

11.13 Some of those we consulted considered that mortgagees should not have such an intrusive role in the running of the commonhold. However under the general principles of mortgage law the consent of the mortgagee is needed if he is to be bound by any variation of the mortgagor’s property including the rights and burdens to which it is subject. To obtain the consent of the mortgagees of all the units in a commonhold would, particularly in large developments, clearly be impractical and hinder the effective management of the commonhold. Instead the mortgagee is given the right to vote on those matters which may affect the value of his security. We consider that this not only simplifies management but properly balances the interests of the mortgagees of one unit and those of the owners of other units and their mortgagees.

11.14 To ensure that mortgagees do have notice of resolutions which are important to them, but are not inundated with notices of meetings which are not relevant, resolutions will be divided into two classes, class 1 and class 2. When the commonhold association calls a meeting, it will have to specify on the notice the class to which a resolution belongs.

11.15 The Commonhold Act will place a duty on the commonhold association to give notice to mortgagees, as well as to unit owners, when a class 1 resolution is to be proposed at a meeting. At those meetings, the mortgagee will have an automatic right to vote. A mortgagee can, of course, arrange with his mortgagor to receive notice of other meetings.

11.16 Resolutions in class 1, will be those on the following topics:

(a) alienation (by sale or lease) of any of the common property (except as a result of compulsory purchase or a sale negotiated under threat of it);
(b) the creation of any third party rights over the common property or individual units;
(c) the acquisition of further property to be held as common property;
(d) alterations in any duty to repair, maintain or decorate the property;
(e) any variations of the proportions in which unit owners contribute to the cost of services, in their votes or in their ownership shares;
(f) any proposal to end the commonhold.
11.17 A class 1 resolution is only passed if everyone present at the meeting votes in favour of it. Failing unanimity, if there was a majority of at least 80% in favour, then those in favour can apply to the court for approval of the proposal. The court will give approval if it considers that it is reasonable in all the circumstances for the resolution to be passed.

11.18 We have considered with some care how mortgagees’ votes should be cast. There are three guiding, yet conflicting, principles. First, the scheme must be kept as simple as possible. Secondly, the unit owner must remain involved with the management of the association, and not be discouraged from attending meetings by a feeling of impotence because of the intervention of mortgagees. Thirdly, mortgagees’ interests must be adequately safeguarded, by allowing them to cast votes against any decision which would prejudice their security.

11.19 We see three possible ways for a mortgagee to exercise his voting rights:

(a) The unit owner could have the exclusive right to vote at the meeting, with mortgagees having the chance to cast contrary votes within a limited time after it. This could cause considerable delay, and violate the second principle mentioned above. The owners’ feeling of participation would necessarily be undermined, if mortgagees, who have not even attended the meeting or heard the discussion, can reverse the decisions taken.

(b) Half of the votes of a unit owner whose property is mortgaged could be exercised by the mortgagee, with the other half being exercised by the owner. This violates the first and third principles. It is certainly not simple, and by reducing the influence of mortgagees on the decision probably deprives them of adequate safeguards.

(c) Votes of the unit owner could be excluded whenever the mortgagee decides to vote. This again detracts from the unit owners’ feeling of involvement, and so violates the second principle.

11.20 Neither the Building Societies Association nor the Committee of London and Scottish Bankers favour solution (b), dividing the votes between borrower and lender. The Building Societies Association prefer solution (c), telling us that it is only when their security is in some real danger that mortgagees will want to exercise their voting rights. Given the combination of simplicity, and the likelihood of only minimal involvement by mortgagees where it is strictly necessary, we recommend the adoption of solution (c), where a borrower’s vote can effectively be overridden by his lender.

11.21 We have also considered the position of second mortgagees. They will be entitled to notices of meetings at which class 1 resolutions are to be proposed, but will only be entitled to vote where the first mortgagee does not wish to do so. In such a case, the second mortgagee’s vote would exclude a vote by the mortgagor.

TERMINATION

11.22 When the commonhold comes to an end, the owners’ legal estates in the units vest in the commonhold association, which then owns the whole property on trust for the unit owners in pre-determined shares. The interest of a mortgagee, if the loan is not paid off, is automatically secured on the mortgagor unit owner’s equitable share.

11.23 Before a commonhold can come to an end, there has to be a resolution to that effect, passed unanimously by all those entitled to vote. This is a class 1 resolution, as explained in para. 11.15, the mortgagee automatically has the right to exercise his unit owners’ vote on that type of resolution. Moreover, because ending the commonhold brings about a fundamental change in the nature of everyone’s interest, there are more stringent requirements in relation to a class 1 resolution for this purpose. All unit owners, and all their mortgagees (not just first mortgagees), must positively consent to the termination. If the majority in favour is less than 100%, but more than 80%, those in favour may make an application to the court for an order authorising the termination.

11.24 If a mortgagee is not prepared to agree, for whatever reason, the unit owner always has the alternative of redeeming his mortgage. The two most likely reasons for ending a commonhold are substantial or total destruction and profitable re-development proposals. In both cases, there will be money available to repay the mortgage loan, in the first case from the insurance proceeds, and in the second from the proceeds of the sale of the site.

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11.25 Once a resolution to end the commonhold has been passed, it will have to be registered at the Land Registry in order to take effect. Before registering it, the Registry will ensure that all mortgagees whose mortgages are registered have given their consent. This is a further safeguard for mortgagees.

11.26 The result of registration at the end of a commonhold is that the Land Registry issues a land certificate to the commonhold association, showing it as owner of the freehold of the whole property. This will allow the association to sell it, either as a whole or in parts. Under normal conveyancing principles, the equitable interests which the unit owners now have are of no concern to a purchaser. The same applies to the mortgagees of those equitable interests. The purchaser obtains a good title by paying the price to the association, and it is the responsibility of the association’s liquidator (see para 14.8) to divide the net proceeds into the unit owners’ respective shares. Before paying out this share to the unit owner any outstanding mortgages on that unit must be discharged.

11.27 We therefore recommend that, after the commonhold comes to an end, there should not be any entry on the land register of the interests of mortgagees of the units. On the other hand, to provide reasonable protection, there should be a restriction on the register requiring that capital money, raised on any dealing with the property or any part of it, should be paid into a special commonhold bank account controlled by the liquidator. Regulations will govern such bank accounts, to ensure that money can only be paid out of it to unit owners with the consent of mortgagees under any mortgage which still continues. The bank with which the account is opened will be able to check the position at the end of the commonhold from office copy entries of the titles of the unit owners, as recorded at the Land Registry at the date of registration of the resolution to bring the commonhold to an end. Those entries will show any mortgages which remain. The former unit owner will have to prove any later repayment of a mortgage. Knowing that, a former unit owner would, when repaying, obtain from the lender confirmation of repayment which can be shown to the bank.
PART XII

THIRD PARTIES

GENERAL PRINCIPLES

12.1 Although commonholds will be a statutory innovation, governed by the Commonhold Act and their own regulations, their merits cannot be considered in isolation. Outsiders will have dealings with the unit owners and commonhold associations. The position of those third parties must be satisfactory.

12.2 Although the title “commonhold association” is to be used in the name of any commonhold association, so that its nature is clear to those dealing with it, there will be other circumstances in which third parties do not know that a particular property is a commonhold. This is one reason for making sure that commonholds conform, as far as possible, to the general law. Outsiders should not be placed in any worse position than if they were dealing with any other type of property owner.

NEIGHBOURS

Property Rights

12.3 Easements, restrictive covenants and other property rights. Rights which existed at the time the commonhold was established, whether benefiting or burdening that land, will continue to do so, subject only to the normal rules which apply to those rights.

12.4 The basic rule is that rights granted after a commonhold is established will end when the commonhold ends. The reason for this, as already explained, is that creating rights which burden the land and which survive the commonhold can reduce the value of the whole site. Special arrangements therefore apply to rights which are to survive the end of the commonhold: the consent of the commonhold association must first be obtained, and if any capital sum is paid for the grant of the rights, it is paid to the association.

12.5 Rights may, nevertheless, arise informally, rather than by express grant. A right of way may, for instance, be acquired by long use. Or, where part of a commonhold is sold to an outsider, following a variation (see Part XIII of the Report), implied rights may be granted to a purchaser over land remaining within the commonhold. According to the principles of the general law, those rights would be permanent. We do not consider that it would be equitable for a unit owner in a commonhold to be in a better position than any other property owner in this respect, and therefore if such rights arise they must be permanent. Commonhold associations and their members will have to be vigilant to prevent this type of right prejudicing their property.

12.6 Rights which are acquired to benefit unit owners or the commonhold association present no problems. They can continue for as long as they would under existing principles of law relating to easements.

12.7 Adverse possession. An outsider may not merely acquire rights informally, he may actually obtain ownership of the land itself, by acquiring a squatter’s title. For this, he must possess it in a way which is adverse to the unit owners or the commonhold association. Under the general law, a land owner loses his interest if a squatter takes possession and the owner does not pursue his claim within a specified time (which is usually 12 years).

12.8 If, in relation to a commonhold, this meant that the property was owned by the squatter outside the commonhold, this would seriously prejudice the scheme. First, it would mean that the grounded rule (see Part III of the Report) could be violated. Secondly, the squatter would have the benefit of using the property without the obligation to contribute to the service charge. Thirdly, the association’s register, recording membership and votes, would show as member somebody who was no longer entitled to membership, but without the possibility of the name of a new member being substituted. As this must necessarily undermine the fundamental basis of the commonhold scheme, we consider that it is necessary for special rules to apply.

12.9 We recommend that where someone has been in adverse possession of all or part of a commonhold unit for a period long enough to give him a squatter’s title, it should be possible for anyone interested in the commonhold to serve him with notice requiring him to be registered as a unit owner. In default, he would lose his title. If the squatter had been
in possession of less than the whole unit, the association will have to agree, before he is registered, the shares of ownership and liability for service charge attributable to each of the units formed by subdividing the former one. As an alternative to registration within the commonhold, the squatter can apply to the court to declare that the property claimed be removed from the commonhold. An order would be made in circumstances where it did not prejudice the interests of other unit owners (e.g. if the property in question was part of a garden on the edge of the commonhold).

12.10 Where the squatter takes possession of part of the common parts, it is likely that exclusion from the commonhold will be the appropriate decision. Unit owners after all would not have enjoyed this part of the property for at least 12 years. Nevertheless, there must, in this case as well, be the alternative that a new unit is created and the squatter becomes a member of the commonhold in the same way as if he had taken adverse possession of a unit. (See further para. 13.8)

12.11 Land which is outside the commonhold but which is acquired by adverse possession either by a unit owner or by the association will remain outside the commonhold unless the association resolves to the contrary. Additional land can be brought into the commonhold, and if it is this is a variation to the original commonhold declaration. Again, the re-allocation of shares, votes and contributions to service charges will be required, except where the land is added to the common parts, and the entries on the register will have to be changed.

**Damage to Neighbouring Property**

12.12 If neighbouring property is damaged by something done on the commonhold, the unit owners and the association will be liable to the neighbouring owners and occupiers under the general rules governing nuisance and negligence to the extent that they would be in the case of any other property. The commonhold association must insure against public liability as its potential liability is extensive. This might arise, for instance, if a gardener employed to tend the communal gardens allows sparks from a bonfire to set light to a neighbour's shed. Or, liability might come from failure to perform a duty. For example, damage may be caused to a neighbour's property because the commonhold association did not properly repair the commonhold property.

**VISITORS**

12.13 The commonhold association is occupier of the common parts, and in that capacity it owes a duty to visitors to make sure that they will be reasonably safe in using the property for the purposes for which they were invited or permitted to be there. This duty also extends to trespassers in certain circumstances, when the occupier has notice of a danger on the premises. As explained in para. 8.42 the association must take out third party insurance to cover such claims. The nature and amount of this insurance will be governed by regulations.

12.14 Unit owners, as occupiers of their own units, bear a similar duty of care to their visitors, and trespassers on their units. The insurance policy covering the whole property may provide cover against this risk. If it does not, they will have to decide individually whether to take out their own cover.

12.15 Visitors will be expected to abide by the regulations of the commonhold. Unit owners, tenants and other occupiers of units, must use their best endeavours to see that visitors do comply, and will be responsible for the actions of visitors if they have not acted reasonably to obtain compliance.

**CONTRACTORS**

12.16 The commonhold association's primary duty is to administer and manage the commonhold. To do this, it has the power to employ contractors, and will often need to do so. In large developments, it is likely that the power will be delegated to the association's committee or to a managing agent. The Act will provide (see para. 8.56) that "sweetheart contracts" entered into by the promoter can be avoided by the commonhold association within a short time limit. Contractors would therefore be well-advised to protect themselves against such an event by requiring an indemnity from the promoter.
12.17 The commonhold association has only restricted liability (para. 8.10). This means that it is only liable for its debts to the extent of its realisable assets, and these may be limited. Although the association can borrow money, it is not entitled to mortgage the common parts. Payments to contractors will normally come out of the service charges or reserve funds. Where the association is unable to pay, a creditor will have to pursue his claim against those who are the individual unit owners at the time of the judgment.

12.18 Someone who is preparing to make a contract with a commonhold association will be forewarned about the position by reason of the use of the words ‘commonhold association’ in its name. Contractors should find the position set out in the previous paragraph an acceptable business risk. Having been forewarned, they will in appropriate cases be able to enquire about the balance of the reserve fund, ask for payment in advance or negotiate arrangements for deposits and guarantees. As the position will be clear in advance, we do not think that there should be undue difficulty, and propose that contractual arrangements be left to market forces.

EMPLOYEES

12.19 The commonhold association (or, on its behalf, the committee or managing agents) will also have power to employ people for the purpose of carrying out its duties. The commonhold may, for instance, need porters and full-time gardeners.

12.20 When acting as employer, the association will have all the normal duties and responsibilities of an employer, e.g. the operation of the PAYE income tax system and deduction of national insurance contributions from pay. It will have the statutory duties in relation to terms of employment.

12.21 In some circumstances, the commonhold association will be obliged to take out and maintain an insurance policy against liability for bodily injury or disease sustained by its employees in the course of their jobs. The Employers’ Liability (Compulsory Insurance) Act 1969 only applies where the employer is carrying on a business. A commonhold association does not do this, within the general meaning of the term. However, for this purpose, business ‘includes any activity carried on by a body of persons, whether corporate or unincorporate’. We consider, therefore, that the Act will apply to staff employed by a commonhold association, and we intend that it should. This will ensure that an employee who has a claim against an association because of injury will not be prejudiced by the fact that it has restricted liability.
PART XIII

VARIATION

GENERAL PRINCIPLES

13.1 One of the main advantages of the commonhold scheme is that details of the units and the common parts within a commonhold, and the regulations governing them, are recorded at the Land Registry, and are therefore readily ascertainable. Variations must also be recorded there, so that the information which is available is always up to date. To avoid unnecessary use of the registration facilities, it is desirable to restrict variations to exceptional circumstances.

13.2 On the other hand, where all the unit owners are agreed that some change should be made in the commonhold, it would be unreasonable if this were not allowed. There is therefore to be a procedure to allow variations where the members of the commonhold association resolve to that effect, or there is a court order. The rules governing the majority needed to pass a resolution for a variation depend on the nature of that variation, and are more fully explained below.

ADJUSTMENT OF INITIAL ALLOCATION

13.3 At the outset, the commonhold declaration lays down the number of votes, and the proportions of liability for service charge and ownership shares on termination allocated to each unit (see para. 3.37). We have suggested that it will be possible to rely upon market forces to ensure that the initial allocation is fair. However, there may be cases in which this is not so. It will then be possible to change the initial allocations, by resolution passed unanimously by those present at a general meeting of the commonhold association. If the vote in favour is at least 80%, but less than 100%, those in favour can apply to the court to sanction the variation.

SUBSEQUENT ADJUSTMENTS DUE TO ALTERATION IN EXTENT OF PROPERTY

Agreement before Variation

13.4 The basic rule is that once the first unit is transferred by the promoter to a purchaser, whether or not it is a phased development, the form of the commonhold is crystallised. Both the promoter and the purchasers are bound by the commonhold declaration and the plans to which it refers, all of which are registered. This means that neither the promoter nor any unit owner is at liberty to:

(a) subdivide the units into separate freeholds or sell the freehold of part of a unit;
(b) dispose of the units so that they are removed from the commonhold;
(c) buy more property and bring it within the commonhold.

13.5 Similarly, the commonhold association which owns the common parts is not permitted to alter the size of the commonhold by selling or buying property.

13.6 The reason for this rule is that an alteration in the extent of the property can alter the balance of the commonhold. Too many units may over-tax the common facilities and services; too few may mean service charges and other expenses are excessively high. All the same, there will be occasions when the commonhold could benefit from a change in the size originally envisaged. We propose that this should be possible where there is a unanimous vote or court sanction, as explained in para. 13.3.

Recognition of Factual Situation

13.7 If an outsider adversely possesses land for 12 years, acquiring a squatter's title, the right of the unit owner or the commonhold association to reclaim it is lost (see para. 12.7). It is important that the new unit owner's position should be officially recorded on the register. However, if what the squatter has obtained does not correspond with the boundaries of an existing unit or units, there will have to be an adjustment. This must be made, before the new registration, by the commonhold association.
13.8 Where what the squatter has obtained was land within the common parts, it will in future be owned by the squatter as a unit owner (unless the court orders that the land can be removed from the commonhold, see para. 12.10), but subject to the unit owner’s rights, provided they have not been abandoned, over the former common parts. The general law will determine whether the unit owners will be liable to contribute to the maintenance of any paths, roadways etc. Votes, service charge proportions and ownership shares will have to be allocated to the new unit. The same will, in effect, apply where the squatter has acquired part of a unit, although in this case the votes etc. allocated to the original unit will also have to be adjusted. In cases of adverse possession, there can be no question of an adjustment not being made. The only issue is the precise terms of the adjustment. It is therefore sufficient for the resolution at the general meeting deciding the matter to be passed by a simple majority, rather than by a unanimous vote.

13.9 A unit owner himself may by squatting acquire land which is not in the commonhold, although he comes to occupy it in conjunction with his unit. If it is proposed to bring it into the commonhold, a unanimous vote or court approval (as in para. 13.3) is required. If there is no agreement that the land be incorporated into the commonhold, the unit owner will be at liberty to continue to occupy it independently of the commonhold.

13.10 As explained in Part VI, The Powers of the Unit Owner, (paras. 6.14-6.16) a unit owner will not be permitted to obtain title by adverse possession either against another unit-owner or against the commonhold association. Nor will the commonhold association have power to acquire property of a unit owner by adverse possession.

Partial Termination

13.11 The commonhold association is under a duty to rebuild or reinstate any of the commonhold property which is destroyed or damaged. Neither the unit owners, nor their mortgagees, are entitled to any of the insurance proceeds, as they are to be spent in repairing the damage. There may, however, be situations when a unit can no longer be used, and the association is unable or unwilling to rebuild it. For example, planning permission might not be forthcoming. Not to rebuild is an important decision, which in effect amounts to a partial termination of the commonhold. For this reason, unanimous approval in a general meeting of the commonhold association, or a court order, is necessary. In this case, all the unit owners must approve, not merely those attending a general meeting. Also, all their mortgagees must agree, not merely first mortgagees.

Compulsory Purchase

13.12 Land and buildings within the commonhold may be acquired by an authority possessing powers of compulsory purchase. Where the whole property is to be taken, the commonhold will necessarily come to an end. Compensation will be paid to the commonhold association, which will hold the proceeds for the former unit owners in their pre-determined ownership shares. If the authority proposes to purchase all the units in the commonhold, but not all the common parts, the commonhold association may require the authority either to take the common parts as well (so that it will then be acquiring the whole of the commonhold property), or not to proceed with its acquisition of the units.

13.13 If what is to be acquired is all or part of the common parts, the result may be that that property is taken out of the commonhold. There is no need for the proportions of votes etc. allocated to the unit owners to be altered, because the units will remain the same. The practical effect may nevertheless be that the amount of service charge is reduced because the size of the common parts has diminished. If the proposed purchase seriously affects the amenity or convenience of the units, the commonhold association can under the general law require the acquiring authority to opt either to purchase the whole of the commonhold property, or not to proceed with the proposed acquisition of the units.

13.14 The proposed compulsory purchase—or a voluntary sale under the threat of compulsory purchase—may affect only some of the units, with or without common parts. The rule here is that the remainder of the property continues to be governed by the commonhold scheme. The result of removing some property from the commonhold may be seriously to reduce the value of the remaining units, because they then have to contribute uneconomic amounts for common facilities. This should be a matter to be taken into account when assessing compensation. However, units could conceivably be acquired for use as they had been previously used, say for housing. It would then be important that
they have the benefit and be subject to the burden of the commonhold regulations, which regulate essential mutual rights (e.g. for access and support). Whether it would be possible to continue the commonhold would depend on the circumstances (see next paragraph).

13.15 If a commonhold is to survive the partial compulsory purchase, it must still comply with the basic requirements for establishing the commonhold. The commonhold scheme pre-supposes a building or buildings, and at least two separately owned units, and the grounded rule (see para. 3.15) must be complied with. Accordingly, if the result of a compulsory purchase is to take all buildings out of the commonhold, to reduce the number of units to one or to breach the grounded rule, it will not be possible for the commonhold to continue.

13.16 Once some of the commonhold property has been taken by compulsory purchase, and assuming the commonhold can continue, there has to be a readjustment of votes, service charge contributions and ownership shares among the remaining unit owners. As with adverse possession, there is no question of avoiding an adjustment, and a resolution of a general meeting of the association passed by a simple majority is sufficient to effect it.

VARIATION OF RIGHTS AND OBLIGATIONS OF UNIT OWNERS

13.17 The advantages of having standard regulations are set out in para. 7.4 of the Report. However, when a commonhold is set up, it will be possible in the declaration to add to or vary the regulations. As explained, variations will have to be worded so that they highlight the changes which have been made, rather than setting out a complete set of alternative regulations.

13.18 It will be possible to make later variations. A unanimous vote of those present at a general meeting of the commonhold association will be needed, or if there is a majority of at least 80% those in favour can apply to the court for approval.

13.19 Any initial variation from the standard regulations will be contained in the commonhold declaration, and therefore automatically registered at the Land Registry when the declaration is registered. Later variations which have been approved will also have to be registered in order to make them effective. This will ensure that anyone searching the Land Registry records obtains an up to date statement of the regulations which apply to that commonhold.

13.20 In the light of experience with the standard regulations, and possibly because of changing circumstances, there may be a need to vary or supplement them. These variations will be made by statutory instrument, and on each occasion it will have to be decided whether the variations will affect commonholds already in existence or merely those promoted in the future.

VARIATION OF COMMONHOLD ASSOCIATION CONSTITUTION RULES

13.21 The rules governing the constitution of commonhold associations will be prescribed by statutory instrument. As the purpose of all commonhold associations is the same, it will be possible to have standard rules. As a major contribution to the simplicity of the scheme, these standard rules will be compulsory for all commonhold associations, and no variation will be allowed.
PART XIV
TERMINATION

GENERAL PRINCIPLES

14.1 The members of a commonhold association may at some stage decide to end the commonhold. It is important that they should be able to do so, and we do not intend to limit the situations in which termination is permitted.

14.2 Others who obtain interests in property comprised in a commonhold should be aware of the possibility of a termination and of its consequences. When a commonhold is converted from an existing development, all freeholders, leaseholders and their respective mortgagees must consent to the conversion. When a commonhold is created from a new property, or an unoccupied old one, potential purchasers and their mortgagees will receive notice that it is a commonhold when they investigate the title. Before a unit owner grants a lease of his unit, he is obliged to inform the tenant that the property is part of a commonhold.

14.3 All the same, safeguards are still necessary to protect:
(a) the interests of minorities who may not want to end the commonhold;
(b) mortgagees whose security will be changed on a termination;
(c) leaseholders,
(d) third parties.

These matters are considered below.

PROCEDURE

14.4 To bring a commonhold to an end, there has to be a unanimous resolution of all the members of the commonhold association or a court order. All unit owners and their mortgagees (not just first mortgagees) must positively consent to the termination. If the majority in favour is less than 100%, but at least 80%, those in favour may make an application to the court for an order authorising the termination.

14.5 The ending of a commonhold confers no automatic right to compensation, except for tenants (see para. 10.34). Nevertheless, the court will have a discretionary power to award compensation on such terms as it sees fit. It may be that to end the commonhold could be particularly prejudicial to one unit owner, but that he could be adequately compensated by a money payment. In such circumstances, an award of compensation might be appropriate to override his objection to termination.

14.6 We do not recommend that the consent of lessees and others with derivative interests (with the exception of mortgagees) should be needed before a commonhold is ended. There may well be a conflict of interests leading to disputes between unit owners and lessees. A lessee, say with a 5 year-lease, may be anxious for the commonhold to outlast his term. On the other hand, the unit owner, as a freeholder, has to plan further ahead. We do not consider that the suggestion to dispense with the consent of lessees causes any injustice. As explained in para. 14.2, all tenants must consent to the conversion of a property to commonhold, or will have been given a prescribed notice warning them of the position when their lease is granted after a commonhold has been established. Moreover tenants will be entitled to compensation as explained in Part X—The Position of Tenants.

14.7 For the resolution to be effective it must be preceded by a notice of intention to propose the resolution to terminate. This notice must be registered on the Commonhold Association Constitution Register at HM Land Registry at least 30 working days before the meeting at which the resolution is to be passed. Although the search of this register confers no priority it will alert a purchaser to the possibility of the termination of the commonhold. The 30 days is to ensure that the notice appears on the register at the time when any purchaser will be making all his searches including those which can confer priority. Where a notice of intention to propose a resolution to terminate has not been disclosed by the vendor but appears on the purchaser’s search the purchaser will be able to
rescind the contract. Once the resolution to terminate has been passed a certified copy must be lodged at the Land Registry. The resolution will be recorded on The Commonhold Association Constitution Register.

14.8 At the commonhold association meeting which passes the resolution to end the commonhold, another resolution will be needed to appoint a liquidator. Anyone qualified to act as an insolvency practitioner in relation to a company under The Insolvency Act 1986 can act as a liquidator in relation to a commonhold association. The liquidator’s duties are to arrange the realisation of the association’s property, pay its debts and pay to those entitled any balance from a special commonhold association bank account (see para. 14.14) which he controls. In carrying out those duties he will adopt procedures and practices similar to those laid down in the Insolvency Act 1986 for the voluntary liquidation of companies. The position of mortgagees of individual unit owners at this stage is dealt with in para. 11.27.

14.9. The next stage in relation to the title to the property is that all the outstanding land and charge certificates relating to the units, and the association’s land certificate in respect of the common parts will have to be lodged at the Land Registry. The individual unit titles will be cancelled. The legal estate of the entire property will be vested in the commonhold association, to whom a land certificate will be issued.

14.10 What a unit owner then has, instead of the freehold of his unit, is a share, being the proportion set out in the commonhold declaration, of the entire property. This is an equitable interest, as the association holds the freehold in trust for all the unit owners. Any mortgage created by a unit owner, and formerly charged on his freehold, automatically becomes a charge on the unit owner’s equitable share.

14.11 Another effect of the legal estate vesting in the commonhold association is to end any contractual tenancy which affects a unit. Whether or not the commonhold association has a ground for possession against a tenant with statutory protection depends on why the commonhold was ended. This has already been discussed in Part X—The Position of Tenants.

14.12 Once the commonhold association’s affairs are fully wound up, the liquidator must summon a final meeting of members. Any mortgagees whose loans are still outstanding and creditors who have not been paid are entitled to have notice of that meeting. The liquidator must produce audited accounts showing how the association’s affairs have been wound up. The accounts must be approved by the meeting. They are then certified by the Chairman of the meeting and a copy of the certificate sent to the Land Registry. The Registrar will then remove the commonhold association’s name from the register, and the commonhold is finally wound up. If any assets are discovered subsequently then they will be distributed as if they had been available at the time of the liquidation. The commonhold will not be revived. It is not feasible for the Land Registry to store accounts relating to the defunct commonhold. The Land Registry will, however, have a record of the name and address of the liquidator. If it is considered necessary that accounts should be made publicly available it may be possible for these to be held by the liquidator although the insolvency profession would need to be consulted.

REALISATION AND DISTRIBUTION OF ASSETS

14.13 It is likely that when a commonhold ends the freehold of the whole property will be sold, although in some cases the unit owners may be able to raise sufficient money to organise demolition and reconstruction. In the latter case, once the rebuilding is completed, a new commonhold may be created. The procedure in Part III of the Report is adopted. To avoid the need for a formal liquidation, the new association could assume all the assets and liabilities of the old one.

14.14 If a sale of all or part of the property follows the ending of a commonhold, the capital money received must be paid into a special commonhold bank account. The purchaser will have notice of this requirement, because an appropriate restriction will be entered on the commonhold association’s register of title. Regulations governing the payment of money out of this bank account will ensure that the interests of any mortgagees are protected. Before a unit owner can receive payment, he will have to produce office
copies of the closing entries of the register of his title. This will show whether any mortgage was outstanding, and if it was the bank will require evidence that the mortgage was later discharged.

14.15 The residual value of the property which had been in the commonhold may be reduced by derivative interests granted by former individual unit owners. These can be divided into two main classes upon which we comment separately below. These are: first, leases, and secondly easements, land obligations and similar rights.

14.16 As we have already explained, contractual leases come to an end on the termination of the commonhold. Where the property is to be demolished or reconstructed, the commonhold association will generally be able to obtain possession. If, in other cases it cannot do so, the value of the share of the unit owner who created the lease will be reduced to take into account any amount by which the value of the site drops as a result of the impossibility of obtaining vacant possession.

14.17 Where a unit owner has granted an easement, land obligation or similar right, the position is different. Only if he first obtained the consent of the commonhold association, can he grant such rights in a way which makes them survive the end of the commonhold. Moreover, any capital payment made on granting such a right has to be paid to the commonhold association. There is therefore no question of one unit owner being responsible for any reduction in the overall value of the property, and there is no reduction in his share.
PART XV
SUPERVISION AND INFORMATION

GENERAL PRINCIPLES

15.1 The success of the commonhold scheme depends on its being workable and readily understood both by property owners and their advisers. Although this applies particularly when it is first launched, there will be a continuing need for information and guidance. There should be a way to obtain information, both so that people can understand what a commonhold is and its general effect, and also what the implications would be for them of setting up or becoming a unit owner in a particular commonhold.

15.2 Linked to the need for information is a possible need for guidance when matters are not conducted as they should be or supervision to ensure that they are.

PUBLIC SUPERVISION

15.3 Physical structure. In paragraph 5.3, we explained the reasons why we rejected the idea that there should be any inspection or approval of the structure of a building which it is planned to divide into commonhold units. The normal law governing planning permission and building regulations will necessarily apply.

15.4 Legal documentation. We also explained (see para. 5.4) why we considered that to have an outside regulatory body to vet the documentation setting up a commonhold was both unnecessary and undesirable. One suggestion was that this function could be performed by local authorities. However, we understand that they are unlikely to have the time or financial resources to undertake this new responsibility. Nor at the moment do they have any special expertise which would enable them to do so. An alternative suggestion is that there should be a new office created, the Commonhold Commission. The role of the Commission would be to provide information, answer queries and mediate in disputes. As to disputes, see paras. 16.8 onwards.

15.5 The National Consumer Council and the Welsh Consumer Council have enthusiastically supported the idea of a Commonhold Commission, and have urged this proposal on us. They envisage that the Commission would be involved in the following areas:

(a) ensuring that commonhold associations are properly constituted, have their accounts regularly audited and maintain proper standards of management,

(b) providing guidance to commonhold associations on such matters as the appropriate types of property, insurance policies and arrangements for dealing with common property;

(c) ensuring that reserve funds are neither inadequate nor excessive;

(d) advising and informing unit owners and potential unit owners of their responsibilities and rights, including producing explanatory leaflets in plain English;

(e) monitoring the working of the commonhold scheme and pointing out to the relevant authorities any deficiencies in the Act or in the regulations.

15.6 All these functions are undoubtedly important and it could be useful to have a central body charged with undertaking them. However, it is unlikely that funds would be provided to finance a Commonhold Commission, and we do not consider that its creation is essential to the commonhold scheme. Further, when that scheme is first introduced, there will not be enough work to justify the establishment of a Commission. Should the need for one be felt after the commonhold scheme has been in operation for several years, provision could then be added to the legislation. (We note that in New South Wales, where there is now a Strata Titles Commissioner, performing much of the role proposed for the Commonhold Commission, the office was created 12 years after the initial legislation was introduced.)
INFORMATION

15.7 Many of the functions suggested for the Commonhold Commission relate to the provision of information. We recognise the need for public education on this new method of land ownership and the need to disseminate information.

15.8 Because the commonhold scheme will be an innovation in England and Wales, we recommend that there should be an appreciable interval between the enactment of the Commonhold legislation and its implementation. This will allow professional advisers to become familiar with the terms of the Act before they are called upon to operate it. Most professional bodies are now active in organising and supporting continuing professional education. We consider that it will be satisfactory to rely upon them and on commercial publishers and conference organisers to ensure that the period between the passing of the Act and its commencement is used effectively.

15.9 Once professional advisers are familiar with the details of the scheme, the main burden of public information and guidance can be left to them. Other bodies, such as citizens advice bureaux and housing advice centres will also have a role to play, and the Government could usefully publish a simple explanation for members of the public.

15.10 In other countries with similar ownership schemes, the bodies equivalent to commonhold associations have formed themselves into regional federations. Through them, associations can give each other mutual support and offer general management advice. They may also act as a pressure group to influence political decisions in the general interests of commonhold unit owners. It seems likely that similar organisations would be formed in this country, and they would be helpful.
PART XVI
JURISDICTION

GENERAL PRINCIPLES

16.1 There is no reason to suppose that the introduction of the commonhold scheme will lead to any increase in disputes (with the possible exception of (c) in para. 16.3 below). The property bought as a freehold unit would presumably have been let to a tenant had the commonhold option not been available, so the number of properties remains the same. It is indeed hoped that fewer disputes will arise with commonholds, because the firm guidelines laid down by legislation on such matters as boundaries, service charge contributions and repairing responsibilities will preclude difficulties which at present arise by reason of uncertainties in the terms relating to those matters.

16.2 A strong case can be made for a procedure to settle housing disputes which is cheap, quick and readily accessible. However, it must be remembered that residential commonholds will only form a part of the total housing stock, and that the commonhold scheme is not confined to residential property. It is also possible that disputes relating to commonholds will involve areas of complex law.

KINDS OF DISPUTE

16.3 Among the disputes which may arise in relation to a commonhold are:

(a) disputes as to the use, occupation, insurance and repair of units and common parts. Although covered by regulations in the case of commonholds, these will be equivalent to the disputes between landlords and tenants which arise at present;

(b) disputes in relation to the running of the commonhold association. Many leasehold developments now have companies running them, and they do not seem to give rise to much litigation. There is no reason to suppose that commonhold associations should generate any more disputes;

(c) actions required because unit owners cannot achieve unanimity, including those for conversion of existing developments into commonholds, the termination of commonholds, the variations of the shares within a commonhold. These actions will not generally have any equivalent under the present system. It is anticipated, however, that these disputes will generally be settled by negotiated compromises rather than by applications to the court.

WHICH COURT?

16.4 Lands Tribunal or Leasehold Valuation Tribunals. There is no predominantly valuation content in the disputes likely to arise under the commonhold system. On the contrary, disregarding disputes about matters of fact, many are likely to turn on matters of legal principle. For this reason, the normal courts seem better suited to take these cases than the Lands Tribunal or Leasehold Valuation Tribunals. The jurisdiction of the latter tribunals is at present exclusively related to residential property, and any extension to commercial commonholds would therefore be a fundamental change. Moreover, tribunals are used to dealing with landlord and residential tenant disputes, which require a different approach.

16.5 The county court. Much modern housing legislation gives the county court exclusive jurisdiction. This is generally considered desirable as it reduces costs and increases the speed of disposal. However, some commonhold disputes concerning management and those special cases to overcome minority opposition (para. 16.3 (c) above) may be more suitable for the High Court. This is because a large number of parties can be involved, arguing different points of view, our experience suggests that it is often difficult to find the necessary time in the county court to deal with such cases efficiently. Another reason not to give the county court exclusive jurisdiction is the need in the early stages of the commonhold scheme to settle points of legal principle. A satisfactory precedent can be achieved if the action takes place in the High Court and is properly reported. If the case starts in the county court, this position can only be reached if there is an appeal to the Court of Appeal.
16.6 The Civil Justice Review (Consultation Paper No.5) suggests a housing action based on the small claims procedure in the county court. If this is introduced, it would be suitable for resolving commonhold disputes, where the property is residential, about repairs and improvements, service charges, enforcement of regulations and the provision of information.

16.7 **County Court or High Court.** For the reasons discussed above, we do not make any recommendations regarding jurisdiction. The legislation will provide for cases to be allocated either to the High Court or the county Court according to the normal principles and subject to any proposals resulting from the Civil Justice Review.

**A SEPARATE DISPUTES PROCEDURE**

16.8 Consumer groups have suggested to us that there should be a separate disputes procedure, not involving the courts. They consider that people are deterred from using the courts because of delay, expense and formality. They suggest that a Commonhold Commission (which would also have information and supervision functions: see Part XV) should deal with disputes. There are similar arrangements in some parts of Australia.

16.9 Our reasons for rejecting the proposal to establish a Commonhold Commission apply here as well, namely problems of funding and initially a lack of work. If commonholds turn out to be used mainly for flats, it may never be possible to justify a dispute settlement service with a chain of local offices throughout the country because flats are concentrated in certain areas.

16.10 If public funds are not available, it would still be possible to finance a Commonhold Commission. Fees could be charged for any application to the Commission, or there could be a levy on all commonhold associations. The first alternative is not likely to produce sufficient funds. The second has two disadvantages. In the early stages, not enough commonholds will have been established for a reasonable levy to support a Commission. Secondly, the levy will make commonhold a more expensive form of property ownership. (There is legislation in Canada to establish a Commission supported by a levy, but it has not been implemented. We know of no example of this system being operated in practice.)

16.11 One of the underlying principles of the commonhold scheme is that the properties within it should, as far as possible, be subject to the general law. It is hard to justify providing a special procedure to resolve disputes in a single sector of the property market. The Civil Justice Review, Consultation Paper No.5, rejects the idea of special housing courts. We do not recommend any special body to deal only with commonholds.

16.12 It is not without interest that in Australia a cheap and informal disputes procedure has tended to encourage trivial disputes and "revenge" complaints. (An owner against whom a complaint is established one week gets his own back by making a complaint the following week against the original complainant). The success of commonholds depends on co-operation between unit owners and the resolution of difficulties through the democratically conducted commonhold associations. This seems more likely to promote harmony when the only alternative is to evoke the formal, and frequently expensive, machinery of the courts.

**ARBITRATION**

16.13 An alternative means of settling disputes about commonholds, which was urged upon us, is for the legislation to provide that they be referred to arbitration. This could have several advantages. The arbitration provision could allow the parties to select an arbitrator with the appropriate expertise for the dispute in question. This might well prove a quicker way to resolve disputes than going through the courts. Certainly, there would be a saving of public resources. Also, the parties involved might welcome the privacy of an arbitration.

16.14 On the other hand, arbitration would have disadvantages. It is likely to be more expensive for the parties, because they would have to pay the arbitrator's fees, and legal aid would never be available. There is also a disadvantage in the lack of publicity for the decisions. The lack of any established body of law deprives advisers of precedents on which they can base advice and which are likely to encourage the settlement of later similar cases.
16.15 For these reasons we do not recommend that compulsory arbitration be provided for residential commonholds. Arbitration may provide a suitable way to settle disputes relating to commonholds of commercial property, particularly because both the types of property involved and the uses to which they are put are likely to vary widely and the form of arbitration could be adjusted appropriately. However, we think that the decision as to whether arbitration should, in these cases, be compulsory should be determined by considering whether resources can be made available to deal with these cases in the ordinary courts.
PART XVII

LAND OBLIGATIONS

GENERAL PRINCIPLES

17.1 The Law Commission's Report "The Law of Positive and Restrictive Convenants" (Law Com. 127) made proposals to cure the defect in the law which has until now restrained the creation of freehold flats, the inability to make positive covenants bind successors in title. The Commission suggested, however, that although condominium legislation—such as the commonhold scheme—"has very great advantages" it would be preferable to create a legal framework "within which people can in effect create condominium regimes of their own". In the course of consultation upon that Report, it was suggested that more detailed condominium proposals for England and Wales should be prepared, and this Report is the result. Our conclusion is that there are considerable advantages to be gained from detailed proposals such as we are putting forward, which are likely to make the creation of multi-owned developments easier, their management generally satisfactory and give them appropriate machinery for dissolution.

17.2 In our Introduction (para. 1.9), we explained that the commonhold scheme can operate independently of the proposals for land obligations with which the Law Commission Report was principally concerned. That Report went beyond arrangements to facilitate the multi-ownership of buildings. Land obligations are to supersede both positive and restrictive covenants relating to land, making them fully enforceable where appropriate, and removing many unsatisfactory features of the present law. Specifically, they are valuable in situations where it would be unnecessarily cumbersome to create a commonhold association. Contributions may be required to facilities used in common by the owners of a number of different properties, e.g. for the upkeep of a private road. However, maintenance work may only be needed every few years, and if that is the only common facility it would be burdensome to require the owners to create a commonhold simply in order to ensure that the payments would be made. We therefore see the two sets of proposals as complementary, each applying where it is appropriate. Land obligations will not be required within a commonhold, because the commonhold legislation will make the mutual rights and obligations of unit owners fully enforceable. On the other hand, the commonhold scheme will have nothing to offer other property owners in tackling the deficiencies in the law identified by the Law Commission.

17.3 We do not feel the need to re-open the issues discussed in the Law Commission Report, except where this is necessary to propose the commonhold scheme. We are aware that some of the recommendations in the Report are seen by the Land Registry as imposing unnecessary burdens upon its resources. Those views have been made known, both during the preparation of the Law Commission Report and subsequently, and will necessarily be taken into account when the implementation of the Law Commission Report is further considered.

17.4 Nevertheless, it is clearly necessary for us to point out that some minor modifications to the land obligations proposals are required if they are to be implemented in harmony with our proposals for commonholds. These variations are explained below.

MANAGERS

17.5 The Commission explains that an optional feature of a scheme imposing land obligations on a number of properties would be the appointment of a manager, who would not be one of the property owners, to exercise such management functions as organising services and collecting the charges for them. This would normally be the type of situation ideally suited to the creation of a commonhold, and in the interests of simplicity we recommend that the commonhold should be the only scheme available for that purpose. It is unnecessarily complex to have two separate systems serving the same function in slightly different ways. Our commonhold proposals, involving a commonhold association with its powers and duties set out in the Commonhold Act and its constitution governed by standard regulations, will provide a management framework which is both more comprehensive and more straightforward than the arrangements contemplated by the land
obligations proposals, which would have to be individually drafted. We therefore suggest that this "optional feature" be dropped from the land obligations scheme, which can be done without prejudicing the fundamental proposals.

ASSIMILATION OF DEVELOPMENT AND NEIGHBOURHOOD OBLIGATIONS

17.6 The first Schedule to the draft Bill appended to the Law Commission Report lists categories of land obligations which are capable of subsisting as, on the one hand, neighbour obligations and, on the other hand, development obligations. A neighbour obligation is one which binds one piece of land for the benefit of another. A development obligation is imposed by a development scheme, where the benefit of the obligation is enjoyed by all or a number of separate pieces of land within a defined area. Three of the categories listed for development obligation arise only where the development scheme provides for the appointment of a manager. It follows from our proposal, that commonholds should supersede land obligation development schemes with managers, that these categories will no longer be required. Their content will be subsumed in the obligations imposed in the commonhold regulations.

17.7 Of the remaining categories in the development obligation list, each has its counterpart in the neighbour obligation list, with one exception. That exception is the obligation requiring that the land which is burdened be used in a particular way, e.g. an obligation to use a particular property as a chemist shop. The Report proposed that that type of obligation could be created as a development obligation, but not as a neighbour obligation.

17.8 The reason why a positive user covenant was not included in the list of neighbour obligations was explained as follows (Report, para. 6.12):

One of our objectives in framing [the] list of development obligations is to make provision for all the types of obligation which are reasonably imposed upon tenants as covenants in a leasehold development, and we think that positive user obligations have a legitimate place here—for example, to ensure that premises are actively used to provide proper shopping facilities of certain kinds. We think, however, that such obligations could be used oppressively if they were included in our list of neighbour obligations.

17.9 We are not persuaded that merely because an obligation is imposed on one property for the benefit of another, its use would be oppressive. The effect of not permitting positive user covenants as neighbour obligations is to refuse the parties the right to achieve in a simple way what they can do by resorting to the more complex procedure involved in creating a development obligation.

17.10 It is desirable that all the new arrangements for making obligations in relation to one property fully enforceable for the benefit of another should be as simple as possible. We therefore recommend that a neighbour land obligation, as well as a development land obligation, should be available for imposing a positive duty to use a property in a particular way. With this addition to neighbour obligations, the substance of the two lists of permitted categories correspond in every respect, and can therefore be merged to achieve the simplicity of a single list.
PART XVIII

SUMMARY OF RECOMMENDATIONS

18.1 This is a summary of the recommendations we make in this Report.

PART I—INTRODUCTION

18.2 There should be a new scheme of land ownership called commonhold. Its aim is to regulate relations between owners of separate properties which are interdependent (para 1.9 onwards).

PART III—ESTABLISHING A COMMONHOLD IN A NEW DEVELOPMENT

18.3 These should be the qualifications for a newly-built commonhold development:

(i) the site must be freehold (para 3.5);
(ii) the title must be registered at HM Land Registry with absolute title (para 3.8);
(iii) there must be one or more buildings on the land, divided into at least two separately-owned units (para 3.10);
(iv) all buildings on the site must be included in the commonhold (the grounded rule) (paras 3.12–3.15);
(v) the whole development, or as the case may be, the whole phase, must be structurally complete before any unit in it is transferred to its owner (the built rule) (paras 3.16–3.19);
(vi) if the development is phased there can be no more than four phases, the first must contain at least 25% of the units and the facilities enjoyed by any units must be included in the same phase or the next one. Any phase including facilities serving units in a previous phase must itself include at least 25% of the units (paras 3.23–3.32).

PART IV—CONVERTING AN EXISTING DEVELOPMENT INTO A COMMONHOLD

18.4 (a) It should be possible to convert an existing property into a commonhold (para 4.1).

(b) Where the property is vacant, qualifications and procedure will generally follow those for a new development (para 4.5).

(c) Everyone with an interest in the property must consent to conversion, unless their interest will remain unchanged after the conversion. Consents should, therefore, be required from the following (paras 4.9–4.13):

(i) existing freeholders
(ii) freeholders’ mortgagees
(iii) exiting leaseholders
(iv) leaseholders’ mortgagees
(v) existing sub-tenants
(vi) sub-tenants’ mortgagees
(vii) those entitled to registered interests whose position might be altered by the conversion to commonhold.

PART V—BUYING A UNIT

18.5 (a) The procedure for buying a commonhold unit should be substantially the same as for buying any other property (para 5.1).

(b) In addition to the usual searches and enquiries, an intending purchaser should make enquiries about the management of the commonhold, which will be answered by the commonhold association at the request of the unit owner or the unit owner’s mortgagee (para 5.17).
The vendor should remain liable to pay future service charges and comply with the other obligations of a unit owner until the commonhold association is notified of the sale (para 5.22).

PART VI—POWERS OF A UNIT OWNER

18.6 (a) The powers of a unit owner in relation to his property should be as close as possible to those of any other freeholder. Some limitations inevitably arise from the fact that units in a commonhold are interdependent (paras 6.1-6.2).

(b) A unit owner should have power:

(i) to sell his complete unit (paras 6.3-6.5);
(ii) to lease his unit (paras 6.6-6.8); 
(iii) to create other rights over his unit, i.e. easements, restrictive covenants and land obligations. Those rights should come to an end when the commonhold ends, unless they are granted with the consent of the commonhold association (paras 6.9-6.13).

(c) No unit owner should have power to acquire by adverse possession the property of another unit owner or of the commonhold association, nor should the association have power to acquire the property of a unit owner in that way (paras 6.14-6.16).

PART VII—RIGHTS AND OBLIGATIONS OF UNIT OWNERS BETWEEN THEMSELVES

18.7 (a) The Act should make the rights and obligations of each unit owner attach to the unit (para 7.2.).

(b) The detailed contents of the rights and obligations of unit owners should be laid down by statutory instrument (paras 7.3-7.4).

(c) The generally applicable regulations should be capable of variation by the promoter in the commonhold declaration, and later by the unit owners themselves by a special majority vote (i.e., the unanimous consent of those voting, or an affirmative vote of 80% and the approval of the court) (paras 7.5-7.6).

(d) A variation must be registered before taking effect (para 7.6).

(e) Unit owners, occupiers of units and the commonhold association should have power to enforce the regulations (paras 7.25-7.26).

PART VIII—COMMONHOLD ASSOCIATIONS

18.8 (a) The unit owners should automatically be members of the commonhold association (para 8.1).

(b) The association should be responsible for organising the common services and facilities, should own any common parts and should own the whole property when the commonhold comes to an end (para 8.1).

(c) The duties of the commonhold association should be set out in the Act, and it should be given all powers necessary to carry out those duties (paras 8.20-8.46).

(d) Members of the association should have “restricted liability” (para 8.10).

(e) The commonhold association should be a corporate non-profit making body, which is not subject to the general legislation relating to companies (para 8.12).

(f) The rules governing the constitution and internal conduct of commonhold associations should be standard (para 8.19).

(g) Committee members should exercise the degree of care and skill which would reasonably be expected of the owner of a freehold house, who had received no special instruction or training, when conducting his own affairs in relation to that house (para 8.48).

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PART IX—SERVICE CHARGES AND RESERVE FUNDS
18.9 (a) The commonhold declaration should state the proportion of service charge
contribution payable in respect of each unit (para 9.4).

(b) All commonholds should be required to maintain one or more reserve funds of
an amount which the association reasonably considers adequate. The purposes
for which those funds are to be used should be prescribed by regulation (para
9.8–9.13).

(c) The freehold unit owner should be primarily liable for service charges, but they
should also be recoverable by the association from a tenant with a lease of over
21 years. Tenants under shorter leases should be liable to pay to the extent of
their contractual rent (paras 9.17–9.20).

(d) The commonhold association should have an automatic lien over each unit, for
all arrears of service charge, and the liens should take priority over all other
charges. In enforcing the lien, the association should be able to sell free of the
interest of a tenant with a lease exceeding 21 years, but subject to any shorter
leases (paras 9.27–9.30).

PART X—POSITION OF TENANTS
18.10 (a) All existing tenants and sub-tenants should be required to consent to the
conversion of an existing property into a commonhold. If tenants of not more
than 29% of the units do not consent, the promoters should be able to apply
to the court to dispense with those consents, on the ground that it is reasonable
to do so (paras 10.3–10.4).

(b) Statutory security provisions should not be affected by the landlord becoming
a unit owner in a commonhold (para 10.5).

(c) When a tenancy is granted out of an existing commonhold unit, the tenant
should be given notice to that effect. Failure to do so should give the tenant a
right to compensation if he suffers loss as a result (para 10.8).

(d) There should be no need to obtain a tenant’s consent to the ending of a
commonhold. Where the commonhold ends because demolition or
reconstruction is necessary, there should be a new statutory mandatory
ground for possession applying to regulated tenancies and statutory tenancies
under the Rent (Agriculture) Act 1976. A tenant should be entitled to
compensation in such cases (paras 10.17–10.40).

PART XI—POSITION OF MORTGAGEES
18.11 (a) A unit owner should be entitled to mortgage his unit, and should give notice
of any mortgage to the commonhold association (paras 11.4–11.5).

(b) If service charges in relation to a unit in mortgage fall into arrears, the
association should give the mortgagee notice of any sums outstanding for
more than one month. It should not be able to exercise its lien for a further 3
months (para 11.6).

(c) The lien should take priority over any mortgage (para 11.6).

(d) The association should be required to give mortgagees notice of all meetings
at which "class 1 resolutions" are to be proposed. A mortgagee should be
entitled to vote on a class 1 resolution, to the exclusion of the mortgagor unit
owner. The Act should prescribe which resolutions fall into the class 1
category (paras 11.12–11.17, 11.20).
PART XII—THE POSITION OF THIRD PARTIES
18.12 (a) Outsiders dealing with the commonhold should not be in any worse position than when dealing with the owner of any other type of property (para 12.2).

(b) Property rights existing at the time of the creation of a commonhold should continue. Rights granted after the commonhold is created should last only as long as the commonhold does, unless they are granted with the consent of the association (paras 12.3–12.5).

(c) If an outsider acquires property within the commonhold by adverse possession, it should be possible to serve notice on the squatter requiring him to be registered as a unit owner. The squatter should have the alternative of applying to remove the property from the commonhold, but should lose his title if he accepts neither option (para 12.7–12.11).

(d) For the purpose of tortious liability the association is the occupier of the common parts and each unit owner is the occupier of his unit (paras 12.13–12.14).

(e) Contractors should be notified that they are dealing with a commonhold association, in respect of which members have restricted liability. For six months after the first annual general meeting of the association at which the majority of votes are not in the hands of the promoter, contracts entered into by the association earlier should be voidable (paras 12.16–12.18).

(f) When the commonhold association employs people it should have all the normal duties and responsibilities of an employer (paras 12.19–12.21).

PART XIII—VARIATIONS
18.13 The commonhold declaration and the regulations governing the rights and obligations of unit owners can be varied by a resolution carried by a special majority vote. Variations have to be registered before coming into effect (paras 13.1–13.2).

PART XIV—TERMINATION
18.14 (a) All unit owners and their mortgagees must consent before the commonhold is ended. If at least 80% agree those in favour may apply to the court to dispense with the consent of the objectors (para 14.4).

(b) Notice of intention to propose a resolution to terminate the commonhold must be registered at the Land Registry at least 30 working days before the meeting (para 14.7).

(c) When a commonhold is ended the individual unit titles are cancelled and the association becomes owner of the entire property on trust for the unit owners in their ownership shares declared in the commonhold declaration (para 14.9).

(d) The proceeds of sale of the property after the commonhold has ended should be required to be paid into a special bank account controlled by the liquidator (para 14.14).

PART XV—SUPERVISION AND INFORMATION
18.15 (a) A Commonhold Commission should not be created (paras 15.4–15.6).

(b) There should be an appreciable interval between enactment of commonhold legislation and its implementation to allow professional advisers and others concerned to become familiar with it (para 15.8).

PART XVI—JURISDICTION
18.16 (a) At least at the outset, there should be no separate disputes procedure (paras 16.8–16.12).

(b) Cases should be allocated between the High Court and the county court according to normal practice (para 16.7).
PART XVII—LAND OBLIGATIONS

18.17 The following variations should be made to the land obligations scheme:

(i) the optional provision for the appointment of a manager should be dropped (para 17.5);

(ii) a positive obligation to use a property in a particular way should be permitted as a neighbour land obligation as well as a development land obligation, allowing the two categories of land obligation to be assimilated (paras 17.6–17.10).

(Signed) TREVOR M. ALDRIDGE, Chairman
JOHN CANE
ALEXANDER HERMON
JULIA LIESCHING
IAN LEWIS
MARTIN WOOD

ANGELA SYDENHAM, Secretary
20 May 1987
APPENDIX A

BODIES CONSULTED

Association of British Insurers
Association of County Councils
Association of District Councils
Association of Metropolitan Authorities
British Property Federation
Building Societies Association
Chancery Bar Association
Chartered Association of Certified Accountants
Committee of London and Scottish Bankers
Consumers’ Association
Conveyancing Standing Committee
Federation of Private Residents’ Associations
House Builders’ Federation
Housing Corporation
Institute of Chartered Accountants in England and Wales
Institute of Legal Executives
Landed Property Consultative Council
Law Society
London Boroughs Association
National Consumer Council
National Housing and Town Planning Council
Organisation for Private Tenants
Royal Institution of Chartered Surveyors
Welsh Consumer Council
APPENDIX B

CONVEYANCING PROCEDURE

Sales by the Promoter

1. Contract
   The promoter supplies a draft contract. No special form
   is prescribed.

2. Title
   The promoter supplies:
   (i) Office copy of the Commonhold Declaration (see
       Form I (a) and (b));
   (ii) Office copy entries of the promoter's title (see
        Form II);
   (iii) Office copy of the Commonhold Association
        Constitution Register (see Form V);
   On the sale of the second and subsequent units the
   promoter in addition supplies:
   (iv) Office copy entries of the Common Parts Title
        (see Form III).

3. Enquiries
   The purchaser follows the normal conveyancing
   procedure (including making arrangements for a
   mortgage and survey where appropriate). He makes the
   usual local authority searches and enquires as well as
   enquiries of the promoter, including those regarding the
   commonhold association (see Form VII).

4. Insurance
   The commonhold association insures the property. After
   exchange of contracts the purchaser must be sure that he
   has the benefit of such insurance, in relation to the unit he
   is buying.

5. Transfers
   The purchaser needs to use a special transfer form:
   Transfer of Unit by the Promoter (see Form VI).

6. Searches
   The purchaser searches:
   (i) the promoter's title. This give him the usual
       priority protection;
   (ii) The Common Parts title;
   (iii) The Commonhold Association Constitution
        Register.
   Searches of (ii) and (iii) give him up to date information
   but no priority.

7. Registration
   After completion the purchaser (or his mortgagee)
   stamps the transfer and lodges his application at the
   appropriate District Land Registry. A land certificate (or
   a charge certificate) is issued giving the unit a separate
   title number.

8. Notice
   The purchaser gives notice of his completed purchase to
   the Commonhold Association, so that he can exercise his
   vote.
Sale by a unit owner

1. Contract
The unit owner supplies a draft contract. No special form is prescribed.

2. Title
The unit owner supplies:
(i) Office copy of the Commonhold Declaration (see Form I);
(ii) Office copy of the unit owner's title (see Form IV);
(iii) Office copy of the Commonhold Association Constitution Register (see Form V);
(iv) Office copy entries of the Common Parts title (see Form III).

3. Enquires
The purchaser makes the usual local authority searches and enquiries. Preliminary enquiries and the special enquiries concerning service charges and the Commonhold Association are addressed to the vendor unit owner (see Form VII).

4. Insurance
The Commonhold Association insures the property. After exchange of contracts the purchaser should ensure that he has the benefit of such insurance, in relation to the unit he is buying.

5. Transfer
The purchaser uses the ordinary transfer form of whole. No special form is needed and therefore none is prescribed.

6. Searches
The purchaser searches:
(i) The unit owner's title. This gives him the usual priority protection;
(ii) The Common Parts title.
(iii) The Commonhold Association Constitution Register.
Searches of (ii) and (iii) give up to date information but no priority.

7. Registration
After completion the purchaser (or his mortgagee) stamps the transfer and lodges his application at the appropriate District Land Registry. Registration is completed in the usual way, with the entries on the register giving details of the purchaser as the new registered proprietor and of any mortgagee.

8. Notice
The purchaser gives notice of his completed purchase to the Commonhold Association, so that he can exercise his vote.
COMMONHOLD DECLARATION

District:
Title Number(s):
Property:
Date: 19

The property (shown edged red on the attached plan which is part of the property) comprised in the above title(s) is to be subject to the Commonhold Act 1988, on the following terms:

1. **Units**  The ........ (number) units are identified on the attached plan

2. **Votes, ownership shares and contributions**  The votes, ownership shares and service charge contribution proportions of the owners of each unit are:

<table>
<thead>
<tr>
<th>Unit</th>
<th>Votes</th>
<th>Ownership Shares</th>
<th>Contribution</th>
</tr>
</thead>
</table>

3. **Rights and obligations**  The owners of the units have the rights and obligations set out in the Commonhold (Rights and Obligations of Unit Owners) Order 1988 (with the following variations):

SIGNED BY of , registered proprietor

in the presence of:
HM LAND REGISTRY
Land Registration Act 1987
Commonhold Act 1988

COMMONHOLD DECLARATION
Phased Developments

District:
Title Number(s):
Property:
Date:

The property (shown edged red on the attached plan which is part of the property) comprised in the above title(s) is to be subject to the Commonhold Act 1988, on the following terms:

1. **Phases**  The number of phases proposed is ……

2. The units and facilities comprised in each phase are shown on the attached plan(s).

3. The dates of commencement and completion of each phase are as follows:

<table>
<thead>
<tr>
<th>Commencement</th>
<th>Completion</th>
<th>Unit Nos. to</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Phase 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Phase 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Phase 3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) Phase 4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. **Votes, ownership shares and contributions**  The votes, ownership shares and service contribution proportions of the owners of each unit are:

<table>
<thead>
<tr>
<th>Phase 1 — Unit</th>
<th>Votes</th>
<th>Ownership shares</th>
<th>Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Phase 2 — Unit</td>
<td>Votes</td>
<td>Ownership shares</td>
<td>Contribution</td>
</tr>
<tr>
<td>(c) Phase 3 — Unit</td>
<td>Votes</td>
<td>Ownership shares</td>
<td>Contribution</td>
</tr>
<tr>
<td>(d) Phase 4 — Unit</td>
<td>Votes</td>
<td>Ownership shares</td>
<td>Contribution</td>
</tr>
</tbody>
</table>

5. **TOTALS:**

<table>
<thead>
<tr>
<th>Units</th>
<th>Votes</th>
<th>Ownership shares</th>
<th>Contribution</th>
</tr>
</thead>
</table>

On completion of phase 1:
On completion of phase 2:
On completion of phase 3:
The whole commonhold:
6. The promoter reserves the following rights until completion of the development...

7. Rights and obligations  The owners of the units have the rights and obligations set out in the Commonhold (Rights and Obligations of Unit Owners) Order 1988 (with the following variations):

SIGNED BY
registered proprietor

in the presence of:

Notes:
1. The maximum number of phases is four.
2. The first phase must comprise at least 25% of the units.
3. The common parts and facilities for the use of any unit must be built in the same phase as the unit or in the following phase.
H.M. LAND REGISTRY

PROMOTER'S TITLE

Edition 1 opened 1.1.1988

This register consists of 3 pages

TITLE NUMBER

A. PROPERTY REGISTER
containing the description of the registered land and the estate comprised in the Title

<table>
<thead>
<tr>
<th>COUNTY</th>
<th>DISTRICT</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOUTHUMBERLAND</td>
<td>NEWTOWN</td>
</tr>
</tbody>
</table>

The freehold land shown and edged with red on the plan of the above title filed at the Registry registered on 1 January 1988 being land at West Street, Newtown.

NOTE 1:—The land in this title is a commonhold scheme established by a commonhold declaration dated 15 February 1988 made by ABC Builders PLC. The commonhold scheme is governed by the Commonhold Act 1988 and by any orders made thereunder. The commonhold association is Commonhold Association 1CR. The land in the title has the benefit of and is subject to the rights and obligations imposed under the Act and orders as varied [by the commonhold declaration and] by any regulations entered on the register of the commonhold association. (1.3.1988)

REMARK:—Commonhold declaration filed.

NOTE 2:—The common parts of the commonhold scheme referred to in Note 1 above have been removed from this title under title S012401. (15.9.1988)

NOTE 3:—The units of the commonhold scheme specified in column 1 below have been removed from this title on the date specified in column 2 under the title number specified in column 3. (15.9.1988)

<table>
<thead>
<tr>
<th>Unit</th>
<th>Date</th>
<th>Title number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>15 September 1988</td>
<td>S012401</td>
</tr>
</tbody>
</table>

Any entries struck through are no longer subsisting.
### B. PROPRIETORSHIP REGISTER

<table>
<thead>
<tr>
<th>Entry number</th>
<th>Proprietor, etc</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>ABC Builders PLC of 1, High Street, Newtown, Southumberland registered on 1 January 1988.</td>
</tr>
</tbody>
</table>
| 2.           | Restriction registered on 1 March 1988. Except under an order of the registrar, no disposition or dealing (other than the grant of a lease) by the proprietor of the land or made in exercise of any powers arising under any charge referred to in the charges register is to be registered unless:—  
   (a) it is a transfer or charge of the whole of the land in the title; or  
   (b) in the case of a transfer of part of the land in the title, it is of the whole of one only of the units of the commonhold scheme referred to in the property register; or  
   (c) in the case of any other such disposition or dealing, which will not determine on the termination of the said commonhold scheme, the written consent of Commonhold Association No 1CR signed by the solicitor, licensed conveyancer, or two committee members, or, if there is no committee, by two members thereof, has been furnished. |
| 3.           | Restriction registered on 1 March 1988. Except under an order of the registrar, no transfer of part of the land in the title by the proprietor of the land or made in exercise of any powers arising under any charge referred to in the charges register is to be registered unless a certificate pursuant to section [50] of the Commonhold Act 1988 has been furnished. |

Any entries struck through are no longer subsisting
## C. CHARGES REGISTER

containing charges, incumbrances etc., adversely affecting the land and registered dealings therewith

<table>
<thead>
<tr>
<th>Entry number</th>
<th>The date at the beginning of each entry is the date on which the entry was made on this edition of the register</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1 January 1988. Charge dated 15 December 1987 registered on 1 January 1988 to secure the money therein mentioned.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Proprietor—XYZ Bank PLC of 10 Main Street, Newtown, Southumberland registered on 1 January 1988.</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>1 March 1988. The land is subject to the charges imposed by sections [21] and [22] of the Commonhold Act 1988 to secure the payment of service charges.</td>
<td>NOTE:— This entry has priority to charge no 1 above.</td>
</tr>
</tbody>
</table>

Any entries struck through are no longer subsisting
A. PROPERTY REGISTER
containing the description of the registered land and the estate comprised in the Title

COUNTY  DISTRICT
SOUTHUMBERLAND  NEWTOWN

The freehold land registered on 1 January 1988 lying within the area edged red on the filed plan of the above title filed at the Registry being land at West Street, Newtown comprising the common parts of a commonhold scheme established by a commonhold declaration dated 15 February 1988 made by ABC Builders PLC being the common parts prescribed by the Commonhold Act 1988 [as varied by the commonhold declaration].

NOTE 1:—The commonhold scheme is governed by the Commonhold Act 1988 and any orders made under that Act and the land in this title has the benefit of and is subject to the rights and obligations imposed thereunder as varied [by the commonhold declaration and] by any regulations entered on the register of Commonhold Association No ICR. (15.9.1988)

REMARK:—Commonhold declaration filed under title number S012345.

B. PROPRIETORSHIP REGISTER
stating nature of the Title, name, address and description of the proprietor of the land and any entries affecting the right of disposing thereof

TITLE ABSOLUTE

<table>
<thead>
<tr>
<th>Entry number</th>
<th>Proprietor, etc</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Commonhold Association No ICR of 1, High Street, Newtown, Southumberland registered on 15 September 1988.</td>
</tr>
<tr>
<td>2.</td>
<td>Restriction registered on 15 September 1988. Except under an order of the registrar:—</td>
</tr>
<tr>
<td>(1)</td>
<td>No charge of the land is to be registered.</td>
</tr>
<tr>
<td>(2)</td>
<td>No other disposition or dealing is to be registered unless a certificate signed by the solicitor, licensed conveyancer or by two committee members, or, if there is no committee, by two members of the proprietor, has been furnished that the disposition or dealing has been effected in accordance with the Commonhold Act 1988.</td>
</tr>
</tbody>
</table>

Any entries struck through are no longer subsisting
C. CHARGES, REGISTER
containing charges, incumbrances etc., adversely affecting the land and registered dealings therewith

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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Form IV
H.M. LAND REGISTRY SPECIMEN (UNIT TITLE)
Edition 1 opened 15.9.1988
TITLE NUMBER S012401
This register consists of 2 pages

A. PROPERTY REGISTER
containing the description of the registered land and the estate comprised in the Title

COUNTY
SOUTHUMBERLAND

DISTRICT
NEWTOWN

The freehold land shown and edged with red on the plan of the above title filed at the Registry registered on 1 January 1988 known as Flat 1, High Tower, West Street, Newtown.

NOTE 1:— Only the ground floor is included in the title.

NOTE 2:— The land in this title is Unit No 1 of a commonhold scheme established by a commonhold declaration dated 15 February 1988 made by ABC Builders PLC. The commonhold association is Commonhold Association No ICR. The commonhold scheme is governed by the Commonhold Act 1988 and any orders made under that Act and the land in this title has the benefit of and is subject to the rights and obligations imposed thereunder as varied [by the commonhold declaration and] by any regulations entered on the register of the commonhold association. (15.9.1988)

REMARK:— Commonhold declaration filed under title number S012345.

B. PROPRIETORSHIP REGISTER
stating nature of the Title, name, address and description of the proprietor of the land and any entries affecting the right of disposing thereof

TITLE ABSOLUTE

<table>
<thead>
<tr>
<th>Entry number</th>
<th>Proprietor, etc</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>John Smith of Flat 1, High Tower, West Street, Newtown, Southumberland registered on 15 September 1988.</td>
</tr>
<tr>
<td>2.</td>
<td>Restriction registered on 15 September 1988. Except under an order of the registrar, no disposition or dealing (other than the grant of a lease) by the proprietor of the land or made in exercise of any powers arising under any charge referred to in the charges register is to be registered unless:—</td>
</tr>
<tr>
<td></td>
<td>(a) In the case of a transfer or charge, it is of the whole of the land in the title.</td>
</tr>
<tr>
<td></td>
<td>(b) In the case of any other such disposition or dealing, which will not determine on the termination of the commonhold scheme referred to in the property register, the written consent of Commonhold Association No ICR signed by the solicitor, licensed conveyancer or by two committee members, or, if there is no committee, by two members thereof, has been furnished.</td>
</tr>
</tbody>
</table>

Any entries struck through are no longer subsisting

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C. CHARGES REGISTER
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<tr>
<td>1.</td>
<td>15 September 1988. The land is subject to the charges imposed by sections [21] and [22] of Commonhold Act 1988 to secure the payment of service charges.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>15 September 1988. Charge dated 1 September 1988 registered on 15 September 1988 to secure the money therein mentioned.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
</tbody>
</table>
| **1.** | 1 March 1988. Commonhold Declaration dated 15 February 1988 by ABC Builders PLC.  
NOTE:— Commonhold Declaration filed under title number S012345. |
| **2.** | Address for service: 1, High Street, Newtown, Southumberland. |

Any entries struck through are no longer subsisting.
Stamp pursuant to section 28 of the Finance Act 1931 to be impressed here. Where the transfer attracts Inland Revenue duty, the stamps should be impressed here lodging the transfer for registration.

<table>
<thead>
<tr>
<th>(1) For a transfer of units from a UNIT OWNER use printed form</th>
<th>TRANSFER OF UNIT(S) BY THE PROMOTER (1) (Commonhold)</th>
</tr>
</thead>
<tbody>
<tr>
<td>County and district ................................................................</td>
<td>..................................................................</td>
</tr>
<tr>
<td>(or London Borough) .............................................................</td>
<td>..................................................................</td>
</tr>
<tr>
<td>Title number(s) ........................................................................</td>
<td>..................................................................</td>
</tr>
<tr>
<td>Property ..................................................................................</td>
<td>..................................................................</td>
</tr>
<tr>
<td>Date ......................................................................................</td>
<td>In consideration of ..................................................</td>
</tr>
<tr>
<td>.......................................................................................</td>
<td>..................................................................</td>
</tr>
</tbody>
</table>

| (2) Strike out if not required. ...............................................|.................................................................. |
| ............................................................................................| pounds (£..........................)(2) the receipt of which is hereby acknowledged. |

| (3) In BLOCK LETTERS enter full name, postal address and occupation of promoter. | (3) I ........................................................................ |
| .......................................................................................|.................................................................. |

| (4) If desired or otherwise as the case may be see rules 76 and 77. | (4) As beneficial owner transfer to |
| .......................................................................................|

| (5) .................................................................................... | Commonhold unit number(s)..............(6) as defined in the Commonhold Declaration referred to in the register of the above title being part of the land comprised in the title. |
| .......................................................................................|

| (6) Whole units only can be transferred | The transferees declare that the survivor of them (7) can/cannot give a valid receipt for capital money rising on a disposition of a disposition of the land. |
| .......................................................................................|

| (7) Delete the inappropriate alternative | (8) It is hereby certified that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount or value or aggregate amount or value of the consideration exceeds £....... |
|.......................................................................................|.................................................................. |

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This transfer must be executed by the transferee(s) as well as the transferor(s).

Signed, sealed and delivered by the said

.............................

in the presence of

Name........................Signature...........................Seal
Address..............................................................
Occupation............................................................

Signed, sealed and delivered by the said

.............................

in the presence of

Name........................Signature...........................Seal
Address..............................................................
Occupation............................................................

Signed, sealed and delivered by the said

.............................

in the presence of

Name........................Signature...........................Seal
Address..............................................................
Occupation............................................................

Signed, sealed and delivered by the said

.............................

in the presence of

Name........................Signature...........................Seal
Address..............................................................
Occupation............................................................

95
REQUEST FOR INFORMATION

To: [Blank]  
From: [Blank]  
acting on behalf of: [Blank]

Please supply the following information in relation to Unit No [Blank]

Signed [Blank]  
Date [Blank]  

Concerning this unit:

1. How much is the current service charge? £............ per month/quarter

2. Has any service charge been demanded but not paid? YES/NO*  
   if YES, state: sum due £........ for period.................

3. Is there any unresolved dispute between the association and the owner of the unit? YES/NO*  
   if YES, give details:

Concerning the whole Commonhold:

4. Has a resolution to end the Commonhold been either proposed or passed? YES/NO*

5. Is the association engaged in any litigation or arbitration, or is any threatened or contemplated? YES/NO*  
   if YES, give details:

6. Are there any material unresolved disputes about the use of any common parts? YES/NO*  
   if YES, give details:

7. What is the present balance of the reserve fund (excluding accrued interest)? £.............
   If the association has more than one fund, identify the purpose of each and give its balance.

8. Has the association incurred, or agreed to incur, any non-routine expenditure not yet included in service charge demands? YES/NO*  
   if YES, give details:

9. Has any service charge payable in relation to any other unit been demanded more than four weeks ago but not yet paid? YES/NO*  
   if YES, state in each case:
   Unit: [Blank]  
   sum due £........, for period:

* delete one alternative
When returning this form, please send:
(a) a copy of the association's last annual accounts.
(b) details of the association's insurance policies.

Information supplied by:
Signed ..........................................................................

date .............................................................................19......
APPENDIX C
COMMONHOLD ASSOCIATION CONSTITUTION RULES

INTERPRETATION
1. In these rules, these words have the following meanings:

"the Act": the Commonhold Act 1988
"the Chairman": the Chairman of the association
"class 1 resolution": a resolution so described in the Act
"the Committee": the Committee of the association
"the commonhold": the commonhold in respect of which the association is established
"the declaration": the declaration registered when the commonhold was established as amended by any variation registered at H.M. Land Registry
"a member": a member of the association
"the office": the registered office of the association
"the promoter": the person who executed the declaration
"the Secretary": the Secretary of the association

MEMBERSHIP
2. The members of the association are all the owners of the units in the commonhold. The Secretary is to keep a register of the members.

3. When a unit is owned by more than one person, each is a member of the association, but where these rules refer to a number of members, joint owners are to be counted together as one. Amongst those joint owners, seniority is the order in which they are registered as members.

4. (a) A person entitled to a unit by reason of the death or bankruptcy of a member or to administer a unit under an order referred to in paragraph (b) is to be treated as a member in respect of that unit for the purpose of these rules on supplying satisfactory evidence to the Chairman.

(b) the orders referred to in paragraph (a) are:

an order of the authority having jurisdiction under Part VII of the Mental Health Act 1983
an administration order under the Insolvency Act 1986

OFFICERS AND COMMITTEE
5.(a) The association has a Chairman (see rule 46) and a Secretary (see rule 47).
(b) the association may have a Committee (see rule 30).

DUTIES AND POWERS
6. If the association has no Committee, the association in general meeting has the responsibility for carrying out all the duties and exercising all the powers of the association.

7. If the association has a Committee, that Committee is responsible for carrying on all the duties and exercising all the powers of the association, subject to any decision of a general meeting.

GENERAL MEETINGS
8. All members are entitled to attend and (subject to rule 24(b)) to vote at general meetings.

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9. If a Class 1 resolution is proposed at a general meeting, all mortgagees of units in the
commonhold who have given the Secretary notice of their mortgage and an address for
service are entitled to attend and vote at that general meeting.

10. A general meeting is called by the Secretary (or if there is no Secretary by those
requiring the meeting) giving at least 14 days' notice to all those entitled to attend. The
notice must state the time and place of the meeting, the text of any Class 1 resolution to be
proposed and the general nature of the business to be transacted. It must also state that a
member has a right to appoint a proxy, who need not be a member, to attend and vote at
the meeting on his behalf.

11. A general meeting may be called on less than 14 days' notice with the written consent
of all those entitled to attend.

12. Notice of an annual general meeting must name it as such, and be accompanied by
a copy of the accounts which the Act requires the association to present to members.

13. The proceedings at a general meeting are not invalidated by the fact that notice was
accidently not given to, or was not received by, anyone entitled to receive notice.

14. The first annual general meeting is to be held within 180 days from the date of the
sale of the first unit or, if earlier, within 90 days of the sale by the promoter, of units then
holding half of the number of votes in the commonhold association.

15. An annual general meeting is to be held every year after the first annual general
meeting and within 15 months of the previous one.

16. Other general meetings are to be called whenever required either by the Committee,
or by at least two members who are together entitled to at least 10% of the total votes.

PROCEEDINGS AT GENERAL MEETINGS

17. No business is to be transacted at any meeting unless a quorum is present. Two
members, or their proxies, are a quorum.

18. If no quorum is present within 15 minutes of the time stated in the notice for the start
of the meeting, it is to be abandoned.

19. A general meeting is to be chaired by -
   (i) the Chairman if he is present
   (ii) in his absence, a member of the Committee selected by the members present, or
   (iii) if there is none, a member selected by the members present.

20. No business may be transacted at a general meeting unless it was specified in the
notice of the meeting or it is of a trivial nature and the Chairman of the meeting agrees.

21. The Chairman of a meeting may, with the consent of the meeting, adjourn it from
time to time and from place to place. If any adjournment is for longer than 14 days, at least
seven days notice of the time and place at which it is to be resumed must be given to all
those then entitled to notice of the meeting.

22. The Secretary is to take minutes of all general meetings and record them in a minute
book.

23. A resolution, other than a Class 1 resolution, in writing signed by all those whose
votes in favour of it at a general meeting at which they were present would have carried it
unanimously, and recorded in the minute book, takes effect as if it had been passed at a
general meeting.

VOTES.

24. (a) A member has the number of votes allocated to his unit in the declaration and all
are to be cast together;
   (b) when a unit is jointly owned, the votes cast and rights exercised by the most senior
of the members doing so are those which take effect;
(c) on a class 1 resolution, a mortgagee of a unit may cast the votes allocated to that unit and votes so cast invalidate votes cast by the owner and any mortgagee whose mortgage ranks lower in priority.

25. The Chairman of a meeting shall decide how a vote is to be taken. If a poll is taken, the meeting may proceed to transact other business.

26. Even in the case of equality of votes, the Chairman of the meeting is not entitled to a casting vote in addition to any other vote he may have.

27. A member may appoint a proxy, who need not be a member, to attend a general meeting, to speak and vote on his behalf.

28. A proxy must be appointed in writing. The appointment may be in the following form, or in some other usual or similar form:

"COMMONHOLD ASSOCIATION NO.

I/We, ..... ..... ..... of ..... ..... ..... ..... ..... a member of the association, hereby appoint ..... ..... ..... ..... of ..... ..... ..... ..... ..... , or failing him, ..... ..... ..... of ..... ..... ..... ..... ..... ..... ..... as my/our proxy to vote in my/our name[s] and on my/our behalf at the general meeting of the association to be held on 19.., and at any adjournment thereof.

[The proxy is to vote for/against resolution no. ..... in the notice calling the meeting].

Signed ..... ..... ..... ..... ..... ..... ..... ..... ..... ..... .....

Dated ..... ..... 19..."

29. Any dispute as to the qualification of a person tendering a vote is to be settled by the Chairman of the meeting, whose decision is final and conclusive. Any vote cast and not disallowed at the meeting is valid.

COMMITTEE

30. The association may, and if there are more than six units in the commonhold must, elect a committee of at least four and not more than 12 members.

31. Committee members are elected and may be removed from office by a general meeting. The committee, or the sole surviving member of the committee, may co-opt members to hold office until the next annual general meeting to fill casual vacancies.

32. An up-to-date list of committee members with a notice of the address of the office shall, where possible, be placed in a prominent position in the premises of the commonhold.

33. A committee member must be a member of the association.

34. A person ceases to be a member of the committee if:

(a) he is no longer a member of the association;
(b) he is disqualified from holding office as the director of a company;
(c) he becomes bankrupt or makes any arrangement or composition with his creditors generally;
(d) he suffers from mental disorder and is admitted to hospital for treatment under the Mental Health Act 1983, a court having jurisdiction in matters concerning mental disorder orders his detention or the appointment of a receiver of his property or affairs or an enduring power of attorney granted by him is registered; or
(e) he resigns his office by notice to the association.

35. The committee is responsible for managing the commonhold, and, subject only to any resolution of a general meeting, is to perform all the duties and exercise all the powers of the association for that purpose.

36. The committee may delegate any of its powers to any one or more of its members or to any agent of the association. The committee has no power to delegate irrevocably.
37. The quorum at the meeting of the committee is two.

38. A committee member is not entitled to appoint an alternate or proxy to act as a committee member on his behalf.

39. The committee decides questions by a majority vote. In the case of an equality of votes, the Chairman has a second, casting vote.

40. The Secretary is to take minutes of all committee meetings and record them in a minute book.

41. A resolution in writing, signed by all committee members and recorded in the minute book, takes effect as if it had been passed at a meeting of the committee.

42. The association may pay committee members all reasonable expenses properly incurred in carrying out their duties.

43. The committee may, on behalf of the association and on whatever terms it thinks fit, employ any member of the Committee to do work or provide services outside the scope of the ordinary duties of a committee member.

44. A committee member who has a material interest in a matter considered by the committee must declare that interest, unless it is unreasonable to expect him to know of it. A general declaration by a committee member of a specified interest in any transaction or arrangement with a specified person or persons satisfies his obligation in respect of that interest.

45. If a committee member has disclosed a material interest in a matter considered by the committee he may not vote on it, but if the committee resolves that the association should enter into or have an interest in any related transaction,

(i) he may be a party to it or have an interest in it and

(ii) he is not accountable for any profit or benefit he derives from it and

(iii) the transaction is not liable to be made void on that ground.

MINUTES

48. A member is entitled to inspect the minutes of general meetings and of committee meetings and the accounting records, correspondence and other documents belonging to the association. If the records are kept in other than written form, readable copies must be made available for inspection on request. Reasonable facilities must be afforded to a member seeking to exercise this right, and no charge may be made.

NOTICE

49. Notice given under these rules:

(a) to the association, is to be sent by post or delivered to the office;

(b) to a member, is to be handed to him personally, sent by post or delivered to an address in the United Kingdom notified by the member to the association, or, in default, to his unit;

(c) to any other person, is to be sent by post or delivered to the last address known to the association for that person.

INDEMNITY

50. (a) A Committee member is entitled to be indemnified out of the assets of the association in respect of expenses incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the association.

(b) The indemnity in the foregoing paragraph is without prejudice to any other indemnity to which a Committee member may be entitled and is subject to the provisions of the Act.