

Property fact sheet

Commonhold vs leasehold for flats

In this fact sheet we'll explore the benefits and drawbacks of both leasehold and commonhold flats so that you can make an informed decision for your property.

What's the difference?

Leasehold is the most common type of property ownership, especially for flats. Under a leasehold arrangement, the property owner (known as the leaseholder) pays an annual sum to the freeholder (the owner of the land on which the property is built) for the right to occupy the property for a set period of time. This is typically 99 to 120 years but can be as high as 999 years.

Commonhold is a newer type of ownership, established in England and Wales from 27 September 2004 by the Commonhold and Leasehold Reform Act 2002, Commonhold Regulations 2004 and Commonhold (Land Registration) Rules 2004. Under a commonhold arrangement, each flat owner becomes a member of a company that owns the entire building and its associated land for an indefinite period of time. This gives each owner a share in the management and upkeep of the property, and there is no need to pay an annual lease fee.

Leasehold considerations

There are different Capital Gains Tax implications for leaseholds and commonholds. Long Leaseholds with over 50 years left can

create tax issues, including SDLT, Capital Gains, Income Tax and Corporation Tax. You can read more about CGT issues in [HMRC's Capital Gains Manual](#).

Essentially, if you dispose of a leasehold, interest and Capital Gains Tax will be payable on any profit you make.

Fortunately, [ESC/D39](#) can be applied to **lease extensions**. These rules state that "the surrender of an existing lease and the grant of a new lease should not be treated as a disposal for the purposes of capital gains if the taxpayer so wishes and all of the following conditions are satisfied:

- The transaction, whether made between connected or unconnected parties, is made on terms equivalent to those that would have been made between unconnected parties bargaining at arm's length;
- The transaction is not part of or connected with a larger scheme or series of transactions;
- A capital sum is not received by the tenant;
- The extent of the property under the new lease is the same as that under the old lease;
- The terms of the new lease (other than its duration and the amount of rent payable) do not differ from those of the old lease. Trivial differences should be ignored."

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Commonhold considerations

Capital Gains Tax will not be payable on the disposal of a commonhold interest, as long as it is your main residence. These are the rules of the [Principle Private Residence Relief Scheme](#).

However, it's important to remember that the flats will still need some form of management. And with community ownership, this can cause tensions within the building. To reduce any potential issues, members should sign a Commonhold Community Statement, which outlines the rules and regulations, for example, rules about subletting, pets, noise and use of gardens.

Further help

If you have any questions relating to your own situation, then please contact us by emailing enquiries@torgersens.com and we'll be in touch.

