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Welsh Government

Developed by LEASE and funded by the Welsh Government

MAJOR WORKS

A guide for leaseholders of social landlords





Foreword

A key aim of this Government is to ensure that everyone has a safe and affordable home that is in a good state of repair.

In the social housing sector, many landlords are currently undertaking major repair works to their stock in order to ensure they are fit for the future and comply with the Welsh Government's Welsh Housing Quality Standard.

I am delighted that the housing sector has taken the lead in producing this *Major Works Good Practice Guide for Social Landlords*, and an accompanying *Major Works Guide for Leaseholders*, which have been supported by the Welsh Government.

Leaseholders have also contributed to the development of these documents and it was important to ensure their views were also represented.

I very much hope that the practical guidance and good practice demonstrated throughout this booklet will help to ensure that matters of dispute can be resolved early on and allow the opportunity for social landlords and leaseholders to live and work together in harmony for many years to come.

Carl Sargeant AM
Cabinet Secretary for Communities and Children

Contents of the guide



Page number

■ Purpose of the guide.....	7
■ What are major works?.....	9
■ Information supplied at sale/re-sales	11
■ Section 20 consultation.....	13
■ Leaseholder involvement and engagement	17
■ Quality of major works	19
■ Payment options	21
■ Dispute resolution	27
■ Glossary of terms.....	31



Purpose of the guide

This guide is for leaseholders of social landlords, which mainly includes local housing authorities and housing associations but can include others, such as a Charitable Industrial and Provident Society.



The purpose of this guide is to explain what ‘major works’ are, your landlord’s legal obligations and what would be best practice from your landlord when they carry out major works to your block. This includes consultation, leaseholder involvement, quality of work and payment options.

Major works and the charges arising from them can be daunting for leaseholders. This guide should help clarify the process, your landlord’s responsibilities and the options available to you.

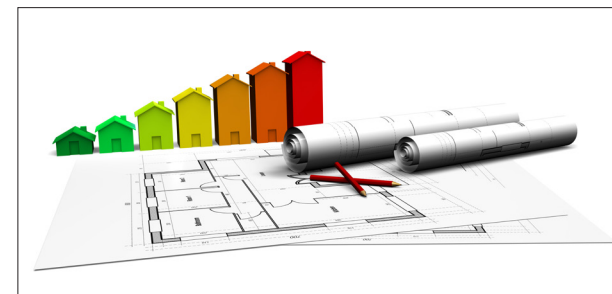
A Major Works Good Practice Guide for Social Landlords has been developed, with the help of leaseholders, to assist landlords to work towards this goal.

This guide is also available in Welsh.

Find these guides on the LEASE website www.lease-advice.org/wales.

Neither booklet is meant to give a full interpretation of the law. If you are in any doubt about your rights and duties, please seek specific advice.

In this guide, where there is a statutory legal obligation the word ‘must’ is used. Where the word ‘should’ is used, it indicates good practice.



What are major works?

These are major works of repair, maintenance or improvement to your building or any other premises that your landlord is responsible for and towards which you contribute under the terms of the lease. Under Section 20 of the Landlord & Tenant Act 1985, landlords are required to consult with leaseholders if the works will cost any one leaseholder more than £250.



Major works charges are defined as a 'service charge' but will, usually, be an additional payment on top of the annual service charge. If there is a 'reserve fund' or 'sinking fund', built up from leaseholder contributions, this may cover some or all of the major works (*see the [glossary of terms](#) at the end of this guide for the definition of 'sinking fund' and many other terms used throughout this guide*).

Major works can include maintenance and repair, and sometimes improvement, of the exterior and structure of the building and common parts. Examples of major works might cover: repairing, replacing or decorating the roof, window frames, exterior brickwork, communal areas, soffits, fascias, external guttering, downpipes and pathways.

Major works will not include maintenance and repair of your own 'demised premises', which will normally be the interior parts of your flat. Your lease should have a definition of what is included within your demised premises and what is, therefore, your responsibility.



Information supplied at sale/re-sales

If you are considering buying an existing leasehold property or exercising your Right to Buy (RTB) or Right to Acquire (RTA) a flat or maisonette from your landlord, you should request a meeting with your potential landlord to talk about leasehold ownership and what this means for you. This will help you understand your rights and responsibilities if you were to become a leaseholder.



Your rights and responsibilities, as well as the landlord's, will be set out in the lease. Your landlord may also provide a handbook containing these. However, these meetings and handbook are not a substitute for obtaining proper legal advice from your solicitor.

As good practice, landlords should provide a pre-sale enquiry 'pack' to solicitors during a sale, which may include a copy of the lease with some advisory notes on the main obligations under the lease. It may also include a completed leasehold purchase enquiry form (LPE1), which is a standard form approved by the Law Society containing detailed enquiries about such things as service charges, ground rent, insurance and other information that your solicitor will require to see prior to purchase.

If buying under the RTB/RTA scheme, your landlord must provide an estimate of any service charges for major works and cyclical works you will have to pay during the first five years of your lease. If the lease says you must pay some of the costs of improvement, the estimate must cover these too. Once an estimate has been given, the landlord is not allowed to charge you more than that figure during the first five years of your lease, except to take account of inflation.

If you are purchasing an existing leasehold property after the first five years following RTB/RTA, the landlord should aim to give you as much information as possible on the works planned at the building. However, the charges for the work will not be subject to the same restrictions as they would be following an RTB/RTA purchase.



Section 20 consultation

Section 20 of the Landlord & Tenant Act 1985 requires a landlord to consult with leaseholders or a Recognised Tenants' Association (see glossary) before they carry out major works.



The consultation process involves writing to leaseholders describing the proposed works, explaining why they are necessary and giving an estimate, or estimates, of the total cost of the works. The notice(s) should invite people to comment on the proposed works and estimate(s) within the following 30 days.

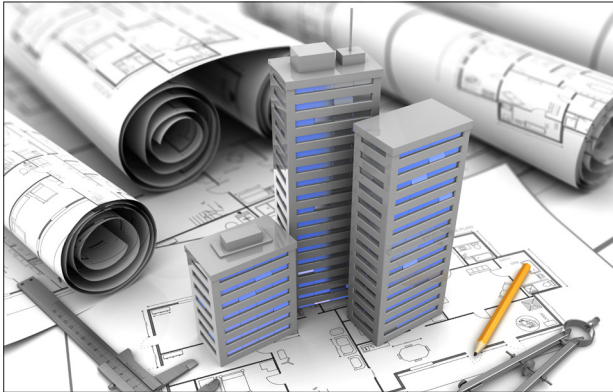
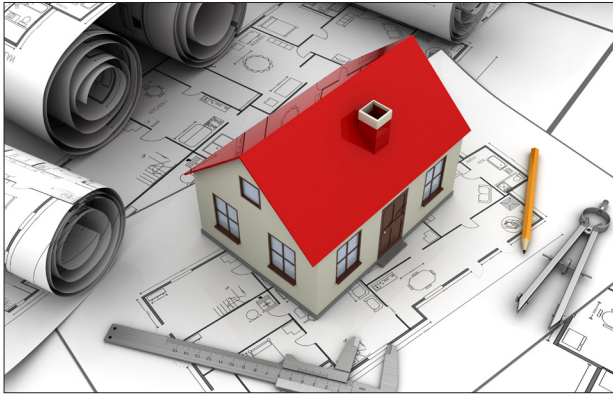
In some circumstances, leaseholders can nominate a contractor from whom the landlord should try to obtain an estimate. If comments are received, the landlord must consider them and respond.

Most social landlords will already have contractors on a long-term contract called a 'qualifying long-term agreement'. Before entering into such a contract, they must consult with leaseholders in a similar way to the above. Once they have a contractor in place, the landlord can always use that contractor for major works and do not have to invite leaseholders to nominate alternative contractors.

There is also a different procedure where the contract for works or services is large enough to require the landlord to tender throughout the European Union.

Section 20 is complex, but a simplified procedure flowchart can be found below (insert page number). More information can be found in the advice guides on the LEASE website <http://www.lease-advice.org>, or you may wish to seek your own legal advice.

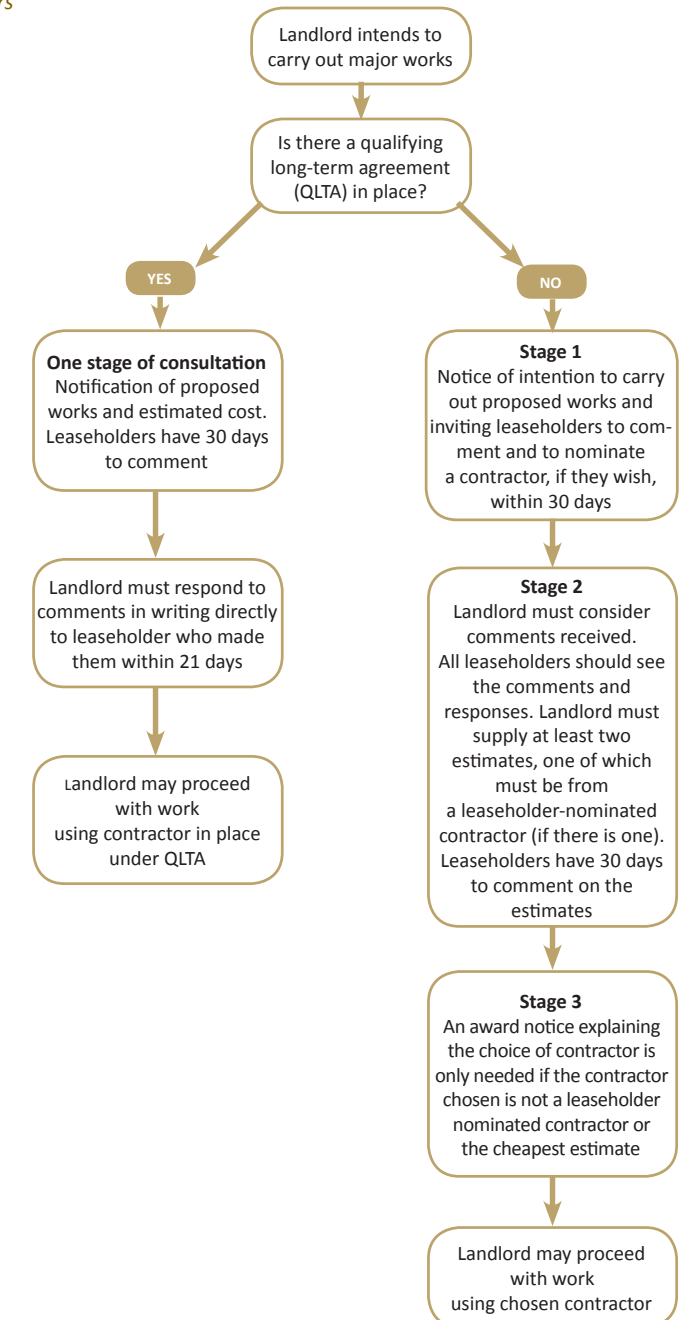
See section 20 flow chart [overleaf](#).



** Please note that this flow chart is a basic outline of two of the possible procedures. The process also differs where the contract for works or services is large enough to require tendering throughout the European Union. Please see the advice guide on the LEASE website www.lease-advice.org for full details.*

SECTION 20

Consultation process flow chart*



Leaseholder involvement and engagement

Leaseholders have the legal right to be consulted where any major works charge would be more than £250 per leaseholder.



In addition to Section 20 consultation, landlords may offer additional services such as:

- Meetings with leaseholders and/or recognised tenants' associations to discuss major works proposals with questions answered by qualified persons acting on behalf of the landlord.
- Inspection of plans and estimates.
- Directing leaseholders to benefits advice, loans or grants.
- Involvement in quality checks.
- Copies of guarantees available either online or by post on request.
- A feedback framework for the leaseholders to comment on the process, and quality of ongoing work and any other relevant matters.

This list is not exhaustive, but gives examples of good practice that you might expect your landlord to provide.



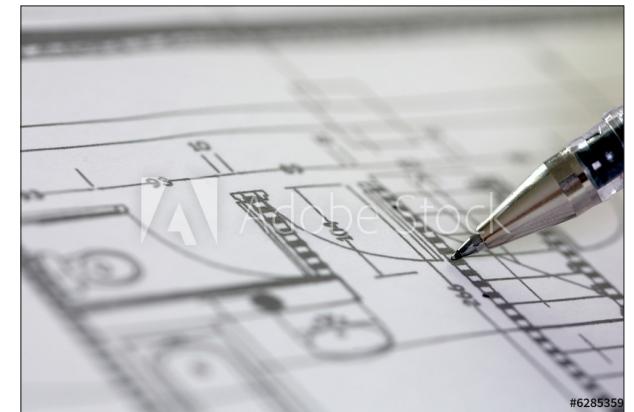
Quality of major works

One of the biggest areas of dispute that ultimately ends up at the Leasehold Valuation Tribunal (LVT) is where a leaseholder believes they have received poor value and poor quality services or work. Involvement of leaseholders in planning, monitoring and evaluating services achieves greater transparency and more satisfactory outcomes.



Suggested good practice examples leaseholders should expect from their landlords:

- Service standards should be made clear in advance of the works. This could include standard of materials used or service charge query response times. Service standards should take account of individual leaseholder's needs. For example, disabilities, communication or support needs.
- Leaseholders should be consulted if a variation of works (outside of the notice) is required.
- Leaseholders should understand who is accountable for on-site performance. This should be the landlord's representative rather than the contractor. Various contact details should be published.
- Leaseholder panels could review quality of work and overall satisfaction with the process and identify any action needed.



Payment options

When charging for major works, landlords should offer a range of payment options to help leaseholders.



Most social landlords will offer a range of payment options to leaseholders, depending on their circumstances. These may include:

- Voluntary loans – extended payments over an agreed period of time (with or without interest). Your landlord would need to be licensed by the Financial Conduct Authority to be able to offer certain loans.
- Place a legal charge against the property so that the major works charge is paid when the property is sold on.
- Offer shared ownership (part rent/part ownership).
- Buy back the property.

Where landlords offer low interest or interest-free loans to leaseholders who sub-let their properties, they need to check EU State Aid rules and the 'de minimis' levels within them to ensure the benefits do not exceed €200,000 over three fiscal years. Your landlord should inform you in writing of the value of the 'de minimis' aid you are receiving.

Mandatory loans

If you own a flat that was purchased under the Right to Buy you may be eligible for a mandatory loan provided by Welsh Government or your local housing authority.

You do not have to be the person who originally purchased the flat under the Right to Buy, but your landlord must either be the housing authority which sold the flat to you, or another housing authority.

You do not have the right to a loan if you or a previous purchaser bought your flat under



the Preserved Right to Buy. The Preserved Right to Buy applies to people who were tenants living in their council home when the council transferred it to the housing association.

In other words if your lease is now with a housing association, you must have already bought the property from the Local Authority before it was later transferred to the housing association. The transfer must have occurred within the last 10 years for you to be eligible for the mandatory loan.

You must pay the first part of the bill yourself or by an alternative loan method. This amount varies annually in line with inflation. For illustrative purposes, for 2016/17 the amount you have to pay before you can apply for a loan is £2,863.

The minimum eligible amount to qualify for a loan is £954. This amount can also vary with inflation. You will not qualify for a loan if the amount requested is less than £954 after the first £2,863 has been deducted from the bill.

There is also a maximum amount that you can apply for. This also varies annually, but for 2016/17 this amount is £38,171.

You will have to repay the loan by equal instalments of principal and interest over three years for loans under £1,500; five years for loans which are for £1,500 or more but less than £5,000; and ten years where the loan is for £5,000 or more.

You can choose to pay over a shorter period if you wish.



It is the landlord's responsibility to inform qualifying leaseholders about this scheme when they send options for payment information to leaseholders.

If your lease is with a housing association you would apply to the Welsh Government's Housing Quality Standards Team in the first instance. They will confirm eligibility and issue an application form. The email contact details are: HousingQualityStandards@wales.gsi.gov.uk, or Housing Quality Standards team, Welsh Government, Rhydycar Business Park, Rhydycar, Merthyr Tydfil, CF48 1UZ.

If your lease is still with a local authority, you apply to them for the loan.



Sinking/reserve funds

Where the lease allows, landlords may set up a reserve/sinking fund to which leaseholders contribute in the annual service charge. This helps spread the cost of the works over a longer period of time.

Timing of invoices

Major works charges are sometimes payable in advance and sometimes in arrears. The timing of the major works invoice is determined by the lease. Major works charges can be based on an estimate of the likely cost of the works. The actual costs will not be known until the work is complete.

Landlords should keep leaseholders informed of the progress of on-going works and let them know if it is likely that the final bills will exceed the estimate.

Section 20B of the Landlord and Tenant Act 1985 states that a landlord cannot recover service charge costs incurred more than 18 months before they formally ask you to pay for them. The exception to this is if the landlord notifies you of the anticipated costs within 18 months of incurring them and that they will be formally demanded in due course.

Because of the financial impact of major works charges on leaseholders, landlords should give as much notice to leaseholders as possible.





Dispute resolution

Disputes may arise between a leaseholder and landlord over major works including such issues as the amount of the charges, the standard of workmanship, the consultation procedure or the terms of the lease.



Internal dispute resolution

Where a dispute occurs, the landlord should try to resolve this via their own internal dispute process, if possible. Good practice would include:

- Provision of a breakdown of costs with an explanation of the bill.
- Face-to-face meetings with groups and individual leaseholders to discuss issues.
- Joint inspection of works with leaseholder(s) and landlord's surveyor.
- Provision of clear information about the landlord's internal complaints procedure stating process, actions and timescales.
- Provision of information on possible routes for external dispute resolution.

External dispute resolution

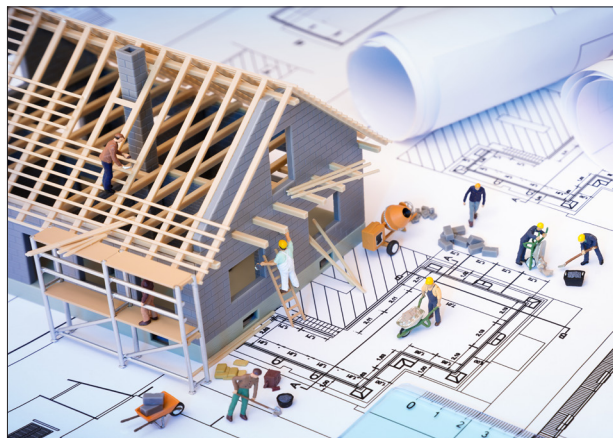
- **Early neutral evaluation (ENE)** – the parties appoint an independent person to provide a non-binding opinion on the merits of the parties' cases. Find out about this on the LEASE website www.lease-advice.org/wales.
- **Mediation** – both parties need to agree to working with a mediator who will try and facilitate an agreement. Find out about this on the LEASE website www.lease-advice.org/wales.
- **Arbitration** – both parties need to agree to be bound by an arbitrator's decision.
- **County court** – usually used as a last resort if the leaseholder refuses to pay or engage in other forms of dispute resolution.



- **Leasehold Valuation Tribunal (LVT)** –
The Tribunal can decide on the quality, reasonableness or level of service charge for major works.

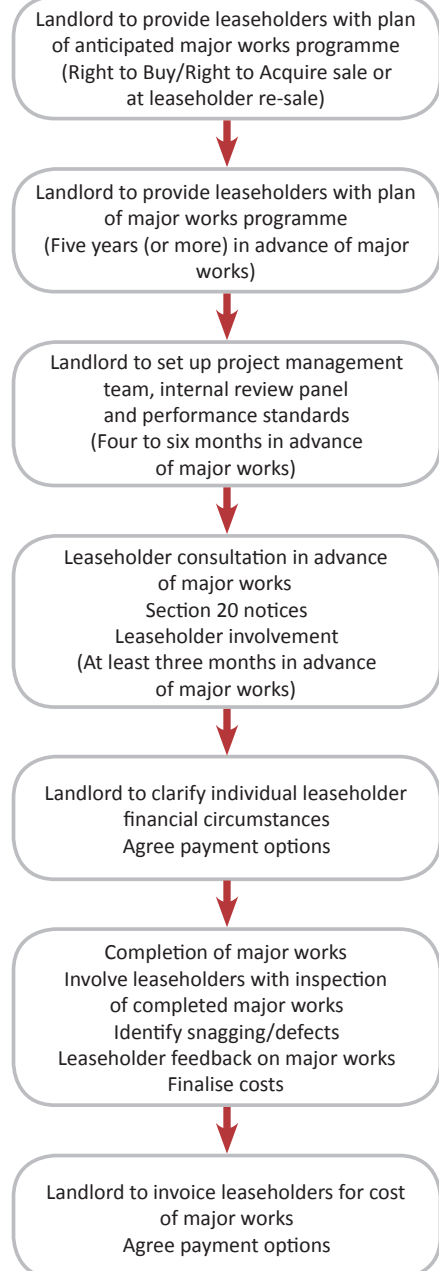
The costs of early neutral evaluation and mediation are expected to be shared between you and your landlord. Leaseholders will be required to pay a proportion of the total cost starting at 25%.

It is in the interest of both leaseholders and landlords to have a good working relationship. It is expected that the good practice set out in this guide will promote more engagement and transparency between landlords and leaseholders and help maintain the long-term rapport between them. A summary of the good practice procedure in this guide can be seen in the flow chart opposite.



LEASEHOLD MAJOR WORKS

Good practice flow chart



** Please note that the steps outlined in this flow chart, apart from section 20 requirements, indicate good practice procedures for landlords.*

Glossary of terms



Arbitration	Settling a dispute by using an independent referee, to avoid going to court.
Assignment	A formal transfer of property. For example, when ownership of a lease is transferred from one person to another.
Block	A block is the building described in a lease that you are responsible for paying a share of the running, upkeep and management costs.
Charge	A certificate that the land registry issues usually to a mortgage lender who has lent money on the security of registered property. It is proof to the lender of their security. A charge can also be against a secure loan or other debt.
Communal areas/parts	Parts of the building/estate/grounds shared with other residents and not specifically granted to the leaseholder in the lease but to which there are rights of access.
Consultation	This is the process a landlord will go through to tell leaseholders about proposed works or long-term contracts for services where the costs are above a financial threshold. Some of this process is legally required (Section 20) and some is good practice.
Cyclical decoration	A programme carried out, for example, every five or seven years in communal areas to both internal and external areas of the building. The costs for this are recovered through a service charge.
Deed	A legal document that commits the person signing it to something.
Demised premises	The area of land that is the subject of a lease. Normally, a lease will clearly specify exactly what the demised premises are. For example, if you purchase the leasehold interest of a flat, the lease might state that your interest applies to the interior partitions and plaster but not to the actual structure of the building.



De minimis	The amount allowed by EU regulations to be provided in state aid over a 3-year period, currently £200000.
Landlord	The person who owns the property. In leasehold terms, the landlord is also known as the freeholder or lessor.
Ground rent	Because leasehold is a type of tenancy, some sort of rent must be paid. The lease specifies how much this will be each year and whether it can be increased or reviewed over time.
Improvement	Doing more work to a property than the repairs required to keep the property in the same habitable condition that was in when the lease was granted. This can sometimes be adding something new to the building. The lease must allow the landlord to recover the cost of improvements.
Landlord and Tenant Act 1985	The original act of Parliament (now added to by more recent laws) that sets out what a service charge is and how it should be arrived at. For example, it must be reasonably incurred.
Lease	A legally binding contract between the leaseholder and the owner of a property (freeholder) giving conditional ownership of the property for an agreed time.
Leaseholder (lessee)	The person who holds land under a lease (also known as lessee). The person the property has been leased to.
Leasehold Valuation Tribunal	The LVT in Wales and the Residential Property Tribunal in England act as independent arbitrators for leasehold disputes and their decisions are binding.
Major works	Where work to a block will cost any leaseholder over a set financial threshold (currently £250), the landlord must consult with leaseholders. These are known as major works. In some cases, the costs can be much higher. For example, if the roof needs



	replacing. Your landlord should be able to advise if there are any planned works due to your block in the next five years. Some leases permit a sinking fund to cover these costs. Where there is no sinking fund, a landlord may offer a range of payment options.
Management charge	The part of the service charge that covers the landlord's leasehold management costs. These can also be the costs to manage a programme of major works.
Pre-sale enquiries	Usually a conveyancing solicitor will send questions to the landlord. The Law Society has issued a dedicated form for solicitors to use and this is an LPE1.
Qualifying long-term agreement	An agreement entered into by the landlord with a contractor for a period of more than 12 months where the costs payable by a leaseholder exceed a threshold amount (currently £100) in any one year.
Qualifying works	Major works that will cost any individual leaseholder more than a threshold amount (currently £250).
Payment options	Landlords may allow extended time to repay service charges for major works where they are expensive and the leaseholder is unable to repay immediately. Generally, the landlord will assess the financial circumstances and affordability of each leaseholder applying for extended time and tailor a solution from a range of options.
Preserved Right to Buy	A local authority tenant retains this right if the local authority transfer their premises to a housing association, as part of a stock transfer.
Recognised tenants association (RTA)	An RTA is an association of 'qualifying tenants' that has been recognised formally by the landlord or by a certificate of recognition granted by the Leasehold Valuation Tribunal under section 29 Landlord & Tenant Act 1985. An RTA has various rights similar to those given to an individual leaseholder including the right to be consulted under section 20.



Section 125 notice	The notice of the Right to Buy purchase price containing details of proposed major works costs in the first five years of the lease and the most the landlord can charge for works during this time.
Section 20	Section 20 of the Landlord & Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002). This sets out the formal process for consulting with leaseholders and tenants about certain items charged through service charges.
Section 20B	Section 20B of the Landlord & Tenant Act 1985. Landlords must issue service charge demands within 18 months of incurring the cost.
Shared owner	Someone who owns a share in a home and pays rent on the remaining share that is retained by the landlord.
Sinking or reserve fund	Long-term savings that leaseholders contribute to every month or year through service charges. This builds up every year and is intended to pay for any major works that are needed for example replacing a roof. You won't usually get any money back that you have paid into a sinking fund/reserve funds. There are special accounting rules for how landlords administer sinking funds/reserve funds. Not all leases allow for this.





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A guide for leaseholders of social landlords

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ISBN number: 978-1-5272-0063-0