

To Buy or Not to Buy

It is a measure of our success in raising awareness of the private estate/fake freehold/fleecehold scam that we now have a large number of enquiries from people thinking of buying properties affected by this.

We have been responding individually, but realised that we needed to publish some general guidance. This is based on the shared experience of our members and does not constitute legal advice. What we have found during the past four years can be summarised as:

1) What is fake freehold/fleecehold???

Where the estate land and facilities are not put up for adoption by the council, but retained by the developer or are only part adopted. Long term maintenance is paid for by the residents of the estate and payment is enforced via property law, rather than a consumer contract.

The charges are called variously estate charges, service charges, maintenance charges.

Fake freehold is a term used where houses are sold as freehold, but are tied to the estate to pay for maintenance and sometimes permission fees. Fleecehold is a broader term also embracing leasehold properties on estates which are bound to pay estate charges as well.

2) We are often asked if a particular developer or maintenance company is good or bad.

The answer is that they are pretty much all the same. Developers keep costs down on estate construction by building sub standard and avoid paying councils for adoption as well. The managing companies/agents mostly do take advantage of unregulated estate charges. Management costs usually amount to 50% of the total, very little goes on services.

New build estates where there are no charges are a rarity now, and this applies to at least the last 15 years.

3) To Buy or Not To Buy?

We would say that if you have a choice, don't buy on an estate with charges. However many people who contact us say that they don't feel they have a choice in their area and price bracket.

So what to look for and what to avoid.

For

- Small green areas
- Roads and footpaths to be adopted
- Sewers to be adopted
- Provision for residents management when complete
- Larger developments give economy of scale
- Look for a chain of covenants (promises to pay the charge in return for services) in the TP1. This is the more acceptable alternative to estate rent charges (see below).
- Ask to see a sample TP1 or lease agreement before you reserve, it is a plus if they agree.

Avoid

- Think anything which could cost a lot to maintain down the line.
- Large public open spaces
- Private roads and sewers
- Complex infrastructure with pumping stations
- Brown field structures/contaminated land/ existing retaining walls.
- **Rent charge.** Estate rent charges are used to enforce payment in many estates. It is an old law which allows for repossession for non payment. Government say they will get rid of this remedy, but have not yet done so. Mortgage lenders are not happy as they don't want someone else to have a charge on the property. We would advise avoid until legislation comes in.
- Managing agent/company embedded (named) in the deeds means you are unlikely ever to be able to change them.

4) A note on the ways management of private estates are commonly set up.

Important – there is huge variation, so don't assume your chosen estate is like any others. You must do some digging! Your local authority planning department should be able to help over what areas (if any) will be adopted. Companies house is also a good source to find out who owns your managing company and what its articles say about conduct.

The first thing a developer does if they intend to retain any of the estate is to set up a dormant company often with the name of the development in it. They will own the company and have a couple of directors from their own staff.

Once the estate is finished, this company may be sold to a managing agent of their choice, or if there is provision for residents' management, they will ask for volunteers from the estate.

In some cases the developer has agreed at a pre build stage for a particular property management company to take over the estate when it is finished. This is the embedded agent scenario and if combined with a rent charge is really the very worst in terms of choice (non) and accountability for residents.

If you do decide to buy we strongly advise you not to be pressurised into used the builder's recommended solicitors.