

Real Estate  
Case Law Update  
Rosling King LLP



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A very welcome wind of change will blow across the residential leasehold property landscape in June when the Leasehold Reform (Ground Rent) Act 2022 comes into force. Ann Ebberson, partner at Rosling King, examines the ramifications of the forthcoming legislation.

For many years now developers, freeholders and landlords have been engaged in the practice of utilising ground rents as lucrative investments that could be packaged and sold as a means of continued income after a residential property had been built and let on a long lease. The ground rents would generate regular long-term income in addition to the premium paid when the lease was originally sold to the tenant.

Often ground rents in leases were set to double or be multiplied by a similar factor and, in the recent past, we have seen these as often as every 10 years. This exponential increase would lead to tenants paying yearly ground rents sometimes comparable or maybe even greater than the original premium paid for the property. The tenant may struggle to sell their property to release themselves from their rental obligation and/or struggle to make payment of such large amounts, leading to potential costly action by the landlord to recover such sums.

Over time, elements of the practice have been curtailed. These include a decision by some members of the UK Finance refusing to lend on leases with unfair ground rent provisions, the ability to have ground rents removed when a lease is extended, and the Government's Help To Buy scheme being unavailable on new leases with ground rent greater than a peppercorn. However, there was nothing previously enshrined in law that directly prevented the practise from continuing.

The new Act will apply to ground rent clauses within future long residential leases. The majority of the provisions will come into force on 30 June 2022. However, in respect of retirement homes, it is expected no earlier than 1 April 2023. The effect of this legislation is that it is prohibited for a landlord to demand payment of a ground rent for more than one peppercorn per year. The legislation does not apply to statutory lease extensions, community housing leases, or home finance plan leases. In respect of shared ownership leases, the landlord is prohibited from demanding more than a peppercorn for the tenant's share but may charge rent for the landlord's share. Moreover, it has no retrospective application. This means that there will still be a large number of problematic ground rent leases that will continue with no statutory assistance to bring them into line with the new legislation.

If a landlord does demand and receive payment of ground rent on a new lease after the Act comes into force, they will have 28 days from receipt to refund the payment. Should the landlord fail to make this refund in time, financial penalties may be imposed on them. This penalty may range from £500 up to a maximum of £30,000. The landlord may also be required to refund the ground rent (plus interest) to the tenant. The tenant can also make an application for recovery of the rent. It is not only the landlord that received the payment that may be required to give the refund; any landlord that has later acquired the lease may be required to make the refund at the date when this is ordered.



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Overall, the new legislation is a real step in the right direction and according to the Government, the first of a two-part reform of the leasehold system. What remains to be resolved is what happens to existing tenants trapped in the cycle of paying escalating ground rents.

Should you wish to discuss this in more detail, please do not hesitate to contact [Ann Ebberson](#) or the Partner with whom you usually deal.