Post course resources - Introduction to leases and recovery of service charges

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hqn TRAINING

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1 Alternative Dispute Resolution

Alternative Dispute Resolution is generally encouraged by the courts and tribunals. Indeed, parties to litigation may find themselves criticised or even penalised if they decline to attempt settlement through ADR.

The five principal methods of ADR are:

- Arbitration
- Adjudication
- Conciliation
- Mediation
- Early neutral evaluation.

Arbitration

The parties to a dispute can agree to refer it to an independent arbitrator and to accept the arbitrator's decision as final and binding. An arbitration is usually conducted informally without the need for a hearing. The arbitrator will often decide the issues on written representations alone.

It is not uncommon for leases to contain arbitration clauses setting out a mechanism for appointing an arbitrator to determine disputes between landlord and leaseholder and, sometimes, between leaseholders. Such clauses are less effective nowadays because the Commonhold and Leasehold Reform Act 2002 provided (put simply) that the only form of valid arbitration agreement for disputes between landlords and leaseholders is a "post-dispute arbitration agreement".

A post-dispute arbitration agreement is one which both sides agree to use when the existence of the dispute is already known.

The rules and procedures governing arbitrations are laid down by the Arbitration Act 1996 and post-dispute arbitration agreements must abide by them.

Adjudication

The parties to the dispute refer it to an independent adjudicator who is often a trained arbitrator or mediator. The adjudicator will read the relevant papers and, unlike an arbitrator, can ask the parties to clarify matters. The adjudicator's decision is issued and is not as final and binding as that of an arbitrator, but will be taken into account if the matter goes on to a court. Adjudication is less expensive, more consumer friendly than arbitration and has a high success rate in resolving disputes.

Conciliation

Conciliation tends to be lumped together with mediation but it is slightly different. Conciliation occurs when the parties are encouraged (often by a professional organisation to which one party belongs) to sit down together and try to negotiate a mutually acceptable solution. If they fail to agree, they can go on to other forms of ADR or proceed to litigate.

Mediation

Mediation is achieved when the parties agree to appoint a mediator (or when one is appointed for them by the court, for example) who will attempt to facilitate a resolution by assisting the parties to put their cases before each other and negotiate – usually with the mediator acting as go-between.

The mediator will not act as an arbitrator and decide the case, so if the parties fail to come to an agreement they may need to resort to litigation.

Early Neutral Evaluation

Early Neutral Evaluation is an assessment of the issues in dispute, designed to serve as a basis for further negotiations and to avoid the time, expense and anxiety caused by unnecessary litigation. An independent expert expresses an opinion on the merits of the issues raised by the parties. The opinion is not binding but gives an unbiased evaluation of the relative strengths of the parties' cases, and guidance as to the possible outcome if the matter proceeds to the First-tier Tribunal (Property Chamber).

2 Scott schedule arrs lt

Reference: DSC/«occnum»
Tel:
Date: «actiondateform»

«title» «inits» «surname»
«jointtitle1» «jointinits1» «jointsurname1»
«propaddress1»
«propaddress2»
«propaddress3»
«propaddress4»
«proppcde»

Dear «title» «surname» «jointtitle1» «jointsurname1»

DISPUTE OF SERVICE CHARGE LIABILITY

Our records show that your service charge account is in arrears by**£«pebal3» to month-ending «pedate3form»**

However, it has come to my attention that you may be disputing liability to pay these charges so I would like to provide you with an opportunity to state the reasons for your non payment.

Please find enclosed a 'Scott Schedule' which details the services provided to you by XXX Housing Ltd and the charge pertaining to that service.

In box 1, can you please enter a tick to identify the service charges which you do NOT have a dispute and are happy to pay.
In box 2, can you please enter a tick to identify the charges which you would like XXXX Housing Association to clarify.
In box 3, can you please enter a tick to identify the charges which you DO dispute and provide comments as the reason for this dispute.

Once you have completed the schedule, please return it to me (marked for my attention) within the next 7 days so I can arrange a response to the points raised.

Should I not receive a response, I will assume that you have decided not to dispute the charges levied and you will arrange to clear all the outstanding arrears within 14 days.

XXXX Housing Association expects that where you are not disputing the charge for a service you will pay that part of the charge within 14 days.

Yours sincerely

«signame»
«sigjob»

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