



Commonhold

What it is and how it works

This booklet is not meant to describe or give a full interpretation of the law - only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties then seek specific advice.

What is commonhold?

Commonhold is a new type of property ownership, an alternative to the long leasehold system. It allows freehold ownership of individual flats, houses and non-residential units within a building or an estate. Ownership is not limited by time as it is with a lease.

The rest of the building or estate forming the commonhold is owned and managed jointly by the flat or unit-holders, through a commonhold association.

How commonhold works

A commonhold can only be created out of freehold land, or a freehold building, and comes into effect when the land is registered at the Land Registry as a commonhold. A commonhold can be a new building or an existing building or unbuilt land.

Once the commonhold is in place, the new law provides a statutory framework of rights and obligations between the owners of each flat (referred to as unit-holders) and between the unit-holders and the commonhold association.

The framework is relatively simple:

- The freehold estate in commonhold land is divided into **units** and **common parts**. A unit may be a flat, or may have some non-residential use like an office or shop, and could include a garage or a parking space. The Land Registry will create a registered title per unit and one for the common parts.
- Each **unit-holder** owns the freehold of a unit. As a freehold, the unit will not be subject to restrictions on its sale or transfer or be subject to forfeiture; however, its use will be governed by the rules of the commonhold.
- The **common parts** are every part of the building that is not contained in a unit, for example, in a commonhold comprising a block of flats, the common parts will include the actual structure - the walls and roof, the lift and the stairs etc, and common areas such as the corridors and entrance hall, the car park etc. The freehold of the common parts is owned by the commonhold association.

The unit-holder is entitled to be a member of the **commonhold association**. Only unit-holders within the commonhold may be members of the association and ownership of the unit provides the entitlement to be a member, although there are special rules in relation to joint owners.

The commonhold association is a limited company, registered at Companies House. It is run according to its Memorandum & Articles which are available for inspection at both Companies House and the Land Registry. The Memorandum & Articles are prescribed by the regulations and set out the functions of the commonhold association.



The commonhold association is subject to the provisions of the Commonhold and Leasehold Reform Act 2002, the Commonhold Regulations 2004 and the **Commonhold Community Statement (CCS)**. The CCS will define the extent of each unit and the common parts and the percentages each unit will contribute to the running costs of the building. It will also set out the duties and obligations of the commonhold association and of each unit-holder. This is similar to the rights and obligations of both freeholder and a leaseholder contained in leases, but the difference is that there will only be one document for the whole building, not one per flat. The Commonhold Community Statement will be registered along with the commonhold association's title at the Land Registry.

The CCS provides for a commonhold association to set a **commonhold assessment**, the estimate of the overall costs of the general operation of the building, its maintenance, repair and insurance. There may also be one or more reserve funds.

The commonhold association will request payment from each unit-holder in accordance with the percentage allocated to each unit in the Commonhold Community Statement.

Although the unit-holder will own a freehold flat, he or she will not have complete freedom to do anything he wishes in the property. The use and occupation of the flat will be subject to the rules of the Commonhold Community Statement, perhaps relating to letting, alterations and nuisance, similar to the restrictions often contained in leases.

The unit-holder will have the opportunity to actively participate in the decision-making process in the running of the building. In managing the building the commonhold association will have a role similar to a landlord under a lease, but the difference in a commonhold is that the unit-holder will be represented in that association and be able to express a view on management. This will bring responsibilities. Commonhold is based on ownership and management of the common asset, the building, by the group of unit-holders; as such, each unit-holder should be prepared to be involved in decision making, to attend and vote at meetings of the commonhold association. This principle of self-management means that unit-holders will not need, and do not have, many of the various statutory rights and protections available to leaseholders.



The commonhold association

The commonhold association is the vehicle which owns and manages the common parts of the building or estate, and to which all unit-holders belong. It is a company limited by guarantee which means that its members, the unit-holders, are limited in their personal financial liability should the company collapse or be wound-up; the legislation limits that liability to £1 per member. There are no shares or share capital. Although an ordinary company under company law, the commonhold association is subject to special rules.

Formation and registration

It is most important to understand that the formation and registration of the company is governed by the rules and procedures of the Companies Act 1985, and although the commonhold legislation has its own requirements, the operation of the commonhold association is as a company under company law. It must meet the requirements of the Registrar of Companies, including the submission of annual returns and audits. Registration of a commonhold cannot be commenced prior to the incorporation of the commonhold association and the secretary and members will need to deal with the separate registration procedures and rules of both Companies House and the Land Registry.

The company: the object of the company must be *'to exercise the functions of a commonhold association in relation to specified commonhold land'*. Therefore, it must be formed especially in relation to a defined parcel of land (or parcels in a split-site commonhold). Because the incorporation of the commonhold association forms a necessary part of the application for registration of the commonhold, the definition or description of the land to form the commonhold must be included in both applications. These descriptions need not be identical, but must, clearly, refer to the same land. The description in the company registration is likely to be minimal, whereas the CCS will describe the land in detail with reference to a plan.

The name of the company must end with 'Commonhold Association Limited', or, in Wales, the equivalent 'Cymdeithas Cydradd - Dolaliad Cyfyngedig'; no other company other than a commonhold association may do this.

The Mem & Arts: the general operation of a company is governed by its Memorandum & Articles of association - the 'Mem & Arts'; the Memorandum sets out the objective and general functions of the company and the Articles provide the rules by which it operates. For a commonhold association the Mem & Arts are largely prescribed by the Regulations and must be adopted. They may be added to, but none of the prescribed provisions may be adapted or deleted, other than in accordance with the Regulations. This is to ensure a similar set of rules for the formation and running of all commonholds in England and Wales.

The prescribed Mem & Arts are set out in Schedules 1 and 2 of the Commonhold Regulations 2004 (SI 2004 no 1829) obtainable from The Stationery Office Ltd or accessible on the DCA website: [Schedule 1](#), [Schedule 2](#). They are also available in Welsh: [Schedule 1](#), [Schedule 2](#).

Forming the company is a relatively simple operation and can be done by a solicitor, by a company agent or directly by the person wishing to register the commonhold.

- Companies House produces several free explanatory leaflets:
 1. *Directors and Secretaries Guide* (GBA1)



2. *Annual Returns* (GBA2)
3. *Resolutions* (GBA7)
4. *Accounts and Accounting Reference Dates* (GBA3)

Contact: The Registrar of Companies, Companies House, Crown Way, Cardiff CF14 3UZ. Tel: 0870 333 3636 or visit www.companies-house.gov.uk

- A useful guide to the formation and running of resident management companies which does not specifically relate to commonhold associations but provides useful overall guidance is *Running a Flat Management Company* (4th edition) by Nigel Cox, published by Jordans.

Membership: every unit-holder is entitled to membership of the commonhold association and only unit-holders may be members. The association must, under the Companies Act, maintain a register of members and, when a unit changes hands, register the new unit-holder, upon notification by him that the sale has been completed.

Where there are joint-owners of a unit, then only one of them may be registered as the member of the association and it will be for them to nominate one of themselves; where joint owners fail to nominate anyone, the legislation provides that the member shall be taken as the first name registered on the title of the unit.

Officers of the company: like any other company, the commonhold association will require a company secretary and at least one director. A director need not be a member of the company, and therefore not a unit-holder, allowing the commonhold association to appoint property professionals or other relevant experts to the Board, to bring in management or financial expertise. The rules for the appointment of the directors are set out in the prescribed Articles of association for the commonhold association. All office holders of the company must be notified to Companies House. (The officers of the company will have certain duties under company law, and it may be prudent for the commonhold association to make provision for Directors and Officers liability insurance).

There are special rules applying to new-build commonholds (those registered without unit-holders) allowing the developer the right to appoint directors and these are provided for in the Regulations. These must be especially provided for in the Commonhold Community Statement, but, in that the developer will probably prepare the CCS as part of his application for registration of the commonhold, this should not present a problem. During the transitional period (the time between the initial registration of the commonhold and the sale of the first unit), the developer may appoint up to two directors of his own choice, in addition to any appointed by the initial subscribers to the company. At the first annual general meeting of the company after the end of the transitional period all directors must resign and a new Board must be appointed; whilst the developer remains the unit-holder of more than a quarter of the unsold units, he has the right to appoint one quarter of directors, and to do so until his holding falls below the quarter. This allows the developer to influence, but not to control, the management of the commonhold whilst he still retains a significant financial interest in it.

Meetings: like all companies, the commonhold association is expected to hold an annual general meeting (although it may choose not to under company law). It may also convene other general meetings for the passing of resolutions or discussions of issues concerning the management of the commonhold. General meetings may be called by the Board, or by the members in accordance with the Articles, giving at least 14 days notice (or 21 days if the meeting is for the purpose of passing a special resolution, a unanimous resolution, a winding-up resolution or a resolution to appoint a director).



The association is not required to arrange a special meeting to discuss and agree the budget (known as the 'commonhold assessment'), although it may find it good management practice to do so.

All general meetings are subject to the requirement for a quorum. The prescribed Articles of association set the quorum as twenty per cent of the members of the association, or two members (whichever is the greater); these proportions may be changed by resolution of the association but may not be less than as prescribed.

Voting: the essential principle of commonhold is the management of the common asset through the democratic mechanism of the commonhold association, and the primary means to this will be through an open vote, by a show of hands, at a meeting on the basis of 'one member, one vote'.

However, the prescribed Articles of association also provide arrangements for a formal poll. A poll may be demanded by the Chairman, by at least two members of the association or by a member or members who represent ten per cent of the total voting rights. In a formal poll, the votes to be exercised are those allocated to each unit in the CCS and not all unit-holders will necessarily have equal numbers of votes (see CCS below).

During the pre-commonhold period, before the commonhold is activated, and during any transitional period, each member has one vote in a poll.

There are arrangements in the Mem & Arts for proxy voting where a member is unable to attend a meeting, and for any mortgagee in possession, receiver or trustee-in-bankruptcy to vote in certain circumstances.

The Commonhold Community Statement (CCS)

The CCS is the central and most important document in the commonhold; it forms the rules governing how the commonhold is used and managed. In a commonhold, the unit-holders are required to contribute financially to the whole and are bound by restrictions and obligations in the use of their unit and the common parts, through the CCS.

The prescribed Commonhold Community Statement is set out in Schedule 3 to the Commonhold Regulations 2004 (SI 2004 no 1829), obtainable from The Stationery Office or accessible on the [DCA website](#), it is also available [in Welsh](#).

In simple terms, the CCS provides the framework to manage the building or estate and to regulate the rights and duties of the commonhold community, through one single, common document. (The Mem & Arts governs the operation of the company, the commonhold association; the CCS governs the operation of the commonhold itself, the building or estate. Both documents are subject to the Commonhold Regulations).

The CCS:

- identifies the units, their number and extent, and the common parts, by reference to a plan;
- allocates the percentage to each unit in respect of the commonhold assessment - the proportion the unit contributes to the overall running costs of the commonhold;
- allocates the percentage to each unit in respect of any separate levy for a reserve fund;



- allocates the number of votes to each unit;
- sets the rules for the running of the commonhold.

The form and most of the content of the CCS is prescribed and every CCS must include all of the provisions in the prescribed document. A commonhold association can add extra provisions relevant to the individual commonhold but may not amend or delete any prescribed provision; any extra provisions must be clearly indicated by a heading which includes the words '*Additional provisions specific to this commonhold*' and set out at the end of the relevant section or part of the CCS or as an annex to the CCS. The provisions will not be effective until they are registered at the Land Registry.

The CCS is registered at the Land Registry along with the title documents for the commonhold and therefore fully accessible to present and potential unit-holders. It is a document which creates legally binding rights and duties; the ownership of a commonhold unit is subject to rights, obligations and duties on both the unit-holder, any tenants of a unit and the commonhold association as set out in the CCS. The closest comparison is with a lease - acquisition of a leasehold flat is subject to the rights and obligations of the lease. In a commonhold there are no separate leases for each flat; the CCS is a single document applicable to all units in the commonhold.

The CCS must contain the following information:

Definition of the commonhold: the CCS will include a plan, or plans, to show the overall extent of the commonhold and the location and extent of each commonhold unit, the common parts and any limited-use areas. It will state the number of units and the rights of passage and access reserved both to and over the units and the common parts.

The CCS will, in this way, be similar to a lease in that it defines the unit and the rights it both benefits from and is subject to, for example, the rights of access to the unit through the common parts but also the obligations to allow access to the unit by the commonhold association in certain circumstances.

The plan will, of course, need to comply with the requirements of the Land Registry (see [Registration of a Commonhold](#)).

Commonhold allocations: the percentage the unit has to contribute as its share of the overall costs of the commonhold and any reserve fund. The CCS sets the percentages allocated to each unit which must total one hundred. Therefore every present and prospective unit-holder is aware of the relative contributions.

The CCS also allocates the number of votes the unit-holder will be able to exercise in a poll. This may be based on an equal vote per unit, but may instead reflect the relative size of each unit, on the basis that a larger unit making a greater contribution to the commonhold assessment should be entitled to a proportionately larger vote in the management of the building. This will be a matter to be decided when drawing up the CCS.

The rules of the commonhold: this is the most substantial part of the CCS and empowers both the commonhold association and the unit-holders to enforce each other's relative obligations. The rules include specific provision for:

- **repairing, maintenance and insuring obligations** of the commonhold association;
- **commonhold assessment:** the commonhold association must produce an annual estimate of the income required from the unit-holders to maintain, insure,



manage and repair the building to which each unit-holder is required to contribute according to the percentage allocated to the unit, upon notice from the association. There can also be emergency and other assessments where required by special circumstances.

- **reserve fund:** a reserve fund is a special fund to build up savings against some anticipated future expense, for example, the replacement of a lift or central boiler system or the recovering of a flat roof to a block of flats.

The CCS requires that the directors of the commonhold association must, during the first year in which the commonhold is registered, formally consider the commissioning of a reserve study from a suitable professional and must, in any event, carry out such a study at least once in every ten years. The directors may decide to establish a reserve fund or funds or the members, the unit-holders, may by resolution require them to do so.

The CCS then enables the association to set a levy and to require payment on notice to the unit holders.

- **diversion of rent:** where a unit is let by a unit-holder who has failed to pay his contribution to the commonhold assessment or reserve fund, the CCS enables the association to require the tenant to pay the rent direct to the commonhold association, to meet the commonhold assessment. (This will comply with the tenant's contractual requirements for proper payment of rent to his landlord, the unit-holder).
- **limitations on leasing:** although a residential unit may be let by the unit-holder, this cannot include the grant of a lease of the unit at a premium or for a term of more than seven years. This is to prevent the creation of long residential leases within the commonhold. Non-residential units are not subject to this restriction on leasing (*see Restrictions on Leasing below*).
- **dispute resolution** (*see below*).
- **local rules:** this is the term in the CCS for special rights and obligations specific to the particular commonhold. They may be added throughout the CCS but only in the manner permitted by the regulations. There is a particular annex which must include the rate of interest to be applied to late payments (if any), the permitted uses of the units and the common parts, the particular details of insured risks and the authorised uses and users of the limited-use areas. This annex is prescribed in form but not in content and the association will draft the necessary rules.

DCA has published some illustrative local rules and these are available [here](#).

- **development rights:** in some cases the developer may wish to reserve rights for future development of the land or the commonhold. These rights will be limited in time and will cease once the developer has completed the building works and sold the last unit. Any such rights will be contained in a final annex of the CCS.

Within the prescribed structure of the CCS it will be possible to make amendments, for example, to the extent of individual units or to rights over common parts, or changes to local rules; the procedure for making changes will be subject to the rules of the CCS but all amendments to the CCS must be registered at the Land Registry and do not apply until the amended CCS is registered.



The commonhold unit

A commonhold unit is that part of the commonhold which is owned exclusively by the unit-holder on a freehold basis; it can be a house or flat, an office or other commercial use, or even a golf course or a piece of unbuilt land within a large commonhold estate. The unit may include, within its definition, a garage or a parking space situated elsewhere in the commonhold, or these can be units in their own right, owned separately.

Where the unit is a flat in a block then, as with a leasehold flat, the ownership of a commonhold unit will usually be limited to the wall, ceiling and floor coverings and the space between them, and will not include external walls. In this case, like leasehold, the structure of the building, the walls and floors, are not owned as part of the unit but will be included in the common parts, owned by the commonhold association. The common parts may also include limited-use areas, which are areas of the common parts where the use is exclusive to a particular unit-holder or unit-holders, or the use itself is restricted.

The purpose of a limited-use area is to be able to include it within the ownership and management responsibility of the commonhold association while still providing a special use to one or more unit-holders or to restrict it to a particular use, irrespective of who uses it. The most useful example is a balcony to a flat; this is likely to be part of the physical structure of the building and it is sensible to reserve the responsibility for its maintenance and repair to the commonhold association rather than to the unit-holder. By designating the balcony as a limited-use area for the benefit of a particular unit, the unit-holder is able to have exclusive use of the balcony but responsibility for its structural maintenance remains with the commonhold association, the costs being shared by the commonhold community. A similar arrangement could apply to an allocated car-parking space in a parking area.

Another limited-use area could be part of the building to which the unit-holders would not normally require, or be allowed, access, such as a boiler room or lift motor room, where use will be limited to specified persons, or, perhaps a caretaker's flat or office where use is limited to the caretaker.

An example of a limited-use area restricted to a certain use could be a common dustbin area, open to all unit-holders but only usable for that purpose.



Setting up a commonhold

This note provides only an introduction to the registration process. Land Registry Practice Guide 60 provides comprehensive guidance, details of fees and copies of all prescribed forms; the guide is available from any Land Registry office or may be downloaded from the website (www.landregistry.gov.uk).

The legislation imposes certain restrictions on the land on which the commonhold may be registered. (The expression 'land' refers, of course, also to a building or buildings; the title relates to the land the building stands on, albeit that none of it may be visible.)

- **The land must already be registered, at the Land Registry, as freehold with absolute title** (so a freehold building or plot registered with only 'possessory' title is not sufficient). It is a requirement that the land is registered and so, in cases where it is not, for example, where the most recent change in ownership pre-dated the requirement for registration, it will be necessary to arrange for its registration as absolute freehold title before any subsequent application can be made for the creation of a commonhold.

The requirement of freehold title makes clear that a commonhold may not be created out of leasehold land, however long the remaining leasehold interest. Commonhold conveys a freehold interest of a unit and this cannot be done unless the land on which the commonhold is registered has full freehold title.

- **The 'grounded' rule:** a commonhold cannot be created other than from the ground upwards; there cannot be a 'flying commonhold'. In simple terms, this means that a residential commonhold cannot be created above a floor of office or shop units in a building; the whole building, down to the ground, must be one single commonhold. It is not possible, therefore, to create, say, two floors of commercial units as one commonhold, then two more floors of flats as a separate residential commonhold. There can only be one commonhold on a site; it is not possible to register a commonhold on land which is already commonhold.
- **Split-site commonholds:** it is quite possible for a commonhold to comprise two or more sites, perhaps two pieces of land divided by a road or railway. As long as one Commonhold Community Statement applies to all the separate parts, they comprise one commonhold. However, in cases where the freeholders of the separate sites are not the same person, then any commonhold unit must be situated entirely within one site; a unit may not be partly on one site and partly on another.

Registration of a commonhold

A commonhold may be created from scratch, as a new building or estate, or by the conversion of an existing building, already let on long leases or other tenancies. Two separate but similar procedures are provided:

- registration without unit-holders; and
- registration with unit-holders.

In each case, however, on application to the Land Registry for registration, there is a requirement for the submission, with the application form and fee, of four sets of documentation:



- **The commonhold association documents:** the full documentation relating to the established and registered association comprising the Memorandum & Articles of association and the certificate of incorporation, its registration as a company at Companies House. The association must be in existence before any application to register the commonhold can be made.
- **The Commonhold Community Statement:** this will be registered as part of the commonhold title and must be submitted in its final form, not a draft for future amendment. (Any subsequent changes will require an application to register an amended CCS).
- **A statutory declaration** relating to any necessary consents from persons with an interest in the land.
- **A certificate by the Directors** of the commonhold association stating that:
 - the Memorandum & Articles of association comply with current regulations;
 - the Commonhold Community Statement complies with statutory requirements;
 - the overall application for registration satisfies statutory requirements;
 - the commonhold association has not traded and has not incurred any undischarged liability.

Registration without unit-holders

This procedure applies where the proposed commonhold is a new development or the conversion of a building where the new unit-holders have not yet been identified.

The individual units will be sold off at a later stage, following registration of the commonhold. In this case, the developer will form and register the commonhold association and draft the Commonhold Community Statement. In cases where the land subject to application is owned by one or more persons jointly with the developer, he will require the formal consent of each non-applicant joint proprietor. He will also require consent of any person holding a registered charge over the land, or any part of the land, such as a mortgagee.

On registration, the commonhold will take the form of a number of separate freehold titles, the individual units (flats, or commercial units, or garages etc) and the common parts; there will always be more individual titles than units in the building - each unit title plus the common parts title. At this stage, while the development is being built or the building converted, the units will be registered in the name of the developer. This is known as the **transitional period**.

The commonhold is not 'activated' until the sale of the first unit, which constitutes the end of the transitional period. When the first unit is sold (either on completion, or 'off the plan' - it does not need to physically exist at the time of sale, like any other new-build development), the transitional period comes to an end. At that point the commonhold association will be registered as the proprietor of the common parts and the rights and duties of the CCS come into force. The original proprietor, the freeholder, will continue to be registered as the proprietor of the remaining commonhold units until their eventual sale, when he will have no further interest except where continuing development rights have been reserved in the CCS.

Once the ownership of the common parts has passed to the commonhold association, then, unless there are reserved development rights, the original freeholder has no further connection with, or influence in the management of the building. There is no situation in commonhold of a freehold 'landlord'; the commonhold association owns and manages the common parts of the building and the units are owned in freehold by the unit-holders.



Registration with unit-holders

This procedure applies where an existing building, in use and occupation, is converted to commonhold; it is a more complex process necessitating formal consents from present owners or tenants in the building.

As with registration without unit-holders, the procedure begins with the formation and incorporation of the commonhold association and the drafting of the Commonhold Community Statement. Consents will be required of any person holding charges over the freehold.

The position is more complicated concerning the consents required from those with a leasehold interest in the building and it is important to understand the reasons for this.

Extinguishment of leases: on registration of the commonhold, any existing lease is extinguished or cancelled. Commonhold is based on freehold ownership of the units; they cannot be subject to existing leases. Therefore, the holder of the lease and anyone with a charge on the leasehold interest must provide a formal consent to the termination of the lease. (It may be reasonable to assume that the leaseholder would only give this consent subject to being registered as owner of a unit in the commonhold).

The requirements for consent are as follows:

- **Long leases, that is, leases where the original term granted was more than 21 years:** these leases will be extinguished by the registration of the commonhold. The application for registration will require the consent of the leaseholder, on the prescribed form, plus the consent of any mortgagee or any other person holding a charge or lien over the flat.
 - the leaseholder's consent might be subject to his entitlement to registration as the proprietor of the freehold unit;
 - the consent of the person holding a charge is likely to be on the basis that the new freehold title will offer equivalent or better security if the lease is to be replaced by a freehold unit in the commonhold over which the chargee will have a charge.
- **Leases of less than 21 years:** these leases will also be extinguished by the registration of the commonhold but the requirement for the leaseholder's consent is dependent upon whether the person registering the commonhold is prepared to offer the leaseholder a replacement lease on the same terms as his original lease for a period of years equivalent to the remaining period outstanding. This agreed entitlement to a new, compensatory lease must be protected by an entry on the Land Registry. In such cases there are two options for the application for registration:
 - where the leaseholder is to receive the replacement lease, then his formal consent to the application **is not required**;
 - where the leaseholder is not to receive the replacement lease, then his formal consent **is required** for the application.

In all cases, a county court has the power to dispense with the requirement for consent if the person concerned cannot, after all reasonable efforts, be identified or cannot be found or has simply failed to respond to requests for the consent.



Examples of the registration process

The registration process and the consents required are best illustrated by examples:

Example 1

Newly built block of flats that is currently vacant where there are no existing leases and the new flat-owners have not yet been identified.

- Likely consents required:
 - the freeholder (there might be more than one, for instance, where the land in the application is jointly owned);
 - any chargee.
- The developer (who is the freeholder) will apply for registration under section 7 (without unit-holders).
- On registration, the land will be divided up into units and common parts. The units are likely to represent the flats. The common parts will be made up of the structure of the building and the communal facilities, such as the corridors, lifts and stairways.
- Each unit and the common parts will be registered in the name of the developer.
- On sale of the first unit, the commonhold is activated. This represents the end of transitional period.
- The new unit-holder will be entitled to be registered as owner of the unit and will be entitled to be entered into the register of members of the commonhold association.
- The commonhold association will be entitled to be registered as owner of the common parts.
- The rights and duties in the CCS come into force.
- The developer remains registered as owner of the remaining units until they are all sold. Once all the units have been sold, the developer no longer holds an interest in the property.
- The developer may, however, have retained developer's rights. These will be set out in the final annex of the CCS. They will expire once all the building works have been completed and the last unit has been sold.

Example 2

Conversion of an existing block of leasehold flats to commonhold where the existing leaseholders become unit-holders.

- Likely consents required:
 - the freeholder (there might be more than one, for instance, where the land in the application is jointly owned);
 - any chargee of the freehold;
 - all leaseholders, including sub-lessees, (except those leaseholders with a lease of 21 years or less who have been offered an equivalent compensatory lease);
 - chargees of all the leases or sub-leases.
- The freeholder will apply for registration under section 9 (with unit-holders), naming each flat-owner as a unit-holder. Only those lease-holders named in the application will be registered as unit-holders.
- On registration:



- each unit will be registered in the name of the identified unit-holders who will be entitled to be entered in the register of members of the commonhold association;
- the common parts will be registered in the name of the commonhold association;
- all existing leases will be extinguished;
- the rights and duties in the CCS will come into force.

Managing a commonhold

In many ways the management of a commonhold block, or estate, is much like managing the equivalent leasehold community. The building will need to be insured, maintained and cleaned, and occasionally major repairs will be required; costs will need to be collected from the flat-owners to pay for all this and disputes will need to be dealt with. The overall responsibility for the control and management of the commonhold lies with the Board of Directors of the commonhold association although, in most cases, the management might be more effectively arranged through a professional managing agent.

However, commonhold introduces certain major differences which need to be appreciated by both the individual flat-owner and the commonhold association or any managing agent.

Prescribed documentation

The major advantage of commonhold is in the very high level of standardisation of documentation and forms. Managers dealing with commonholds can rely on the commonality of documents in that the greater part of the Mem & Arts and the CCS are as set out in the Regulations. There will not, therefore, be the problems of dealing with differing leases or with inadequate company structures. The Regulations also provide a comprehensive range of forms, prescribed in both content and layout, to cover the events and disputes most likely to arise in management (*these are listed in [Appendix 2](#)*). The use of the forms in the appropriate circumstances is obligatory.

No landlord/tenant relationship

Management responsibility rests exclusively with the commonhold association, made up of the unit-holders. There is no separate third-party landlord and management decisions are made by the Board of the association, answerable to the members. In the absence of landlord or tenant there is no necessity for the extensive legislative rights and protections available to leaseholders through the various Landlord and Tenant and Leasehold Reform Acts. There is, therefore, no right to challenge management and other costs at the Leasehold Valuation Tribunal (LVT), nor any requirement upon the commonhold association to formally consult the flat-owners over proposed works or contracts; all disputes are dealt with through the internal procedures of the commonhold association. The overall concept of commonhold is based on management by agreement, with all unit-holders able to participate in the decision-making process through membership of the commonhold association.

The LVT has no jurisdiction in any matter relating to the ownership or management of a commonhold unit (although it may be involved in some disputes relating to tenants of a commonhold unit-holder).



Commonhold assessment

This is the budget required for the management of the commonhold or for costs of repairs or special works. It has to be collected by contribution from each unit-holder (equivalent to service charges under leases). The assessment is made by the Board of the commonhold association which sends a notice to each unit-holder, in the prescribed form ([Form 1](#)), advising how much the unit-holder is required to pay. The unit-holder has a period of one month during which he may make representations to the association on the amount demanded.

The directors must consider any representations made before issuing the demand for payment to each unit-holder ([Form 2](#)), specifying the payment required to be made by the unit-holder and the date the payment is due (at least 14 days after the date of the notice).

In case of urgent works, the association may demand an emergency commonhold assessment ([Form 3](#)). In this case there is just one notice issued, the demand for payment, and there is no period of one month for representations.

Where the association resolves to create a reserve fund, the arrangements for notification, representations and demand for payment are similar to those for the commonhold assessment ([Form 4](#) and [Form 5](#)). A reserve fund is one set up to build up funds against some anticipated future expenditure, perhaps the replacement of the lift or renewing the roof.

Arrears recovery

As the units are held on a freehold basis, there can be no question of the use or threat of forfeiture as a means to enforce unpaid demands, nor does the association have any power to prevent the sale of a unit where there are outstanding arrears. However, the unit-owner is subject to all civil debt-recovery procedures in the case of unpaid assessments, reserve fund levies and interest.

Normal action for debt recovery must be pursued against the individual unit-holder on a personal capacity through the court, which can include interest on the outstanding amount at the rate specified in the CCS. Where the unit-holder has let the flat, the commonhold association can instruct the tenant to divert the rent payments to the association in settlement of the arrears ([Form 6](#)).

The options following judgment can include provision for the association to register a charging order on the unit, but this will not achieve priority over other charges and mortgages previously registered. The association may also be able to apply for an order for sale following a charging order. Where the unit is sold prior to settlement of the debt, the prescribed CCS provides that the association may give a notice to the incoming unit-holder requiring him to pay any arrears owed by the previous unit-holder. Payment must be made within 14 days of the notice and is thereafter subject to interest. The intention, clearly, is to encourage the recalcitrant unit-holder to pay, as it is unlikely that a prospective purchaser would be prepared to buy subject to a debt (see Buying a Commonhold Unit below).

If the new unit-holder makes the payment, then the CCS automatically assigns to him the right to pursue recovery from the previous unit-holder.



It must be acknowledged that arrears recovery will be highly important in a commonhold, to avoid shortfalls in cash-flow and an inability for the association to meet its liabilities. The association may have no significant assets apart from the common parts; there is no share capital and in serious situations it would be for the remaining unit-holders to make whatever contributions are necessary to make up the deficiency.

Dispute resolution

The CCS makes provision for the resolution of disputes within the commonhold. It is a key element of commonhold that procedures are provided to encourage and facilitate the settlement of disputes within the commonhold community without the need for recourse to litigation and the courts.

The CCS provides three distinct procedures:

- **for a unit-holder or tenant wishing to enforce a right or duty against the commonhold association;**
- **for the commonhold association against a unit-holder, or tenant;**
- **for a unit-holder or tenant against another unit-holder, or tenant.**

The procedures are based on standard, prescribed notices and encourage the parties to the dispute to consider first the use of other means of resolution such as mediation, arbitration and conciliation; there may, in future, also be access to a Commonhold Ombudsman who will be able to investigate and adjudicate the issues. If alternative forms of dispute resolution are not a realistic option or have failed to achieve a result, dispute procedures may be commenced.

The dispute resolution procedures need not be used in cases of emergency or where the association is seeking to enforce a financial payment.

- **unit-holder (or tenant) against the commonhold association:** the unit-holder (or tenant) may serve a complaint notice ([Form 17](#)) on the association, setting out his grievance. The association has twenty-one days to consider the issue before service of a reply notice ([Form 18](#)), setting out its proposals for remedy. These may simply be proposals, or a request for more information; the reply notice is not necessarily intended as the final disposal of the dispute, although it can be.

In most cases this should settle the matter but, if the unit-holder is not satisfied, he may, after having further considered alternative means of dispute resolution, commence legal proceedings.

- **commonhold association against unit-holder (or tenant):** the procedure is much the same, again using prescribed forms. The association serves a default notice on the unit-holder ([Form 19](#)), setting out the alleged deficiency or offence and the unit-holder has twenty-one days to respond by service of a reply to a default notice ([Form 20](#)). The association then must decide the appropriate course of action. In this case it is relevant that the legislation includes a quite specific provision, that the association *'need not take action if they reasonably think that inaction is in the best interests of establishing or maintaining harmonious relationships between all the unit-holders'*. Therefore, the association is expressly required to put the best interests of the community first, and to consider seriously the most appropriate action for the commonhold as a whole.
- **unit-holder (or tenant) against unit-holder (or tenant):** the procedure is a little more complicated as the action is not simply between the unit-holders but



initially via the commonhold association. A unit-holder with a complaint against a fellow unit-holder, or his tenant, may serve a notice on the commonhold association seeking action by the association to curb the alleged problem ([Form 21](#)). Again, the association has twenty-one days to consider its response before service of its reply ([Form 22](#)).

If the association supports the claimant's complaint it may then proceed with the standard enforcement procedure above. If the association does not support the complaint, or considers inaction the most appropriate course in the interests of the whole commonhold, then it must make a further decision on whether to allow the complainant to pursue the case further.

Where the association does not respond within twenty-one days, or decides that the complainant may pursue the issue direct with the other unit-holder, the complainant may serve a notice directly upon the offending unit-holder ([Form 23](#)). The unit-holder must respond with a reply ([Form 24](#)) within twenty-one days. Where the complainant considers the response unsatisfactory, he may, after considering alternative means of dispute resolution, commence legal proceedings.

However, the commonhold association has power to refuse the complainant the right to proceed against the alleged offender if it considers the issue vexatious, frivolous or trivial, or considers that the alleged offence does not amount to a breach of the unit-holder's obligations or duties under the Commonhold Community Statement. In this case the complainant again has recourse to alternative dispute resolution or legal proceedings, or could invoke the dispute procedure against the association.

The procedures are intended to be simple, progressive and informal, designed to achieve sensible settlements within, and for the overall benefit of the commonhold community.

Restrictions on leasing

Legislation prohibits the creation of leases within residential commonhold units where they are granted at a premium or for a term of more than seven years. The commonhold association may not prevent a unit-holder from letting his unit; it is owned as a freehold and the unit-holder is free to do with it as he wishes, within the legislation - he must simply notify the commonhold association within fourteen days of granting the tenancy ([Form 14](#)) and provide a copy of the agreement. A prospective leaseholder of a commonhold unit must be given a copy of the Commonhold Community Statement and a notice informing him that he will be required to comply with it ([Form 13](#)). (The leaseholder's obligations under the CCS do not include payment of the commonhold assessment - that remains the responsibility of the unit-owner). The leaseholder is therefore liable to comply with the majority of the rules and obligations of the CCS as though he was the unit-holder and may be subject to default action (as above) in the event of any failure. The association has the right to demand information about any tenancy, of a unit by giving notice to the parties to the tenancy ([Form 8](#)).



Buying a commonhold unit

The procedures for purchase of a commonhold unit should be simpler than for a leasehold flat; there is no diminishing term or ground rent to worry about and a great deal of the necessary documentation is readily available to the purchaser through the Land Registry and Companies House. However, all the documentation will still require careful examination and, in most cases, professional advice from a solicitor.

- **Commonhold association:** the buyer should check that the association is properly registered as a company limited by guarantee at Companies House and that the Mem & Arts are registered at the Land Registry and conform to those prescribed. Any supplementary articles and supplementary clauses in the memorandum should be examined in connection with their possible effect on the management of the unit. The registered details at Companies House will show the names of the directors and secretary of the association. It will also be possible, for commonholds that have been in existence for some years, to confirm the financial health of the commonhold from the company's filed annual accounts and whether returns have been made.

Outside the Companies House information, buyers should also seek details of the most recent commonhold assessment, the reserve funds and any proposals for future expenditure.

- **Commonhold Community Statement:** this should be examined in the same way as should a lease, in terms of how the building is managed and what rules are in place relating to the use and occupation of the units and the common parts. As with the Mem & Arts, it should be confirmed that the CCS is drafted in accordance with the Regulations.

It is most important to check the title documentation for the unit against the CCS to confirm its extent, the area of the common parts and any limited-use areas, such as a balcony, benefiting or affecting the unit; the CCS will include details of the percentage allocated to the unit for the purpose of the commonhold assessment, any reserve fund levy, plus the allocation of votes. It is also sensible to check, in the case of a new development, if the CCS reserves any development rights which could affect the unit, for example, building alongside it.

- **Joint owners:** where there are joint unit-holders, only one of them may be registered as the member of the commonhold association. It is advisable for joint owners to decide and to formally notify the association as to which of them will be the member; alternatively care must be taken in the application to the Land Registry for registration as unit-holders since, if there has been no nomination, the first name registered on the title shall be entitled to be the member.
- **Outstanding arrears:** the buyer must check the position and should request from the seller a Commonhold Unit Information Certificate ([Form 9](#)). This is completed by the commonhold association, at the request of the unit-holder, and sets out the debts owed to the association in respect of the unit, relating to the commonhold assessment, the reserve fund and any interest on late payments, at the date of the certificate. Since the prospective buyer will acquire the unit subject to the provisions of the CCS, he may become liable to the commonhold association for any outstanding debt on completion of purchase if the commonhold association decides to assert its right to pursue the new owner. Hopefully this should ensure the payment of the arrears by the existing unit-holder, since it seems unlikely that anyone would consent to purchase subject to



the liability for the debt. If there are outstanding sums, then the buyer should also confirm that there is no charge registered on the unit since this could cause concerns to a lender. If there is a charge, the buyer should try to ensure an agreement with the seller that the arrears be paid off, from the purchase money, and the charge removed.

- **Notification on acquisition:** on completion of the purchase the buyer becomes entitled to be registered as the unit-holder, and becomes eligible for membership of the commonhold association. He must formally notify the association of his acquisition of the unit in the prescribed form ([Form 10](#)) and register the transfer at the Land Registry.

Terminating a commonhold

It is worth a reminder at this point that the commonhold is dependent upon the continuing existence of the commonhold association, which is the freehold owner of the common parts. As the association is a limited company, subject to company law, it is imperative that the secretary remains vigilant in completing and providing all necessary returns and other documentation to the Registrar of Companies to avoid the company being struck off. Similarly, the Directors must not allow the association to become insolvent, with the dangers of winding-up.

Although it is probably an unlikely event, the legislation makes provisions for the termination of a commonhold and, in the appropriate circumstances, its resuscitation.

It must be stressed that termination involves both the 2002 Act and insolvency legislation and any commonhold association contemplating termination should seek professional advice before proceeding. The following paragraphs only provide basic guidance.

In general, a commonhold cannot be terminated other than by the express vote of at least eighty per cent of the members or by order of the court. There are two main routes to termination, a compulsory winding-up of the company or a voluntary winding-up following a decision of the members of the association.

Termination through insolvency: it seems unlikely that a commonhold association could allow itself to become insolvent in that it retains the ability to raise funds through a commonhold assessment. It may be relevant that in the Australian strata-title situation no association has become insolvent in the twenty-five-year existence of the legislation.

However, the 2002 Act provides specific procedures for such a case and, in view of the absolute requirement for commonhold association to be in existence in order to preserve the integrity of the commonhold, also provides arrangements for a successor association to take and to manage the common parts of the commonhold.

Where the commonhold association becomes insolvent then, as a company, it is subject to the provisions of the Insolvency Act 1986, allowing a court to make a winding-up order. A liquidator is appointed who will then be obliged to notify the situation to the Land Registry and copy the order and any directions issued by the court to them.

What may happen is that the insolvent commonhold association, or one or more of its members, or the provisional liquidator, will apply to the court for a succession order, to transfer the freehold estate in the common parts of the commonhold to a successor commonhold association. The new association must be fully formed, subject to the prescribed Mems & Arts, and incorporated with the Registrar of Companies.



The court will grant the application for a succession order unless it thinks there are circumstances which make it inappropriate to do so. Where the application is granted, the common parts are transferred and the successor association then begins with a clean sheet in the management of the commonhold. It may be that the court will only make the succession order if sufficient assets are transferred to the liquidator to pay off creditors, but that is for the court to decide.

What is significant is that the legislation specifically provides for any reserve fund to be released to creditors in the event of the termination of a commonhold (the fund is not subject to requirement for trust status as in leasehold legislation). Therefore all, or a major part, of the reserves built up may be used in settling the insolvent association's debts - they simply become assets available for distribution by the liquidator. The successor association will have to take very early steps to rebuild the fund by issue of new reserve fund levies.

Voluntary termination: the commonhold association may wish to terminate on a voluntary basis. Since this will have the effect of ending the commonhold, it is difficult to envisage a reason why this should occur, other than for the purpose of a unanimous decision for sale of the site. The decision will require agreement by one hundred per cent of members, or by eighty per cent plus a court order approving the termination application.

The association may not be terminated voluntarily unless the Directors first make a declaration of solvency, that all debts are paid, or that sufficient money is held in the bank or the reserve fund to settle all accounts. If assets do not exceed liabilities, then the termination cannot proceed.

With the declaration in place, the association must agree a termination statement, setting out clearly the proposals for the transfer of the commonhold land and how the assets of the commonhold are to be distributed; these will include the reserve fund, plus any liquid or fixed assets. Clearly, the members must agree on these details before proceeding.

The association must then seek the support of its members to the winding-up resolution and there are two routes to achieve this:

- **one hundred per cent agreement:** that is, the resolution has one hundred per cent of the members voting in support of it. This means what it says, it is not one hundred per cent of members who are present at a meeting where a vote is taken. The resolution must be agreed by all members.

If this is achieved, the association appoints a liquidator who shall make a termination application to the Land Registry within six months of the resolution.

- **eighty per cent agreement:** this is where the proposal achieves eighty per cent support of the members. The association must appoint a liquidator who may seek a court order determining the terms and conditions on which a termination application may be made and the terms of the termination statement which must accompany the application.

Note: the treatment of the assets of the terminating commonhold association will be treated differently according to the route taken to termination. It is outside the scope of this guide to cover this and, again, professional advice should be sought.



Appendix 1

Glossary of terms

The Act: The Commonhold and Leasehold Reform Act 2002 .

Charge: an obligation, or commonly a debt, associated with the land or unit may be registered as a charge on the title at the Land Registry; this alerts prospective purchasers to the existence of the obligation and normally prevents the disposal of the land without settlement of the debt. A mortgage will normally be registered as a charge on the title of a unit.

Commonhold: a new type of property ownership, which allows freehold ownership of individual 'units' (flats, houses and non-residential units) within a building or estate, where the common parts are owned and managed jointly by the unit-holders through a commonhold association.

Commonhold allocations: the percentages each unit has to contribute to the commonhold assessment and to the reserve fund (if any). The allocations also set the number of votes the unit-holder may exercise in a poll.

Commonhold assessment: the income raised from unit holders to meet the expenses of the commonhold association for the management, maintenance, insurance, repair and other costs of the common parts.

Commonhold association: the company that owns and manages the common parts of the building or estate. The commonhold association must comply with both company legislation and the Commonhold Regulations and must be registered at Companies House.

Commonhold Community Statement (CCS): the document containing the 'rules' of the commonhold. The CCS defines the extent of each unit and the common parts, the percentage each unit must contribute to the commonhold assessment, plus the rights and duties of the unit-holders and the commonhold association. The CCS must be drafted according to the regulations and must be registered with the commonhold title at the Land Registry.

Commonhold land: all the land within the commonhold, comprising both the units and the common parts. Its extent will be defined in the CCS and in the Mem & Arts of the commonhold association.

Companies House: The agency of the Department of Trade and Industry responsible for all UK company registration matters. The information held at Companies House is available to the public (www.companieshouse.gov.uk).

Common parts: all those parts of the building, or estate (the commonhold land) which are not included within the unit. It will typically include the structure of the building, the corridors, lifts and the staircases, the communal car parks or roads and any other communal areas.

Development rights: rights reserved in the Commonhold Community Statement by the developer to allow him to continue his development interest in the commonhold after ownership and management of the common parts has passed to the commonhold association.



Extinguishment: the cancellation of a lease.

Land Registry: the register holds information on all registered land in England and Wales. All commonhold titles, and associated documents, must be registered at the Land Registry. The information held in the register is available to the public (www.landregistry.gov.uk).

Limited-use area: that part of the common parts subject to a restriction as to its kind of use (e.g. boiler room) or as to the person/s that may use it (eg the balcony of a flat).

Mem & Arts: the Memorandum & Articles of association of the commonhold association. All companies must have Mem & Arts and in commonhold these are largely defined by the regulations. The Memorandum sets out the object and purpose of the company, the Articles of association provide the rules by which the company is run. A copy of the Mem & Arts of the commonhold association must be registered both at Companies House and with the commonhold title at the Land Registry.

The Regulations: The Commonhold Regulations 2004 (Statutory Instrument 2004 no 1829).

Reserve fund: a special fund to build up savings against an anticipated future cost of works to the common parts, for example, replacement of the lifts.

Transitional period: the period between registration of the commonhold at the Land Registry and the sale of the first unit; during the period all units will still be registered in the name of the developer.

Unit: that part of the commonhold which is owned exclusively by the unit-holder on a freehold basis, usually a flat but a unit can also be a garage, a parking space, a garden, a shop, an office or even an unbuilt piece of land.

Unit-holder: the freehold owner of the unit.

Appendix 2

List of prescribed forms

[Form 1 - Notice of proposed commonhold assessment](#)

[Form 2 - Request for payment of commonhold assessment](#)

[Form 3 - Request for payment of emergency commonhold assessment](#)

[Form 4 - Notice of proposed reserve fund levy](#)

[Form 5 - Request for payment of reserve fund levy](#)

[Form 6 - Notice to tenant for diversion of rent](#)

[Form 7 - Notice to sub-tenant for diversion of rent](#)

[Form 8 - Notice requesting further details about a tenancy](#)



[Form 9 - Commonhold unit information certificate](#)

[Form 10 - Notice of transfer of a commonhold unit](#)

[Form 11 - Notice of transfer of part of a commonhold unit](#)

[Form 12 - Notice of vesting of a commonhold unit by operation of law](#)

[Form 13 - Notice to a prospective tenant](#)

[Form 14 - Notice of grant of a tenancy in a common hold unit](#)

[Form 15 - Notice to a prospective assignee](#)

[Form 16 - Notice of assignment of a tenancy in a commonhold unit](#)

[Form 17 - Complaint notice against commonhold association](#)

[Form 18 - Reply to complaint notice against commonhold association](#)

[Form 19 - Default Notice](#)

[Form 20 - Reply to default notice](#)

[Form 21 - Request for action](#)

[Form 22 - Reply to request for action](#)

[Form 23 - Complaint notice against unit-holder or tenant](#)

[Form 24 - Reply to complaint notice against unit-holder or tenant](#)



Appendix 3

Other resources

The most accessible guide to commonhold for the lay reader is

"Commonhold - the new law"

By D.N Clarke

Published by Jordans

The Act

The [Commonhold and Leasehold Reform Act](#) is available on the HMSO website. Information regarding the [legislative passage](#) of the Act is also available.

Regulations

The [Commonhold Regulations 2004](#) are available on the HMSO website. The supporting documents are set out below:

- [Final Regulatory Impact Assessment accompanying the Regulations](#) 
- [Explanatory Memorandum for the House of Lords Committee on the Merits of Statutory Instruments](#) 

Land Registration Rules

The [Commonhold \(Land Registration\) Rules 2004](#) are available on the HMSO website. Guidance on the procedure for registration of a commonhold can be found on the [Land Registry website](#).

Model Documents

- [Memorandum of Association](#)  [Word version] 
(as schedule 1 of the Commonhold Regulations 2004)
[\[Cymraeg\]](#)  - 
- [Articles of Association](#)  [Word version] 
(as schedule 2 of the Commonhold Regulations 2004)
[\[Cymraeg\]](#)  - 
- [Commonhold Community Statement](#)  [Word version] 
(as schedule 3 of the Commonhold Regulations 2004)
[\[Cymraeg\]](#)  - 

Forms

- [Forms](#) 
(as schedule 4 of the Commonhold Regulations 2004)
[\[Cymraeg\]](#)  and [Bi-lingual forms](#)  [Cymraeg-English]