

Debt Collection – Property Debts

Can we Recover the Costs?

Freeholders and Management Companies are often concerned about the costs they may incur if they look to pursue amounts which have not been paid which are due and owing to them.

The starting point for consideration of this must always be the Contract which entitles the charges to be levied usually this will be the Lease Agreement originally entered into.

Firstly it is vital that checks are made to ensure that the terms of the Lease in respect of the Lease sums which have been sought to be recovered have been complied with along with any statutory rules and regulations (in particular the requirement now to give certain statutory information in respect of service charges and ground rents before the same are recoverable). Assuming that these have been dealt with it is then important to review whether or not there is a clause within the document allowing recovery of costs of enforcement. Most Leases will contain certain clauses and as a result reasonable enforcement costs may be recovered. If you have Managing Agents or a Management Company which is already charging a fee for management of the buildings generally they will be expected to undertake some minor collection works without charge. If however their initial attempts are futile they are entitled to charge reasonable administration fees for further work. It is vital that these costs are reasonable for the work undertaken and if not these can be subject to challenge at the Leasehold Valuation Tribunal.

Generally a fee for sending a letter before action and then recovering the costs of any Court proceedings will be recoverable if the Lease has the appropriate clauses. If a resident defends a claim and the matter is referred to the Leasehold Valuation Tribunal and resolved there if the amount sought to be recovered is less than £5,000 the Court may not award further costs. Again provided the Lease contains appropriate clauses it may be that these are costs which can form part of the general management expenses and they will be recoverable as a service charge item.

Even if you have a Lease Agreement which does not appear to have specific clauses allowing recovery of charges it may be possible for you to recover Court costs on issuing the Summons and entering Judgment and possibly if the claim is defended but again this is dependant upon the amount sought and advise should always be taken.

Generally Managing Agents and Freehold Companies should not be afraid to take action. Under most Lease Agreements the costs will be recoverable from the defaulting leaseholder and provided you can show you have complied with your statutory duties and obligations the Court will support the taking of action. Further most Leases contain effective mechanisms for enforcing Judgments.

If you require any advice or assistance in connection with Debt Collection matters please contact David Whitney on dw@hpwsolicitors.co.uk or on 0208 735 9783 for a without obligation discussion.

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