

Fact Sheet – Estate Rent Charge

Estate maintenance rent charge schemes have been used for many years to create a legal framework to ensure the timely payment of maintenance charges associated with various 'estate facilities' shared by owners on a freehold estate.

The legislative framework connected with these schemes stem from the Law of Property Act 1925 and the Rentcharges Act 1977 much of which is now obsolete. Most annual charges of this nature tend to amount to no more than £50 to £350. Accordingly, enforcement of payments associated with these paltry sums has not really attracted too much comment or friction among payers or collectors.

Harsh Penalties

Recent caselaw has exposed some extreme powers available to estate rent charge collectors which had gone un-noticed for many years but which the caselaw reminded us is still technically possible. Accordingly, the following is a broad summary of the powers that could be exercised in the event that you do not pay your estate maintenance charge promptly.

In addition to taking legal action for non-payment of a debt, the owner of an estate rent charge can seek to enforce;

- A Statutory Rent Charge Lease – Failing to make payment for 40 days after the debt has become due could result in the Estate Rent Charge Owner having the legal authority grant a Lease of the Property to themselves. The Lease can then be sold or mortgaged until the arrears are paid. Due to the legislation being drafted badly, there is no legal obligation on the Rent Charge Owner to surrender the lease once it has been granted, even if all of the arrears are paid. In practice most Estate Rent Charge Owners will surrender the lease at no additional cost. This will almost certainly be the case where the Estate Rent Charge Owner is a Resident Owned Management Company but it may not be where the Estate Rent Charge Owner is a commercial company whose main purpose is to make profit from fees in administering the estate rent charge and maintenance of the estate. It is therefore possible that this remedy could make the Property difficult to sell if a Rent Charge Lease subsists and the Rent Charge Owner will not extinguish it.
- Statutory Right of Entry – Failing to pay an outstanding bill for 40 days potentially gives an Estate Rent Charge Owner power to obtain a Court Order to evict you from the Property to enable them to obtain possession so that they can draw income (usually rent) from the Property until the arrears are repaid. It is likely that the Estate Rent Charge Owner will only threaten to use this power in the event that you repeatedly ignore requests to pay outstanding arrears. You should be aware, however, that some Rent Charge arrangements involve the payment of a fixed sum on a specific day in each year. In these circumstances the Estate Rent Charge Owner could seek to repossess the Property as soon as 40 days have elapsed without receipt of your annual payment.
- Re-Entry / Forfeiture – Rent Charges sometimes contain a right for the Estate Rent Charge Owner to seek a Court Order forfeiting your Property altogether (meaning you do not own it anymore) if rent charge payments are not promptly paid or you breach other covenants contained in the Rent Charge Deed. While this remedy is subject to the Court's jurisdiction to grant relief (in most cases they should especially where all arrears repaid), you will be responsible for paying the vast majority of the legal costs connected with defending this type of action if an Estate Rent Charge Owner was motivated to pursue it.

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Avoiding the Penalties

Some remedies available to an Estate Rent Charge Owner are dis-proportionately harsh and could cause problems subsequently selling the Property. In practice, these remedies are very rarely invoked because freehold estate maintenance charges are quite low and most freehold owners prefer to quickly pay any arrears rather than suffer the additional costs and stress involved in a legal dispute. It is highly likely that legislation will be passed to reduce the nature and scope of the Statutory Rent Charge Lease and Right of Re-entry. Until then it is highly advisable to consider the following courses of action;

- Pay all charges connected with the estate rent charge on time (and if part of it is a fixed sum, whether it is demanded or not) and ask for a receipt of payment
 - Set up a Standing Order if possible to avoid overlooking payment of the Rentcharge
 - If the Rent Charge Owner is not actively collecting rent, check with your neighbours to see if they have any further information
 - Be prepared to pay the Estate Rent Charge Owner's administration fee for further documentation or penalty interest on late payments as this is likely to cost less than disputing some of the harsher remedies available to the Estate Rent Charge Owner.
- Estate Rent Charge Owners Personal Covenant – It may be possible to obtain a written undertaking from the Estate Rent Charge Owner addressed to you and your Mortgage Lender (if applicable) not to invoke the estate rent charge remedies until they have given you and your Lender written notice of their intention to do so and a further 28 days to repay all arrears together with an acknowledgement that in the event that a Rent Charge Lease is obtained, they will surrender it for nil premium after all rent charge arrears have been repaid.
- Extinguishing the Estate Rent Charge – In limited cases and until further legislation is passed it may be possible to extinguish the Rent Charge or obtain a Variation to the Rent Charge Deed to exclude some of the more draconian remedies available to the Rent Charge Owner.
- Limitation – The Estate Rent Charge Owner is time barred from seeking the above remedies if the breach has subsisted for more than 6 years apart from any right to re-enter and forfeit which continues for 12 years from the date that a cause of action accrued.

Please let us know if you are interested in exploring any of these options in greater detail. Their will, however, be additional fees involved and we shall have to give you a quote in this regard depending on what you are looking to achieve.

You will receive separate information from us about the current annual maintenance charge being collected and whether any increases are envisaged. You should have more cause for concern if the annual charge is greater than £500 as some mortgage lenders have set an annual threshold in or around this sum.