



**DEAN WILSON**  
SOLICITORS

# Flying Freehold

Each freehold property is usually completely independent from another. To put it another way the owner of a freehold property is usually entitled to maintain and insure all of their property without needing the co-operation of any neighbour.

A 'flying freehold' arrangement is created when part of one property (A) overlaps and sits directly above an attached neighbouring 'creeping freehold' property (B) sitting directly beneath.

if one neighbour's house (B) is destroyed, the owner of house (A) should be able to compel the owner of (B) to rebuild because the flying freehold part of the (A) building cannot exist without the (B) building.

Each case is different but flying freeholds normally present these problems:

- No written legal rights for structural support shelter or protection within the registered title to property (A) or property (B).
- No legally enforceable arrangements may exist between (A) and (B) for the maintenance, repair, rebuilding and insurance of both properties.

The structural integrity of each property affects the other. The inter-dependence on one another creates additional risks which may affect the saleability of each Property. Some mortgage lenders are still not prepared to lend in circumstances that a property is subject to a flying or creeping freehold arrangement.

This problem does not exist with Leasehold property schemes mainly because leasehold covenants can be enforced more extensively and most lease schemes make one person, the Landlord, responsible for insuring and repairing the structure of the building.

Due to a quirk within the English law, it is much more difficult to create enforceable freehold legal covenants which compel each owner to be responsible for the maintenance and insurance of each property for the benefit of the other.

Fortunately, many Mortgage Lenders are now prepared to accept these arrangements provided that either of the following is carried out;

#### 1. A Deed of Mutual Covenant

Both affected owners sign nearly identical Deeds which create the necessary legal rights of support and shelter for each property as well as respective covenants to insure and maintain. The Deeds also contain an obligation that on a sale of either Property, the incoming Buyer must sign a fresh Deed of Covenant and give it to their neighbour. The Deed of Covenant is effectively an acknowledgment from the buyer that they will observe and perform all of the arrangements cited in the original Deed of Mutual Covenant. This ensures that at any moment in time there is always a direct contractual arrangement between the owners of each property.

These Deeds are registered on the land registry title to each Property. They are often accompanied with a Restriction on the land register that prevents any sale of the Property without an incoming Buyer proving that they have signed a Deed of Covenant and given it to their neighbour.

This arrangement is known as a 'scheme of enforceable freehold covenants.' It is the most thorough way of dealing with the issue, but it requires a significant amount of co-operation with the neighbouring property owner to set up and this will cause delay and additional cost.

## 2. Indemnity insurance

It may be possible, especially where the flying freehold area is small and quite contained, to obtain insurance to cover against the risks described above. The cost of the policy is a one off cost of anything typically between £250 to £750 depending on the property sale value.

The insurance policy will give additional terms and condition details but in the event of a problem, the insurer would normally cover (up to the maximum sum insured under the policy):

- Damages and legal costs for any claim.
- Loss of value because of the problem.

The insurer would normally handle everything but as is the case with all insurance cover, you will need to read the terms and conditions carefully as any claim will be subject to them.