

Real Estate Tip of the Week: Revenge of the Rentcharge

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A rentcharge is a periodic payment to a third party secured on freehold property and is usually only a nominal sum.

If you own a property which is subject to a rentcharge then you need to ensure that payment of the rentcharge is made when due. In the event that the rentcharge, or any part of it, is unpaid for 40 days after it is due, s.121 of the Law of Property Act 1925 allows a rentcharge owner to grant a lease to trustees. It is important to note that the rentcharge does not need to have been demanded for s.121 to apply.

In the recent case of *Roberts v Lawton* the Upper Tribunal (Tax and Chancery Chamber) held that a rentcharge lease is capable of being registered at the Land Registry. If such a lease is granted and registered it is likely to prevent a land owner from (i) making a freehold disposal, or (ii) granting any lease. This is because any prospective purchaser or tenant will not proceed with the transaction, as the tenant of the rentcharge lease is entitled to possession of the property as a means of raising the monies to pay the arrears and ancillary costs, without any provision for such lease to end on repayment of the rentcharge arrears. In *Roberts v Lawton* the rentcharge owner (a company which owned 15,000 rentcharges) granted leases of 99 years to trustees of a portfolio of properties subject to a rentcharge and would not agree to surrender the leases without the registered freehold proprietor paying the rentcharges together with the associated costs involved in granting the rentcharge leases and registering them at the Land Registry, effectively ransoming the properties and forcing the freehold owners to pay such costs.

To avoid the risk and potential impact of this draconian remedy:

1. Know when rentcharge payments fall due and ensure that all rentcharges are paid when due even if for a nominal or seemingly insignificant sum (without waiting for the rentcharge to be demanded);
2. Keep accurate records of rentcharge payments;
3. Consider defective title indemnity insurance to guard against the risk of a rentcharge owner exercising its statutory rights;
4. Statutory redemption (a way of extinguishing a rentcharge in return for payment of a lump sum) may be available for some rentcharges in England. After a period during which this statutory method of extinguishment was unworkable a revised formula used to calculate the sum payable has come into force recently (1 October 2016). Unfortunately this is not available for rentcharges affecting Welsh properties;
5. Where a rentcharge has been registered and has not been paid for a prolonged period an application could be made to ask the Land Registry to remove it from title.

If you are unsure on the position, take advice now to avoid problems later.

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