

# **Leasehold Reform (Forfeiture) Bill [HL]**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Lord Young of Cookham, have been ordered to be published as HL Bill 76—EN.



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[AS INTRODUCED]

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## [AS INTRODUCED]

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**B I L L**

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Make provision requiring landlords exercising a right of forfeiture or re-entry in relation to a property subject to a long lease to account to the tenant for the tenant's equity in that property and to hold the tenant's equity on trust; to restrict the landlord's right to legal and administrative costs; and for connected purposes.

**B**E IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 Landlord's duty to account for tenant's equity**

- (1) This section applies to any landlord exercising a right of forfeiture or re-entry in relation to a dwelling held on a long lease under—
  - (a) the terms of that lease; or
  - (b) section 146(1) of the Law of Property Act 1925. 5
- (2) A landlord exercising any right prescribed by subsection (1) owes a duty to the tenant to do each of the following—
  - (a) to calculate the tenant's equity and give written notice to the tenant in accordance with section 2;
  - (b) to account to the tenant, or chargees of the tenant, in accordance with section 3; and 10
  - (c) to hold the tenant's equity on trust in accordance with section 4.
- (3) Except where specifically modified by this Act, nothing in this Act affects the landlord's obligations in relation to re-entry or forfeiture under—
  - (a) any provision of the lease; 15
  - (b) section 146 of the Law of Property Act 1925; or
  - (c) sections 168 and 169 of the Commonhold and Leasehold Reform Act 2002.

**2 Calculation of the tenant's equity**

- (1) The tenant's equity is the aggregate of the open market value of the long lease disregarding any default by the tenant less—
  - (a) any amount due to any one or more chargees of the tenant; 20

- (b) any finally determined amount due to the landlord; and
  - (c) any reasonable costs of the landlord permitted under section 5.
- (2) By the end of the period of 14 days beginning with the day on which the landlord re-enters the property, the landlord must give written notice to the tenant of the landlord's calculation of the tenant's equity under subsection (1). 5
- (3) A landlord who does not give notice to the tenant in accordance with subsection (2) may not extinguish, terminate or market for sale the long lease until notice is given in accordance with subsection (2).
- (4) The Secretary of State may make regulations supplementing any provision under this section, including in particular— 10
- (a) the form and means of delivery of the notice to the tenant;
  - (b) for notice to be given to any legal chargee of the tenant, including the form and means of delivery of any such notice; and
  - (c) for reasonable steps to be taken by the landlord to trace the tenant. 15
- (5) For the purposes of this section “open market value” is the value that could be achieved on a sale of the same property by a willing seller to a willing buyer, where both seller and buyer are independent of the landlord.

### **3 Landlord's accounting for the tenant's equity**

- (1) The landlord must account to the tenant for the tenant's equity in accordance with this section by the end of the period of three months beginning on the day the landlord re-enters the dwelling. 20
- (2) The landlord accounts to the tenant for the tenant's equity as follows—
- (a) where there is any legal charge secured against the long lease, by accounting to any chargee in the order in which any such charges were registered and, to the extent there is a surplus, to the tenant for the remainder; and 25
  - (b) where there is not a legal charge secured against the long lease, by accounting to the tenant in full.

### **4 Landlord to hold tenant's equity on trust** 30

The landlord holds the tenant's equity calculated in accordance with section 2 on trust for the tenant until such time as the landlord discharges the duty to account under section 3.

### **5 Restrictions on landlord's legal and other costs**

- (1) For the purposes of the calculation under section 2, the landlord's reasonable costs are limited to the lesser of— 35
- (a) the amount actually incurred by the landlord; or
  - (b) 5% of the open market value of the long lease determined in accordance with section 2.

- (2) Section 146(3) of the Law of Property Act 1925 is to be read accordingly.

## 6 Anti-avoidance

A covenant or agreement (whenever made) is void to the extent it purports to exclude or limit any provision made in this Act.

## 7 Interpretation

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- (1) In this Act a “long lease” means—

- (a) a lease granted for a term certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant or by re-entry or forfeiture or otherwise;
- (b) a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, other than a lease by sub-demise from one which is not a long lease;
- (c) a lease taking effect under section 149(6) of the Law of Property Act 1925 (leases terminable after a death, marriage or civil partnership).

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- (2) In this Act—

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“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it;

“finally determined” has the same meaning as in section 169 of the Commonhold and Leasehold Reform Act 2002;

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“lease”—

- (a) means a lease at law or in equity (and references to the grant of a lease are to be construed accordingly);
- (b) includes a sub-lease;
- (c) does not include a mortgage term.

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## 8 Extent, commencement and short title

- (1) This Act extends to England and Wales.

- (2) This Act comes into force—

- (a) for the purposes of making regulations, on the day this Act is passed;
- (b) for remaining purposes, at the end of the period of six months beginning on the day this Act is passed.

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- (3) This Act may be cited as the Leasehold Reform (Forfeiture) Act 2022.

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Ordered to be Printed, 1st December 2022.

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