

LEASEHOLD REFORM (FORFEITURE) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Leasehold Reform (Forfeiture) Bill [HL] as introduced in the House of Lords on 1 December 2022 (HL Bill 76).

- These Explanatory Notes have been prepared by Lord Young of Cookham in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	2
Commentary on provisions of Bill	3
Clause 1: Landlord's duty to account for tenant's equity	3
Clause 2: Calculation of the tenant's equity	3
Clause 3: Landlord's accounting for the tenant's equity	3
Clause 4: Landlord to hold tenant's equity on trust	3
Clause 5: Restrictions on landlord's legal and other costs	3
Clause 6: Anti-avoidance	3
Clause 7: Interpretation	3
Clause 8: Extent, commencement and short title	3

Overview of the Bill

- 1 This Bill amends a landlord's right to forfeit or re-enter a property by requiring the landlord to account for the tenant's share of the value of that property (referred to in the Bill as the "tenant's equity").

Policy background

- 2 The right of forfeiture arises in cases where the lease contains a forfeiture clause and:
 - a. there is an amount of £350 or more outstanding, or a lesser amount has been outstanding for more than 3 years, and there is no dispute over the amount in question; or
 - b. the tenant has breached a clause in the lease, the landlord has given notice to the tenant of the breach and the tenant has been found by a court or tribunal not to have remedied the breach.
- 3 Currently, a landlord exercising a right of forfeiture or re-entry receives a windfall gain. That is because the landlord is not obliged to account to the tenant (or any lender) for the excess over the tenant's debt to the landlord. It is therefore theoretically possible for the tenant to lose possession of a £350,000 flat or house for a debt of as little as £351, with the landlord keeping the difference.
- 4 Landlords are also entitled to deduct all their legal and professional fees from the value of the property. In the case of solicitors' fees, these charges are often significantly higher than would be permitted by the relevant guideline hourly rates issued by the Senior Courts Costs Office.
- 5 Typically, forfeiture only occurs where there is no mortgage secured by way of legal charge over the property. A lender will usually step in and pay the outstanding service charges, ground rent and legal costs to avoid the forfeiture. The lender then seeks the costs it has paid from the tenant under the terms of the mortgage.

Commentary on provisions of Bill

6 The Bill reforms the law by making the following provisions:

Clause 1: Landlord's duty to account for tenant's equity

- 7 Clause 1 imposes a legal duty on the landlord to account for the tenant's equity in the property by doing each of the following:
- a. calculating the tenant's equity and giving notice to the tenant of the amount so calculated;
 - b. accounting to the tenant for the tenant's equity by no later than the end of the period of 3 months beginning on the day the landlord re-enters the property; and
 - c. holding the tenant's equity on trust until the landlord has accounted to the tenant.

Clause 2: Calculation of the tenant's equity

- 8 Clause 2 explains how the landlord is to calculate the tenant's equity and to give notice to the tenant. Clause 2 provides that a landlord may not deal with the lease, or market it for sale, until notice has been given.

Clause 3: Landlord's accounting for the tenant's equity

- 9 Clause 3 explains how the landlord is to account, which is first to any legal mortgagee of the tenant and then to the tenant or, in cases where there is no mortgage, to the tenant directly.

Clause 4: Landlord to hold tenant's equity on trust

- 10 Clause 4 provides that the landlord exercising a right of forfeiture or re-entry holds the tenant's equity on trust for the tenant until the landlord accounts to the tenant. This means the value of the tenant's interest is not regarded as the landlord's money and the landlord cannot deal with it except as provided by the Bill.

Clause 5: Restrictions on landlord's legal and other costs

- 11 Clause 5 caps the landlord's legal and professional fees to 1.5% of the open market value of the lease.

Clause 6: Anti-avoidance

- 12 Clause 6 restricts the ability of landlords to avoid the provisions of the Bill by agreement, whether or not contained in the lease in question.

Clause 7: Interpretation

- 13 Clause 7 defines certain terms for the purposes of the Bill.

Clause 8: Extent, commencement and short title

- 14 Clause 8 provides for the Bill to extend to England and Wales and to come into force immediately for the purposes of making regulations, but otherwise 6 months after Royal Assent.

LEASEHOLD REFORM (FORFEITURE) BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Leasehold Reform (Forfeiture) Bill [HL] as introduced in the House of Lords on 1 December 2022 (HL Bill 76).

Ordered by the House of Lords to be printed, 1 December 2022

© Parliamentary copyright 2022

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS