Ringley's top tips

Getting an efficient 'manageable lease' is a must

Lease recommendations:	Reasoning
THE DEMISE	
Patios along with their maintenance responsibilities	It is not fair for the service charge to have to pay for a ground floor occupier who drops and breaks a patio tile, or spills oil on it etc...
Balconies along with rainwater outlets to them	To protect other service charge payers paying for impact damage from inappropriate shoe wear, planters, terrace furniture, BBQ's, spills, breaks, clogged up gutters that cause leaks etc... Other benefits: Demised areas increase what the Estate Agent can measure in saying how big the flat is so thats a plus point
Jubilee or bolt on metal balconies	Can be communal as there are no 'useage issues'
Plaster	The Grand v Gill case held that plaster is the landlord's responsibility unless demised. It is better if plaster is the leaseholder's responsibility as horsehair plaster fails, sections loose key with the external walls or become stained or water damaged or if the wrong type of plaster has been used after damp proofing works leading to efforescence and staining. Where a lease is not specific and simply states that the landlord is responsibility for repairs then the responsibility for plaster could be his. Where damage to the plaster is caused by an external leak from the structure this would be classed as 'consequential' damage that the landlord should be responsible for.
Window timbers	If the windows are not demised the individual tenant will replace windows in varying styles probably in breach of planning permission and a change in the fenestration and design/aesthetics of the windows is detrimental to the value of the building. Where the landlord owns the

	windows then alterations would require consent. Also, if the window frames are not the landlord's responsibility then the lease is open to disputes where landlord doesn't paint and the tenant sues for wood deteriorating or seeks to off-set the costs he would otherwise be charged for timber repairs.
Window glass	This should be the leaseholder's responsibility
Car Park Spaces - should be allocated not demised to owners.	This stops owners from believing they can 'do as they please' with demised spaces. It ensures that the Manager can mark, line or paint or repair kerb stones or brick paviours to spaces in a uniform way. Allocating a space to an owner makes it easier to enforce estate regulations and remove dumped or untaxed cars and makes little difference when selling a property. For demised spaces it needs to be explicit that in carrying out any maintenance to the said space the materials of the car parking spaces must conform to the design code and therefore cannot be changed without the consent of the Landlord or Managing Agent. This all means to help disabled drivers spaces can be reallocated if necessary.
MAXIMISING THE FREEHOLD VALUE	
Buildings Insurance - the landlord may wish to retain rights to insure	Landlords often receive upwards of 30% commission on insurance, they'll want the right to insure
Plant insurance	leave this as a management company duty to reduce the landlord's risk exposure
Step in and manage	In the event of neglect to management duties by the management company
Ground rent	25 yearly rises to a percentage of market value
Create a management company	Management Companies where the

	freeholder passes over his responsibilities to the democratic world of the new owners are now the norm. Great for developers whether they want a long term interest in the property of not. Leases are usually drawn so that the freeholder retains the right to insure and earn insurance commission. The repairing responsibilities are bestowed upon the management company. Better still the freeholder will not have a duty to provide services particularly eliminating the duty to fund the service charge if there are arrears. The company covenants with the landlord to perform any obligations set out in the Schedule of Landlords' responsibilities.
Minimise exposure to the 18 month rule	A big win for developers is that creating a Management Company protects the developer from the 18 month rule *1987 Landlord and Tenant Act. Why? Because, if, the utility set up and billing - usually both the developer's and the Managing Agents biggest nightmare, doesn't get billed efficiently, back-billing, (which more in theory than in practice, is governed by the Energy Retail Association Back Billing Code) will fall on the Management Company rather than the developer. The problem here being this code applies to residential customers and management companies are classed as commercial supplies. If the developer does not set up a Management Company then all amounts barred by law as service charges become the freeholder's/developer's responsibility. Where a Management Company exists even if barred by service charge law, under company law the Management Company will have to pick up the cost.
Minimise exposure to poor practice	The Management Company also best protects the developer from an Agent who either through lack of skill messes up. For example where insurance, water or other costs are charged to the wrong schedule

	and back-charge/correction is barred under the 18 month rule. No management company ultimately the freeholder was liable for the back-charge management company and they pick up
Handover paperwork & meters	It will depend on the quality of the developer's handover paperwork and whether an Agent could be expected to know what parts of the building were attached to which meter. Something the utility companies can rarely confirm because they install pipework to a geographic location not to the units/apartments that later get to sit on a particular map point.
The downsides of a management company	Arguably management companies are bad for owners who want services provided whether or not everybody pays their service charge. Bad if you live in a block where none of the owners are brave enough to come forward and volunteer for the unpaid role of a Director of the Management Company. Bad with the rise in ambulance chaser claims, especially as these tend to be made by sub-tenants leaving owners in an inadequately insured management company open to costly legal fees. As service charges are not for profit the reality is that cashflow will be juggled to fund legal action against arrears and the Managing Agent left with the job of keeping contractors sweet.
No obligation to provide services if charges are not paid – a shall not unless is better than a shall if	A positive obligation Example: If the Lessee pays the service charge and observes his obligations under this Lease, the Landlord must use all reasonable endeavours to provide the Services (as listed at the date of this Lease in Schedule X).
LANDLORD REPAIRING OBLIGATIONS	
Duty to paint the windows	Painting should be the landlord's or

	management companies responsibility if the building is more than 2 stories high. Else how can a leaseholder paint their windows if they live on the 10th floor.
Window seals	Sunlight hardens mastic seals eventually causing them to fail.
Planting & Planning conditions	Maintain trees, shrubs etc that form part of a planning condition. Helps leaseholders understand that Section 106 liabilities become theirs.
HOUSEKEEPING	
Cleaning windows	Lessees to clean their own windows once a month. depends on method statement in pack, the CDM developer is required to consider this.
Curtains or suitable window coverings	Example of a clause: *"To furnish all the windows of the Demised Premises with curtains of a colour and design suitable to the Building and will at least once a month clean all window."* *"No name, writing board, sign, drawing plate or placard of any kind shall be put on or in any window on the exterior of the Property so as to be visable from outside"*
Laundry	No laundry to be aired on the balconies or communal estate grounds.
Pets Either a restriction ie, no pets Or pets to be allowed via a pet licence which can be obtained from the Managing Agent, such licence revocable if nuisance is caused	What harm can a goldfish do – the cultural custom of eide requires a symbolic table spread with goldfish! Include a draft pet licence at the end of the lease. Need an example email us now Example: The Lessee must not keep any animal, bird or reptile except birds in cages or fish in tanks or other small animals in cages or tanks without the Landlord's prior written permission by way of a pet Licence.
Balconies / Terrace generally	A clause to require owners to keep outlets clean & cleared at least annually after the

	leaf fall season.
Satelite Dishes / Aerials / Antennas Absolute Prohibition satellite dishes, aerials, etc.	Only communal systems should be favoured. However the lease should allow for improvements if so deemed appropriate by the landlord or a majority of owners.
Democratic improvement clause	To provide maintain or install in or about the Estate any other service or facility as the Company in its absolute discretion considers desirable for the comfort or convenience of the tenants of the Estate.
Managing Agents improvement clause	Providing, inspecting, maintaining, repairing, reinstating and renewing any other equipment and providing any other service or facility in connection with the Maintained Property will in the opinion of the Manager it is reasonable to provide.
Keep common parts clear Not to obstruct the staircases, landings or other common parts of the reserved property.	There is huge resistance to understanding that fire legislation requires common areas to be kept clear. This being explicit in the lease helps the Managing Agent in implementation.
Cars & vehicles Not to use any parking space or driveway for any purpose other than the parking of a private motor vehicle having a current Road Fund License. And to set out what vehicles can park on an estate, how and where and who retains the ownership space.	It is helpful to define what a commercial vehicle is as with the increase in people carriers which are sometimes taxi's it is often not that clear. Suggestions : Prohibitions: 1. Driving or riding any vehicle, including bicycles, anywhere except on the estate roads; 2. Storing bicycles except in a designated bike store; storage of push-chairs, furniture or other items; 3. Parking commercial vehicles, boats, caravans, camper-vans, trailers or similar items on the estate; 4. Using your parking space for anything other than parking a roadworthy, taxed and licensed vehicle not exceeding 3 tons including carrying out vehicle

	maintenance; 5. Parking a vehicle that is not roadworthy, taxed or licensed 6. Parking in an area other than your designated parking space;
Parking plans To reduce burgulary risk spaces should be marked on a different basis to flat numbers. On the lease plan make sure this is clear and allocated spaces are referred to by numbers not just a red line.	Example: Flat 1 should have space A to confuse opportunist burglars.
Management Company Obligations to pay any water rate not assessed or charged upon any individual unit. to maintain, in a designated area, containers for the deposit of household refuse and provide for such to be regularly emptied. to keep clean and reasonably lighted, the main entrance, common parts, passages, landings and staircases. to keep the garden areas cultivated in a neat and tidy condition. to maintain, renew and repairs as often as necessary, the master television aerial (if any) installed in the estate and to pay the rental for any master television aerials so installed. to keep the property insured in the name of the landlord and the company, all buildings, plant etc... whenever reasonably necessary, (or whenever the landlord or its agent/surveyors) considers reasonably necessary and in any event within x months of any notice served by the landlord maintain, repair, re-decorate or renew the landlord's retained part and communal parts. to take all reasonable steps, including taking proceedings to enforce the observance and the performance by the tenant and tenants of other flats in the estate of the covenants entered into with the company and in the leases of other flats. See hertford lock – subject to complainant indemnifying the company. To maintain a reserve fund the extent of which to be estimated annually by the company or its managing agents. Company to keep proper books of account of all charges and expenses incurred in carrying out its obligations in respect of the landlords covenants. Insurable risks to include loss or damage by fire, public liability and/or other risks usually described in the property owners' liabilities (including architects and surveyors fees etc) Obligation for company to make good the deficiency in insurance out of the company's own moneys.	
CASHFLOW	
Insurance Premiums Provide for collecting insurance	For some large blocks the half-yearly service charge may not cover the

premiums separately.	premium.
Directors & Officers insurance explicitly allow in the service charge schedule for management companies	
Utilities Where a landlord's utility supply serves multiple parts of a building and meter/wiring installations do not match to the heads of charge in the lease, agree with the developer/designers an appropriate apportionment per head of charge and write this up in the lease	Minimises disputes and in the absence of wiring diagrams and CDM packs investigations to estimate usage between say parts of the estate that houses and flats benefit from as opposed to flats only. Can also apply to other shared costs such the split of the insurance premium between houses & apartments. The houses liability being public liability only. Then a second policy, which would increase the service charges, is not unnecessarily.
Management Company Set up On mixed sites avoid the costs more than one management company. Set sufficient heads of charge/service charge expenditure schedules in the documentation: ie, estate costs and block costs.	Each management company comes with accounting, filing and company secretarial running costs. All costs which do not 'add value' as far as owners are concerned.
Service Charge Accounts Service charge to be certified by a qualified accountant	It is best not to recommend full audit the costs of which are prohibitive and resented if there are less than about 40-50 flats. Companies House guidance suggests that management companies should be run as "dormant" companies so don't let the lease over-ride this and cause unnecessary expense. Normally a full AUDIT is only required if there is a social housing element and the Housing Associations Solicitors are insisting on this
Service charge budget Don't require the service charge budget to include prior year balancing charges.	Gone are the days where the Managing Agent themselves prepared the service charge accounts. The RICS Code of Practice for Residential Managing Agents says that service charge accounts should be audited by an external accountant. It is unrealistic to expect all this to happen in minutes before you can implement a new budget.

	Para 10.4 RICS Code *"You should arrange for service charge accounts to be audited annually and for copies to be made available to all those contributing to them where the lease requires this. Otherwise, you should consider the benefits and costs of an audit with regard to the tenants and the property concerned"* Do consider that the cost of an audit is prohibitive if there are less than 40-50 units.
Balancing charges Don't require balancing charges (which can be credits) to be split (refunded) if there is no cash Provide the option for surpluses to be transferred to reserves at the discretion of the management company	
Time for delivering service charge accounts - do not specify	There is no need. Section 20B inserted into Landlord and Tenant Act 1985 requires that service charge accounts must be served within 6 months, or a schedule of expenditure with a Section 20B Notice or the expenses will not be due.
Water Charges Water meters often do not get installed as per the developer's original plan.	Even if intended to be communal provide for water to be a valid head of charge under all schedules. *"The right of passage and running of water sewage gas electricity telephone and other services from and to the Property through and along the Pipes which are in under or passing through the Building and the Estate."* *"To pay all charges for gas electricity and other services supplied to the Building Common Parts and External Landscape Areas and (if there is a metered supply or supplies to the Building) all charges for the supply of water to the Building including any meter rents and standing*

	charges."
Describe service charge arrears as "rent in arrears"	*When called "rent in arrears" there was the added remedy to disdain – right to enter the demise – but now this right only applies to commercial property. Forfeiture is only possible for residential properties when the landlord gives their consent – section 146*
Interest on arrears clause	Every Managing Agent needs an incentive to avoid set off
No right of set off	Set off should not be permitted to encourage payment, dialogue and resolution of disputes
Rent Dates Specify 1st April OR 25th March	It is best to specify 1 ground rent collection date only. Dates nearest to the 5th April tax year end are most popular. Less accrual accounting required.
Service charge dates Specify 1st April, 1st October OR 25th March and 29th September	We recommend that the service charge is payable half-yearly in advance. Our experience proves these dates are the most popular, they avoid the Christmas and summer holiday periods and sites with these dates tend to have lower arrears!
Capping the amount towards the reserve fund that can be collected in any one year	
Demands Allow supplementary or one off adhoc demands should unexpected or unplanned expenditure necessitate it, or; any reserve funds need topping up to procure redecorations or big works during the year, and; for management companies should cashflow requires it. To become 'due on demand'	As money is collected towards major works often tenders will come in during the year so when setting the budget or reviewing the reserve plan it is not until all tenders are in that the final price will be known. To get the works on site during the year a supplementary demand may be needed to top up any shortfall. Cashflow can be destroyed by bad payers and it is easier for leaseholders to understand an extra levy under the lease than a demand for liquidity raised under the Company Memorandum & Articles.
Year end For trading companies – choose a year end as close to 5th April as possible For service charge only schemes, resident management companies & right to	to minimize accruals and adjustments setting year end date 1 day before the next demand date maximizes cashflow

manage companies – the year end doesn't matter greatly it simply should be 1 day before the next demand date to maximize cashflow	
Service Charge Deposits Should be called a "service charge deposit" not service charge on account. The lease should make it clear that a service charge deposit is held as surety for the duration of the lease and held as reserves which pass on to subsequent owner not 'on request' to be used as day-to-day service charges by an owner, or; claimed back as a refund when an owner sells.	Should be held separate from day-to-day service charges else they are not really surety for the duration of the lease; they will be given back in error as balancing charges; Many buyers seek to not pay service charges and use their service charge deposit on completion, we recommend an explicit reference in the lease that service charge deposits are to be held in the 'reserve fund' and on subsequent sale passes to the new owner. It then becomes the incoming purchaser who refunds the service charge deposit to the seller, if required.
THE SERVICE CHARGE SCHEDULE - WHAT CONSTITUTES SERVICE CHARGE	
Managing Agents allow a professional managing agents to be employed; don't cap fees as a percentage of expenditure; use the words 'managing agents reasonable fees'.	The RICS Code of Practice for Residential Managing Agents guides that Managing Agents should charge a fixed fee per unit not a percentage of expenditure.
Accountancy fees lease to expressly provide for an external accountant to certify the accounts	Rettke-Grover v Needleman 2010 held that because the lease did not specify an external accountant to produce the service charge accounts the cost was not due. As the RICS Code of Practice for Residential Managing Agents states that an Agent should get accounts prepared by an external accountant the lease should provide for this.
Legal charges to the owner, to the service charge or schedule 11 costs?	The following clause would enable the Landlord to recover costs in relation to professionals/experts used. Where it

	specifically refers to the tenant then the tenant would have to indemnify. Where the lease refers to all the dwelling holders, the indemnifying amounts may be charged to all the flat tenants. Usually outlined within the main body of the lease: *"indemnify the Landlord and the Company against all reasonable damage costs and expenses damages losses actions demands proceedings claims and liabilities made against or suffered or incurred by the Landlord including (without prejudice to the generality of the foregoing) solicitors' costs and surveyors' fees for any advice sought or any action reasonably contemplated or taken by or on behalf of the Landlord or the Company arising out of the prevention or procuring the remedy of any breach or non-performance by the Tenant of any of the covenants conditions or agreements herein contained and on the part of the Tenant to be observed and performed."*
DEALINGS IN LAND	
<u>Notice of Transfer</u> If there is a Management Company then the lease needs to provide that Notice of Transfer be served on both the Freeholder and the Management Company.	Whilst the Freeholder or his Agent might maintain the ground rent ownership registers, there will be a second entity: the Management Company or their Managing Agent who will be in charge of the service charge ownership registers. What freeholder out of kindness, at his cost forwards Notice of Transfer to the Service Charge Manager You cant collect service charges if you don't have notice of dealing and a administration charge to deal with it so remain unaware of the 'deemed service address' of the buyer. If a lease is silent on notification of transfers to the Service Charge Manager then the Agent will have to rely on not allowing buyers to become members of the RMC as a means of obtaining notice of transfer. Hopefully the lease requires them to become members!

<u>Freeholder and the Management Company.</u> Membership of any management company – should be an obligation upon any owner	Else any duty to keep the management company solvent or to contribute to resolutions passed by any company or to pay into a reserve fund put in place via the management company will not pass onto new owners.
<u>Licence to assign</u> Recommended for high value flats or where buyers are likely to be companies or off-shore customers.	Particularly for high value flats, especially residential, the license to assign procedure enables the vetting of prospective buyers, taking references and service charge deposits also to protect against professional non-payers. Also the ability to require sales to domiciled individuals and legal action to fall therefore under the due restriction of England & Wales. Remember, in a tri-party lease a residents management company does not hold the Freeholder's right to forfeit the lease and a healthy deposit as a pre-condition of Licence to Assign offers a great deterrent.
<u>Sub-letting</u> Choose a sub-letting control appropriate to the building location/valule. Here's the options: "Licence to Sublet" "written consent" "notify only" "tenant enter into deed of covenant & notify" "lessee seek consent, tenant enter into deed of covenant & notify) "lessee seek consent, notify of tenancy" **As a minimum a "notify only" clause should be wrapped into the Notice of Transfer clause using the words "sub-let, under-let….."** Remember in a tri-party lease with a management company the Service Charge Manager needs to be a party to sub-letting documents too.	The rise in buy-to-lets means many blocks are well over 50% sublet. Such buildings are ghost towns to the Managing Agent if the lease does not tell them who is in occupation of each unit. Remember, The Managing Agent needs to hold contact details to deal with emergencies, day and night! Merely relying on forcing emergency access increases insurance premiums and service charge costs; Not knowing who is an alternative keyholder or phoning High Street Letting Agents is no way to deal with repairs; Landlords do resent recharges arising from incidents their tenants cause, empowering the Managing Agent to 'manage' all occupants reduces this. Buy-to-let landlords and their Letting Agents rarely pass on estate rules, car park plans etc… to tenants. If sub-letting registration is enabled the Managing Agent can take responsibility to welcome new occupiers and pass on the 'house rules' When move in/out dates are known

	– damage caused by sub-tenants to the common parts can more easily be traced and recharged to the buy-to-let owner. We recommend you include a sub-letting notification form in the lease. Need an example email us now
Deemed service address Require a service address in England & Wales.	No Managing Agents want to be serving a claim in a foreign jurisdiction and this is what could happen if the lease does not require a deemed service address in England & Wales. Intended service addresses often get lost between solicitors during a purchase, require NOTICE of deemed service address so that buy-to-let investors don't build up arrears and they say they didn't want demands sent to the property. Saves the service charge incurring the costs of Land Registry searches to trace owners if service charges are not forthcoming. And as Land Registry searches are not budgeted for this depletes funds for other items and leads to disputes as to who should bear the cost of searches : all owners, or the owner being traced? We recommend you include a service address notification form in the lease. Need an example email us now Ringley will serve demands abroad by email, but the first demand is by post and when payment fails to comply with Section 166 of the 2002 Act we then serve demands on the flat prior to starting litigation. Pre-sales packs should require buyers to declare whether they will live at the property or require service at another address. Remember the service charge budgets wont provide for HM Land Registry searches for each sale. And, how can the site be expected to bear such costs.
Restriction for a Certificate of	To prevent a sale being registered, ie,

Compliance To prevent a sale being registered at HM Land Registry without a Certificate of Compliance issued by the Managing Agent.	physically completed if ground rent or service charge are unpaid and rectification of any other breach. Requiring the buyer to execute a declaration that the property is still as per the lease plan during this process is a good way to prevent sales without regularising or requiring re-instatement of any unauthorised alterations. Else a Managing Agent is powerless to prevent a sale even if there are known breaches in terms of dis-repair, alterations, arrears etc… Particularly for Management Companies where cashflow is particularly sensitive this mechanism ensures that when the "proceeds of sale" are apportioned by Solicitors the RMC gets the arrears. We recommend you include a draft compliance certificate in the lease. Need an example email us now
ALTERATIONS & IMPROVEMENTS	
Alterations There are 3 types which is appropriate depends on the age and construction of the building. 1. Absolute prohibition ie; no right to alter 2. Alterations permitted (subject to landlord's consent) 3. Alterations permitted (subject to landlord's consent) such consent 'not to be unreasonably withheld' Know your building – if it is timber framed then alterations should be absolutely prohibited.	There's a common myth that timber walls are not load bearing and can be removed. Even in older buildings timber walls are often spine partitions providing support for the joists above, but in timber framed buildings removing a timber partition can cause the flat above to sink and become a dangerous structure in a matter of hours. Absolute prohibitions are often advisable to external facades to maintain the aesthetic appeal of the building. Whilst internal alterations may be permittable with consent. Consent brings an opportunity to get specialists Engineers or Surveyors to deem any works are appropriate. We recommend that a lease should control alterations to: Layout (removal of walls), Loading of services (extra bathrooms)

	Exterior walls (holes in outer walls, ie. new boiler flues), Permitted habitation : number of bedrooms to discourage over occupation Where alterations are given consent these should include where possible the leaseholder taking on the repairing obligations of the altered area going forwards
IMPROVEMENTS	
Have a clause to provide for how block expenditure can be reviewed and additional services provided for.	Obviates potential disputes or the need to seek sanction of certain expenditure items from the Leasehold Valuation Tribunal. Enables modernisation, examples include: a doorbell to be replaced with an entryphone; an entryphone to be upgraded to a video entryphone; a lino or concrete floor to be carpeted; bare brick walls to be plastered; a communal TV aerial to be replaced with a satellite system. For leases with a management company - the company should be permitted at its absolute discretion to provide maintain or install in or about the Estate any such other services as the Company may consider desirable for the comfort and convenience of the tenants. *Example – a right to ….improve and upgrade equipment provided the block and installing new equipment for the benefit of the tenants if so approved by a majority of members of the management company* *Example – for a non-management company lease (no democracy) Providing inspecting maintaining repairing reinstating and renewing any other equipment and providing any other service or facility in connection with the maintained property which in the opinion of the manager is reasonable to provide*

USER	
<u>User – residential purposes</u> – expressly provide that the property should be used for residential purposes. These days homeworking should be included but not running a business from home or using the property as a place of business or business address. **<u>User – as a single family dwelling</u>** – in central London and holiday areas the lease needs to further to exclude short term or holiday lettings. **<u>User – sub-letting</u>** must be for a term of more than 6 months	In practice the Agent needs the clause to make it easy for them to apply the test : to demonstrate that the flat is still primarily used for domestic purposes else there would be a breach of lease. Having a camp bed in the corner did not cut it. *An example of the clause in a lease: "To use and occupy the Demised Premises as a private residence for the sole occupation of the Lessee and his family and servants any work within the Demised Premises must be incidental to the work of an external base of employment and this Lease will at all times be interpreted as a Lease for residential purposes"* Few people know that letting a property as a holiday let or short let or in a way that is not as a single dwelling requires planning permission. It helps if the lease defines that any tenancy should be to a 'individuals living as a family unit' and for a term 'in excess of 6 months'. Some Councils do have active policies to protect the hotel industry and will 'fine unauthorised short let' buildings or apartments. This is governed by Section25 of the Greater London Council (General Powers) Act 1973 provides (as amended by Section 4 of the Greater London Council (General Powers) Act 1983). Letting a flat as a short let (less than 3 months) is considered as 'Change of Use' and owners are required to obtain consent from the planning department of their Local Authority. If consent is not obtained, then the owners are liable for a hefty fine and possible criminal offence. It is not easy to prove a breach of lease for short term rentals as lots of visitors may not prima facie constitute nuisance, even though the added wear and tear to the common parts will be a nuisance. The obvious party wont constitute a continuing

	breach. And, the onus is on the Managing Agent to obtain the evidence – statements from owners, copies of disturbances reported to the Council 24 hour noise line or web adverts seeking short let tenants.
Floor Coverings	Not to reside or use or permit any other person to reside in or use the Demised Premises unless the floors thereof (including passages) are close covered with materials which are reasonably suitable for the purposes of sound absorption and to minimise the sound that could be heard into the next premises, while the same shall be removed for cleaning repairing or redecorating of the Demised Premises of for some temporary purpose
Waiver	No acceptance of or demand or receipt for service charge by the Landlord after knowledge or notice received by the Landlord or its agents of any breach of the Tenant's covenants and conditions herein contained shall be or operate as a waiver wholly or partially of any such breach but any such breach shall for all purposes be a continuing breach of covenant so long as such breach shall be subsisting and no person taking any estate or interest under this Lease shall be entitled to set up any such acceptance of or demand or receipt for rent by the Landlord or its agents as a defence in any action or proceedings by the Landlord. If any of the service charge payable hereunder are paid by standing order then receipt of such service charge by the Landlord's bank shall not constitute acceptance of service charge unless and until a period of 3 months shall have elapsed without the Landlord having endeavoured to return such service charge to the Tenant or its bank.
COVENANT ENFORCEABILITY	
Repairs Notices, Section 146 Forfeiture proceedings If the lease includes a management	For money judgements this is mostly a problem when an owner is not UK resident, doesn't have a mortgage, has no

company it should provide for the RMC who is managing the building to be able take action either: in the name of the Freeholder, or; to require the Freeholder to take action on providing an indemnity on costs; jointly in the name of the Freeholder and Management Company and to be able to deduct service charges due from proceeds obtained for the freeholder	quantifiable earnings for an attachment to earnings order or where warrants fail. Leaving forfeiture the only option. For repairs issues – the management company needs the rights to enter and do the repairs and recharge the owner.
ABILITY TO CORRECT DRAFTING ERRORS	
<u>Ability to vary lease percentages</u> and for such variation to be retrospective without the need to serve notice	Example of a clause: *"if the Tenant's Proportion is reasonably deemed inappropriate for any reason the Company may in its reasonable discretion by Notice to the Tenant vary the Tenant's Proportion".* Morgan v Fletcher & others 2009 has interpreted Section 35, Landlord & Tenant Act 1987 that the Leasehold Valuation Tribunal has no due restriction to vary percentages even if manifestly unfair if they add up to 100%.
<u>Wrong management company refered to</u> – so service charges are simply not due.	The points on the lease that have caused the Chair concern and for which I request modernisation of the lease are Clauses 4.2 and Schedule 4, No. 1 in respect of insurance -minor rewording to clear up who should be paying who insurance (I have debriefed Michael more fully) Clause 4.5 in the Chair's opinion does not cover debtchase work specifically administration charges as per the Commonhold & Leasehold Reform Act 2002 as S146 action (forfeiture) is now not possible without first having gone and got sanction from an LVT or having first obtained a Court judgement. The effect of this is that the Chair states that at best that every owner in the building has to pay

	equally for the costs of debt chase for the professional non-payers and then only IF at the next hearing Michael can prove that debt chase work is an allowable cost under Schedule 4 No. 10 or no. 16. If this cannot be proved the Chair is suggesting the only option is a call is made on the members to ask them to put into a pot an amount "outside the lease" towards debt control. Not only will refunding all professional non-payers all their debt chase fees give everybody no incentive to pay on time EVER, but it will cause sheer rage amongst the other good payers who now have to fund the arrears of others.
Heads of charge – allow the ability to create a new head of charge or service charge group.	If the lease wording sets out that a particular expenditure item is payable by certain dwellings but it is later found out to be for the benefit of another 'undefined group of beneficiaries' then the Managing Agent needs room to address this. Example: *air conditioning provided to 8 flats but running off the common parts electricity for all.* A gym in an estate charge intended to be used by private residents only when there is only one head of charge for the whole estate.
Service charge dates - you'd be surprised how often stating the service charge dates is forgotten. More of a problem when service charge is not deemed to be 'additional rent' as there is no clear link to use the ground rent dates in the absence of any other choice.	
WHAT TO AVOID	
Reserve Funds do not need to be held in a separate account	Or worse still on a more complicated site, a suggestion that each reserve fund should be held in a separate bank account. Managing Agents will often charge extra for each bank account they have to maintain and reconcile. The usual convention is that reserve funds should be held in a separate cashbook.

	And, some Agents still hold all clients funds together in one global bank account with internal allocation & statement production.
<u>Voids</u> – It is essential that the Service Charge Manager retains the right to vary service charge percentages until 100% of the units are built/sold. Example: *The Company shall be at liberty to vary the Service Charge Proportion or apply different Service Charge Proportions as between the lessees of the various flats of the Property (such variation to be determined by the Company exercising its reasonable discretion) as represents a fair and reasonable contribution towards the service charges depending upon the nature and extent of the use of any services provided by the Company under this Schedule and save in the case of manifest error such variation of the Service Charge Proportions shall be binding on the Lessee*	In a poor market there is no guarantee all phases of a development will be built and not providing for this could bankrupt the developer by leaving them exposed to pick up the balance of costs for units that are never built. In the worst case scenario, where the service charge costs were intended to be £800 for example; if the site is not 100% built then the costs will be lower. This is due to the fact there would be less buildings to clean, insure and maintain. If the percentage is fixed, the owner would end up paying his percentage of the intended 100% costs and end up with actual service charge of approximately 50% of the intended running costs because the his percentages cannot be varied.
<u>Noting the interest of lessee's and mortgagee on insurance policies</u> – not necessary	The insurance industry has grown up and all reputable blocks of flats policies include a 'general interests' clause in a standard policy