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Commercial Tenants Win Right to Leasehold Enfranchisement

A recent Court of Appeal case (Day –v- Hosebay & Others) (2010) decided that commercial tenants may fall within the enfranchisement rules under the Leasehold Reform Act 1967.

The outcome of this highly controversial case is that if the statutory criteria for enfranchisement are met, commercial tenants may compel their landlords to sell them the freehold of the leased property. This right had hitherto been reserved for residential leaseholders.

The Leasehold Reform Act 1967 – The Loophole

Under the Leasehold Reform Act 1967, tenants with leases over twenty-one years could apply to purchase the freehold as long as they resided at the premises and the property conformed to the Act's definition of a "house".

The Act defines a house as "any building designed or adapted for living in and reasonably so-called".

With the introduction of the Commonhold and Leasehold Reform Act 2002, however, the residency requirement was scrapped and with no appropriate exemption in place for business tenancies, it was only a matter of time before great minds prevailed.

The Litigious Landscape

Thus far, two landlords involving properties in commercial use have failed in their appeals to retain control of their freehold asset. In both cases, it was held that commercial tenants could seek to enfranchise provided that they themselves were not occupying and carrying on a business.

It is now bitterly acknowledged by landlords that they must tightly word their commercial leases to sidestep enfranchisement litigation and prevent the possible loss of their freehold asset.

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