International Insights: Commonhold

What's next for UK property ownership and what lessons can we learn from Australia, the US and EMEA?

As the UK government takes its initial steps to phase out leasehold ownership for residential property, replacing it with a reformed commonhold regime, we discuss the early proposals and their pitfalls.

At Herbert Smith Freehills Kramer LLP, we are ideally placed to draw comparisons with five jurisdictions – Australia, France, Germany, Spain, and the US – where similar co-ownership models are the norm.

Owning residential property in the UK

Currently, property ownership in England and Wales is divided into freehold and leasehold tenures. A freehold interest is perpetual, bestowing on the owner complete control over the property.

In contrast, leasehold ownership grants the owner the right to occupy the property for a fixed period, after which it reverts to the landlord (which may have a freehold interest or a long lease itself). Unlike short-term tenancies in the private rented sector, the leasehold owner does not pay a monthly rent but the lease is granted in exchange for a premium and it can be marketed for sale during its term. The lease prescribes the rights and obligations on both the landlord and the leasehold owner, as well as specifying any restrictions on the use of the property.

The leasehold system for residential property has come under criticism in recent years. It is, by its very nature, a depreciating asset. Although leasehold owners have statutory rights to extend their lease or acquire the freehold, this can be a costly exercise. Lack of control over service charges and increasing ground rents are common complaints of leasehold owners, with a risk of forfeiture for non-compliance.

Various legislative interventions in the last half a century have sought to protect leasehold owners from these risks, but the Labour government wants reforms to go further and to bring an end to leasehold ownership.

From top

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The uncommon model

Commonhold is an alternative model of freehold ownership, similar to models used in North America, Australia and Europe for property ownership, particularly in shared buildings such as a block of flats. It grants ownership of a 'unit' (the flat) and membership of a commonhold association, which owns and manages shared areas in the building.

Commonhold was introduced in England and Wales in 2004 pursuant to the Commonhold and Leasehold Reform Act 2002 – but is rarely used. The existing legal framework is complex and inflexible, making it particularly unsuitable for mixed- use properties. Other concerns with the regime include enforceability of the unit holders' obligations by the commonhold association and associated insolvency risk, which makes the tenure unattractive to lenders. There are no obvious incentives for developers to choose commonhold over the familiar leasehold model, which brings the added advantage of an income stream from ground rents that can then be sold to investor landlords.

A new dawn for commonhold?

The Ministry of Housing, Communities and Local Government (MHCLG) published a white paper on 3 March 2025 proposing a phase-out of leasehold ownership in favour of a reformed commonhold system. The proposals incorporate almost all the Law Commission's recommendations from its report in 2020, Reinvigorating Commonhold: The Alternative to Leasehold Ownership.

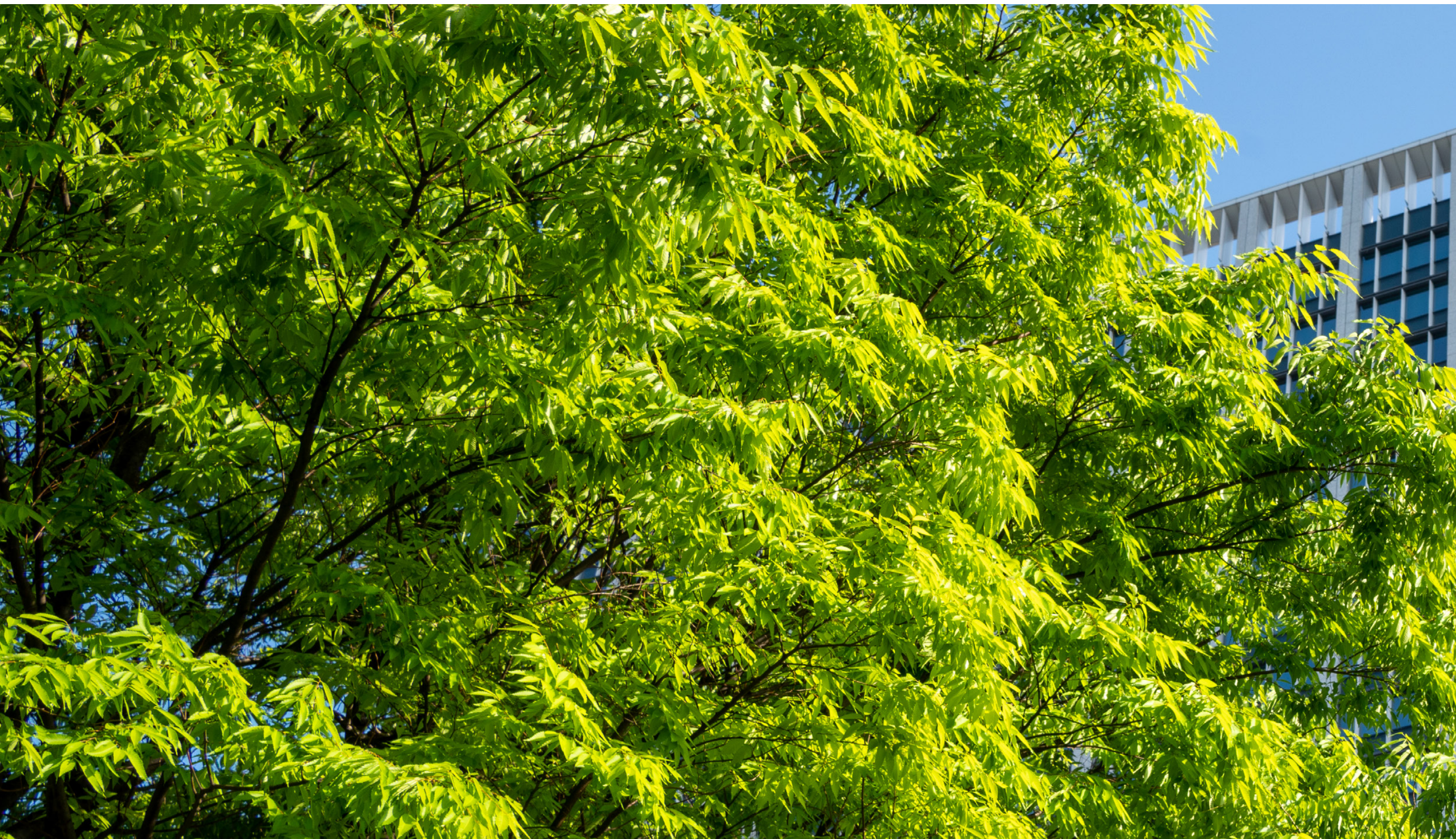
The foundations of the revised framework can be summarised as follows:

- Unit holders will own shares in the commonhold association, which will be a limited company registered at Companies House.
- The commonhold community statement will set out the rights, responsibilities and rules of the commonhold in relation to shared areas, funding, facilities, governance, decision-making and dispute resolution. It will consist of a set of mandatory rules as well as local rules that are bespoke to the property. The local rules can only be changed if at least 75% of members vote in favour of the change.
- No ground rent will be payable, but the unit holders will be obliged to contribute to the insurance, maintenance and repair costs of the building.
- Budgets must be approved by the majority of unit holders, otherwise the budget for the preceding year will apply.

Promises ...

As a key manifesto commitment, the white paper promotes many benefits to stakeholders (except landlords, which have no place in the commonhold regime), including:

- **Democratic decision-making**: The white paper proposes collective self- management for owners with greater control over costs, and rules that can adapt to the changing needs of the building and its occupiers.
- **A simplified framework**: The white paper announces plans to simplify the legal framework to make it more accessible and attractive to homeowners and – importantly – developers.
- **Affordable housing and shared ownership**: The government wants to make commonhold workable for affordable housing and shared ownership schemes, which is not the case currently.
- **Greater flexibility for mixed-use developments**: The white paper proposes greater flexibility for developments, by introducing 'sections' within commonholds. The aim is to fairly apportion costs and voting rights between the different interests. This will help separate commercial and residential interests in a mixed-use scheme.



- **Better enforceability**: The reforms include giving the commonhold association the right to an expedited order for sale where unit holders have not paid their contributions. The white paper also proposes greater clarity on repair obligations for unit holders.
- **Insolvency safeguards**: These proposals include mandatory reserve funds for major repairs, and compulsory public liability and buildings insurance.

... and perils

Although the white paper lacks the detail that can only come with consultation and a draft bill, potential perils are already arising:

Conversion of existing leasehold properties: Recognised in the white paper as one of the most significant challenges in the reforms, the government acknowledges that this area needs further thought. Any interested leaseholders must first trigger their rights to collective freehold enfranchisement before starting the conversion process, which adds to its cost and complexity. The government proposes reducing the conversion threshold to 50% of leaseholders (to mirror the position under enfranchisement) and removing the need for freeholder and lender consent. However, this will result in a building with split interests and a conundrum for how to deal with the non-converting leasehold owners. One suggestion is based on a lease-back model of those flats to the existing landlord, but this raises serious concerns regarding conflicting regimes in the building and interference with property rights.

Increased uncertainty and instability in the market: At a time when investor confidence in the property market is cautious, there is concern that the perceived benefits of a default commonhold regime do not outweigh the uncertainty caused by further reforms and the potential impact on housing supply.

From landlord to managing agent: Commonhold is being offered as the panacea for all tenant complaints, but the reality is that many of the issues of owning a flat in a shared building will remain. Unit holders may have opposing views on management, repairs and funding, which may end in dispute. Unit holders may also lack the skills, knowledge or inclination to actively manage the building, requiring the appointment of property management agents. The legislative protections that have been implemented over the years to protect tenants will not apply to commonhold unless the bill provides otherwise.

Forfeiture in all but name: The white paper highlights the benefit for unit holders and lenders in removing the risk of a landlord exercising its right to forfeit for breach of the lease, but the new expedited order for sale granted to the commonhold association should not be overlooked. It will be available where the unit holder is in arrears above a minimum level, although any surplus after the debt is settled and the flat is sold will be returned to the lender/unit holder.

Next steps

We can expect to see the draft Leasehold and Commonhold Reform Bill for pre-legislative scrutiny later in 2025, as well as consultations on the ban of new leasehold flats and a new code of practice covering cost apportionment in commonhold and strengthening regulation of managing agents. Industry engagement by practitioners, developers, lenders, landlords and owner-occupiers will be critical to ensure any new commonhold system is workable and achieves its aims.

(This article was first published in The Law Society's Property in Practice magazine in June 2025)

International Insights from Australia

Australia has a comparable legal framework known as strata title. Strata title can be implemented regardless of asset type, however, it is mostly used for residential apartment buildings, units or townhouses.

From top

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It is a statutory system that confers legal title of a defined portion of a building (referred to as a lot or unit) and grants rights to use common areas (eg foyers, swimming pools and lifts) jointly with other lot owners. This collective structure, known as a strata scheme, involves:

- **Owners Corporations**

  A building developed as a strata scheme will typically have an owners corporation (also known as a strata company or body corporate) that is responsible for owning, managing and maintaining the common areas, shared facilities and structure of the building. An owners corporation is automatically established under legislation when a strata scheme is registered. Owners of a lot in a strata scheme automatically become members of the owners corporation, granting them voting rights at its meetings as well as a proportional share of its liabilities.

- **Levies**

  Strata lots are ascribed a proportion (commonly based on the area of a lot in proportion to all lots) of the owners corporation's liability for owning, maintaining and administering the common property. Capex relating to the common property is commonly funded from a perpetual sinking fund or via the imposition of an extraordinary levy for any unexpected or large expenses (eg rectification works for combustible cladding).

- **Rules**

  Each strata scheme is governed by its own rules, which allows the owners corporation to regulate the use of lots and common property, including maintenance, renovations, noise control and the conduct of owners, tenants, and visitors. Non-compliance with the rules, such as a failure to pay levies, may result in legal proceedings, debt recovery actions and the potential forfeiture of voting rights.

Common issues with a strata scheme in Australia include:

- **Financial challenges**

  Typically, the repair and maintenance costs of a building will increase over time or if the building suffers from defects. If the amount held in the sinking fund is insufficient to cover the required capex, lot owners will need to contribute more by way of levies. Passing resolutions of the owners corporation to increase levies are often contentious.

- **Developer control**

  If the original building developer retains ownership of lots in a completed building, it may continue to exert significant control over the owners corporation. The developer may pass decisions that benefit its interests (eg appointment of its preferred service providers) in preference to the interest of other lot owners. Although legislation in Australia limits developers' ability to act in this manner, it continues to be a point of tension.

- **Conflict**

  If the strata scheme is not effectively managed, conflict may arise between members and the owners corporation relating to issues such as the responsibility for repairs and the misuse of the sinking fund. These conflicts can be slow, costly and difficult to resolve.

International Insights from France

The co-ownership regime is the standard model for residential property ownership in condominiums in France. Governed by the law of 10 July 1965 and its implementing decree of 17 March 1967, buildings are divided into lots, each comprising a private part (eg the apartment) and a share of the common parts such as the roof, stairs, etc.

Above
Anne Petitjean, Partner

The operating rules for the building, including how expenses will be distributed, are set out in a mandatory document known as the Co-ownership Regulations, whereas a Descriptive Division Statement identifies each lot and its share. Each co-owner has the right to freely use its private part, be a member of the co-owners' association and participate in collective decision-making for the building, and access management documents. A property manager is appointed to run the building and keeps the accounts. The manager can be professionally appointed or a volunteer co-owner.

Common difficulties encountered by condominiums in recent years include:

- Conflicts between co-owners (nuisance complaints, unauthorised works)
- Poor management, including inaction or lack of openness by the property manager
- Unpaid charges by co-owners which weaken the condominium's cash flow,
- Difficulties in reaching the voting thresholds required in the syndicate to vote on work to the common parts
- Aging buildings and delays in energy-efficient renovations

In 2020, reforms were introduced to improve the efficiency of co-ownership, modernise governance, strengthen transparency and facilitate decision-making within condominiums. The changes included:

- Expanding the role of the co-owners' association (Syndicat des copropriétaires). As soon as any damage originates from a common area, even without fault, the association has strict liability for that damage. This risk means that the association needs to proactively carry out improvements to the building.
- Increased obligations for property managers and penalties in case of non-compliance (eg, failure to provide the summary sheet). New rules were also introduced regarding contract termination to ensure continuity of management.
- Any co-owner may carry out accessibility works at their own expense, unless they affect the structure or the intended use of the building. The general assembly may impose collective-interest works on private areas.
- Widening access and participation rules for the General Assembly for remote attendance/paper voting.

International Insights from Germany

Condominium ownership law (*Wohnungseigentumsrecht*) has played a significant role in Germany for decades. Introduced in 1951, the German Condominium Ownership Act (*Wohnungseigentumsgesetz*) provides the framework for the legal separation of properties into individual units (residential or commercial) within a building (so-called separate ownership (*Sondereigentum*)) which are each linked to co-ownership shares (*Miteigentumsanteile*) in the commonly owned parts of the building and land.

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Individual condominium owners collectively own the building in which the units are located and the land (so-called common ownership (*Gemeinschaftseigentum*)). In the notarial deed which governs the division of the building into individual units, any condominium owner may be granted exclusive usage rights (*Sondernutzungsrechte*) over specific areas of the property (eg cellars, terraces and gardens) which would otherwise be deemed common areas. The relationship between the individual owners and the governance of the common property are regulated by the binding (notarized) community rules (*Gemeinschaftsordnung*). Regular owners' meetings are held to discuss and decide on matters relating to the common ownership (eg administrative questions, budgets for maintenance, repairs and house rules).

In general, each condominium owner is free to deal with their separate ownership as they wish. However, certain principles, requirements and consequences relating to condominiums are governed by the Condominium Ownership Act. Additional rules, particularly regarding the common ownership and the relationship between the individual condominium owners (such as voting rights, cost-sharing for routine and special maintenance, repairs and upgrades) may be set out in the community rules.

In response to the recent trend in Germany where investors bought properties, divided them into condominium units and sold them individually (reducing the availability of rental apartments), the German government introduced legislation allowing municipalities to designate certain areas as having a tense housing market (*Gebiet mit angespanntem Wohnungsmarkt*). The government's goal was (and still is) to maintain a sufficient supply of affordable housing and to prevent displacement caused by the conversion of rental apartments into condominiums. If a property is located within such an area, the division into condominium units is subject to approval by the competent authority or municipality. This has resulted in greater caution among international investors considering the German residential market.

Common practical difficulties associated with condominiums include poor management by the administrator, disagreements between condominium owners and (strategic) inaction by the majority of condominium owners when it comes to necessary or requested investments in the common property.

International Insights from Spain

The ownership of multi-owner buildings in Spain is governed by the Spanish Civil Code and the Horizontal Property Law. These laws cover various aspects of property ownership, including the rights and obligations of property owners and the management of common areas.

From top

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There are several types of ownership which may apply to the apartments/units within a multi-owner building, each with its own legal implications:

- **Full Ownership (*propiedad en pleno dominio*)**: This is the most common form of property ownership, where the owner of the apartment has full rights to use, enjoy, and dispose of the property. Full ownership includes both the land and any structures on it.

- **Pro-indiviso Ownership (*propeidad en regimen de pro-indiviso*)**: In this case, ownership of the apartment/unit is shared among multiple individuals. Each co-owner holds an undivided share of the property, meaning that no single owner has exclusive rights to any specific part of the property. Instead, all co-owners have equal rights to the entire property, proportional to their ownership share. This arrangement requires a high level of cooperation and agreement among the co-owners, as decisions regarding the property must be made collectively. One of the key aspects of the pro-indiviso regime is the requirement for unanimous consent among co-owners for any significant decisions related to the property. This includes decisions such as selling the property, making substantial alterations, or entering into long-term leases. If unanimous consent cannot be reached, co-owners may seek judicial intervention to resolve disputes. The court can authorise actions that are in the best interest of the property and its co-owners.

- **Bare Ownership (*nuda propiedad) and Usufruct (usufructo)*:** The bare owner holds the title to the property but does not have the right to use or enjoy it which shall vest in the beneficiary of the usufruct.

In Spain, multi-owner buildings are generally horizontally divided. A horizontal division deed is granted which results in the creation of different land registry units (for example, one for each commercial unit on the bottom (if relevant), and one for each residential unit in the building).

An Owners' Association for the building is incorporated and every unit owner is a member. They hold meetings to discuss and vote on matters related to, among others, the management and maintenance of common areas. Decisions are made collectively, requiring different majority votes depending on the matter. The by-laws include, among others, the allocation of common expenses.

Generally, the regime works well and promotes fairness and cooperation among co-owners. In case one owner does not pay their contribution to common expenses, it may lose its right to vote in the Owners' Association until it is up to date with its payment obligations. The Association can also start legal proceedings to claim the due amounts. The more sensitive matters within the running of multi-owner buildings are often the approval of budgets, approval of works within the building and extraordinary costs. These are resolved democratically by the Owners' Association voting on each matter and once the requisite majority is reached and the vote is passed, it binds all owners, provided the requirements for the call of the meeting and the requirements to consider the meeting as valid have been complied with.

International Insights from the US

From top

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Commonhold ownership of the type being considered in the UK is quite common and well established in the United States, most often in the form of a "Condominium". Although governed by the laws of each of the individual states, nine states have adopted the Uniform Common Interest Ownership Act (UCIOA) and another fourteen adopted a similar uniform statute (the Uniform Condominium Act (UCA)). Each state's condominium law addresses many of the same core challenges, ie balancing private unit ownership with collective responsibility, ensuring transparency from developers, and regulating mixed-use properties. New York, with the most mature and sophisticated condominium markets, has a bespoke and well-developed statutory regime offering some instructive examples.

Legal Foundation and Public Oversight

In New York, the Condominium Act (Article 9-B of the Real Property Law) provides the basic legal structure of a condominium – detailing among things who owns and controls what within the project, and how the affairs of the governing condominium association are conducted. And the Martin Act (General Business Law 352-e) is a securities law type statute offering consumer protection for condominium buyers by requiring the filing of a detailed offering prospectus prior to any sales to the public being permitted.

Defining Rights and Responsibilities

A strength of the various model acts and the New York statute is the clear division of ownership and responsibilities: the subject property is divided into separate legally recognised parcels (each a "Unit"), which may be owned separately, and the remainder of the property (the "Common Elements") is co-owned in fixed proportionate shares (often based on proportionate relative square footage of each Unit but which may also be based on specified alternative factors such as value) by all the participants and is jointly administered by a governing body operating in accordance with the condominium declaration and bylaws ("governing documents"). The governing documents set the rules for how each space may be used, how decisions are made, how costs are shared, and how disputes are resolved. While the statutes prescribe basic governance rules which must be followed in every condominium, they allow for the addition of other procedures and rules as necessary to suit the circumstances or complexities of the particular project.

Common Challenges and New York Solutions

- **Collective Responsibility**. It is important for the governing documents to provide express rights and remedies for enforcement in the case of defaults. The Condominium Act provides a statutory lien right to the Condominium's board for a default on the common charges, which lien is generally superior to all other liens, other than property tax and first mortgages of record, to ensure collection of funds. Late payment penalties and interest may also be charged. In non-residential condominiums, the board's lien may be superior even to the lender's lien.
- **Varied Ownership Priorities**. The governing documents must balance the needs of owners for investment versus personal use. They also will typically provide a period of developer control to ensure successful sell-out and completion of development. Most voting on shared matters is by majority of interests, but some critical decisions (eg termination) typically require a supermajority, and sometimes consents of lenders.
- **Financeability**. The governing documents grant direct rights and remedies for lenders of both developers and individual units (which may vary), providing comfort of the stability and first-class operations of the larger project and value of the collateral.
- **Complex Developments**. Mixed-use developments where a single building includes residential, retail, office or even hotel components often require advance planning and consultation with the developer or participants to ensure that the mixing of uses and governance (which may be tiered) protects each use's and user's interests and differing objectives.

Final Thoughts

The proposal in the UK reflects many of the same concerns that shaped New York's laws decades ago: maximising productive use of land by facilitating mixing of uses on a single parcel, protecting residential buyers, and ensuring sound governance and long-term viability of the integrated community that will occupy the property. A well-structured commonhold type law should empower owners, attract investment, and provide a flexible framework for buildings to thrive. In doing so, condominiums are an attractive development possibility in the US and can be in the UK.

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