

## SWANSIDE RESIDENTS ASSOCIATION LIMITED

### Information for Lessees regarding Selling and Sub-Letting Flats and Making Alterations

This document contains important information for lessees who wish to either sell or sub-let their flats. In both cases you will need to obtain a licence (i.e. legal permission) through Swanside's solicitors, before the relevant transaction takes place. **Failure to do so would be a serious breach of covenant under your own lease.**

If you wish to **sell or transfer your flat** into the name of someone else (either in your personal capacity or as the Executor or Administrator of someone who has died) you will need to obtain a licence (or permission) to assign the lease.

If you wish to **let your flat**, you will need to obtain a licence (or permission) to sub-let.

If you currently have a licence to use a **garage or garage-space** there are rules concerning its transfer.

If you wish to **alter your flat** in any way you must request a variation of your lease, which Swanside may grant or refuse at its absolute discretion.

If you let or re-mortgage your flat, **you must give formal notice** to Swanside's solicitors, and if you sell or transfer your flat the new owner must do likewise.

Details of each of these procedures are outlined below. Details of Swanside's Managing Agents, Company Secretary and solicitors are given in paragraph 8 at the end of these notes.

**Please note that this is for information only. It does not override any of the terms of your lease and is not intended to be a substitute for professional legal advice. If you have queries about your lease please consult your solicitor.**

#### 1. Selling/Transferring your flat:

##### 1.1. Why does Swanside need to give you permission?

Under the terms of your lease you agree to ask for permission to assign it. This is because Swanside is obliged to ensure that anyone who takes over your lease will be able and willing to observe and perform the covenants in the lease. Swanside need to know that the person(s) taking over the lease are able to pay the ground rent and service charges, and that there is no reason to believe that they will not behave in accordance with the terms of the lease. In such a way good estate management can be ensured so as to maintain or enhance property values, and protect the interest of all leaseholders.

##### 1.2. What do you do to obtain a licence to assign?

1.2.1. As soon as you know to whom you propose to sell, you should ask them to provide your solicitors with the following:-

- The buyer's full names and addresses for the last 5 years
- Details of 3 referees including one financial (bank or building society); employer or accountant (if self employed), or pension provider (if retired) and previous landlord (if applicable) or mortgage lender. Some banks and building societies are unable to provide suitable references, in these cases copies of 3 months banks statements is a suitable alternative.
- Letters addressed to each referee giving them authority to divulge information to us and to Swanside's solicitors (for details see paragraph 8.3 below).

- Where there is more than one purchaser, references should be sought for each except where they use a joint bank account or live in one household, or where only one income is relied upon for any mortgage advance.
  - If a flat is being sold to buyers who have not previously bought or rented a property, a letter from the householder at their current address(es) confirming the address together with other evidence (driving licence, bank statement etc) of address, should be provided instead of a previous landlord or mortgage lender's reference.
- 1.2.2. Once your solicitors have this information they should make an application for a Licence to Assign to the solicitors acting for Swanside. Details of referees should be forwarded to Swanside's solicitors at this time. Your solicitors must give an undertaking to be responsible for the costs of Swanside's solicitors, whether or not the licence is eventually granted or the sale proceeds to completion.
- 1.2.3. The solicitor for Swanside will write to each of the referees, requesting information as to the proposed purchaser's ability to meet service charge and ground rent obligations in addition to their other outgoings and their willingness to comply with the covenants and obligations of the lease. It is your responsibility to ensure that any charges to be made by the prospective purchaser's bank for providing a bank reference have been settled direct or that he provides a signed authority addressed to the Bank for his account to be debited with any such fee. Upon receipt of replies, Swanside's solicitors will seek instructions from the Company Secretary. Provided all the references are in order, a decision can normally be made within 7 days from the provision of the replies to the references.
- 1.2.4. Once a decision to grant a licence has been made, the solicitor for Swanside will send out a draft licence for approval by the Lessee's solicitors (who will normally seek the approval of the purchaser's solicitors.) On receipt of approval original and counterpart licences will be drawn up for sealing and signature, to be exchanged when the Licence is completed. Swanside's solicitors' fees are payable on or before completion of the Licence in accordance with your solicitors' undertaking.
- 1.2.5. Within one month of any assignment, a Notice of Assignment (and Notice of Mortgage if applicable) must be given to Swanside's solicitors, accompanied by certified copies of the transfer and any mortgage.. There is a small administrative fee for receipting the Notice, details of which are contained in your lease. Compliance with this requirement is a condition of the Licence to Assign, and failure to comply therefore renders the Licence void, and you will be treated as if you had not obtained Swanside's permission to sell your flat.
- 1.2.6. Lessees considering the sale of their properties should consult their own solicitors for further explanation or advice concerning the above procedures.

## **2. Sub-letting your flat**

### **2.1. Why does Swanside need to give you permission?**

Your lease contains covenants and obligations which you are expected to fulfil as leasehold owner of a flat in Thorpe Hall. If you sub-let your flat without ensuring that your sub-tenants are legally bound to observe the covenants and obligations in your lease then your sub-tenants could put you in breach of your lease (which could ultimately result in Swanside obtaining forfeiture of your lease and taking possession) and could also be disruptive for other residents at Thorpe Hall. Swanside are concerned, therefore, to ensure that any sub-tenant should be capable and willing to observe and perform the covenants in your lease. Furthermore, if, for any reason, your lease was forfeited, so that your tenant became the direct tenant of Swanside, we would want to know that the terms of the tenancy agreement you had entered into were acceptable to Swanside including provisions in respect of rent and ability to terminate.

## 2.2. What do you do to obtain a Licence to Sub-Let?

As Swanside has the same concerns about a sub-tenant as they have about the potential new lessee on the sale of the lease, much of the information they require is identical to that which they require for a licence to assign, and the process is very similar.

- 2.2.1. Provide to Swanside the name and address (for the last 5 years) of the tenant to whom you intend to let your flat, and provide details of referees including one financial (bank or building society); employer or accountant (if self-employed), or pension provider (if retired) and previous landlord (if applicable). If a previous landlord's reference is not available a character referee should be identified. If you have taken up references yourself in order to decide whether or not to let your flat to that particular person, it may be possible to use the references you have already obtained, but not a general status report obtained by your letting agents as such reports do not normally allow third parties to rely on them. Copies of the letters of enquiry must also be provided. It is your responsibility to ensure that any charges to be made by the prospective tenant's bank for providing a bank reference have been settled direct or that he provides a signed authority addressed to the Bank for his account to be debited with any such fee. Some banks and building societies are unable to provide suitable references, in these cases copies of 3 months banks statements is a suitable alternative
- 2.2.2. Provide the sum required (Check with us for the current rate) on account of anticipated of dealing with the Licence to Sub-let, whether or not such Licence and/or the proposed sub-tenancy is granted. If unexpected complications arise or Swanside require alterations to your tenancy agreement this sum may increase.
- 2.2.3. Provide a copy of the tenancy agreement you propose to use.

Please note:

2.2.3.1 The annual amount of the Rent must always exceed the total of the annual Ground Rent and Service Charge.

2.2.3.2 In cases where there is a garage or garage-space, the tenancy agreement needs to include a further provision granting the tenant the right to use the garage or garage-space in accordance with the terms of the Licence, and requiring the tenant to observe and perform the covenants and conditions contained in the Licence except those requiring payment of Licence fees and proportion of contribution to the service fund. Assuming the tenancy agreement to be in the usual form used by most letting agents, starting with brief particulars of the letting, and continuing with detailed terms and conditions setting out the obligations of the parties, the following is suggested for inclusion as a separate provision at the end of the detailed terms and conditions, under the heading "Garage or Garage-Space":-

1. *As a condition of this agreement and for so long as the tenancy hereby created shall continue, the landlord will allow the tenant by way of sub-licence to use garage/garage-space No X at Thorpe Hall aforesaid for the storage of a private motor vehicle and for no other purpose and without becoming entitled to enjoy exclusive possession thereof strictly in accordance with the terms and conditions set out in the Licence dated xxxx under which the landlord is currently entitled to use the said garage/garage-space and of which a copy has been supplied to the tenant prior to the date hereof as the tenant hereby acknowledges.*
2. *As a condition of this agreement the tenant will observe and perform all the covenants and conditions contained in the said Licence (except the provisions therein requiring the payment of licence fee, ground rent and contribution to the service fund).*

2.2.3.4 There must be specific obligation on the sub-tenant to observe the covenants and conditions of the lease except payment of ground rent and service charge.

2.2.3.5 In all cases, the following should be included in the tenant's covenants (sometimes entitled "tenant's obligations"), preferably at the end, in order to be easily found:-

*To observe and perform all the covenants and conditions contained in the lease under which the landlord holds the property (except the covenants for the payment of rent and proportion of contribution to the service fund).*

2.2.4. If you have not supplied references, Swanside's solicitors will write to each of the referees making appropriate enquiries. They will also consider the terms of the tenancy agreement you propose to offer.

2.2.5. Upon receipt of replies, Swanside's solicitors will seek instructions from the Company Secretary. Provided everything is in order, a decision can normally be made within 7 days from the provision of the replies to the references, provided the proposed tenancy agreement is satisfactory.

2.2.6. Once a decision to grant a Licence has been made Swanside's solicitors will prepare an engrossment of the Licence for sealing by Swanside, following which it will be sent to you, your Solicitor or Letting Agent as appropriate. Only when this has been received may the sub-letting be completed. The tenancy agreement signed by you and your tenant should not be the actual draft agreement annexed to the Licence to Underlet, although its contents must be the same.

2.2.7. Within one month of any sub-letting a Notice of Sub-Letting must be given to Swanside's solicitors with a copy of the signed and dated tenancy agreement.

### **3. Garages and Garage-Spaces**

(References in the following part of these notes to "garages" includes designated spaces in the communal garage).

The garages at Thorpe Hall are not included in any of the leases. A leaseholder or resident who uses the garages does so under licence. A licence is a personal contractual permission; it cannot be assigned, transferred or sub-let except as mentioned below. Swanside has certain criteria for granting a licence: the person requesting the licence must be an occupier of one of the flats in Thorpe Hall; the garage must be used for the sole purpose of storing a motor vehicle belonging to the occupier; details of the motor vehicle to be stored should be provided to the Company Secretary.

#### **3.1 Can I sell my Licence to use a garage?**

Upon your ceasing to be a leaseholder, unless you assign it with your flat as mentioned below, the licence may be terminated with immediate effect and Swanside will be free to grant the licence to another leaseholder. However, provided you do so before you lose your right to the licence, you can assign it to the buyer of your flat or request that Swanside grant a new licence to a particular person :-

3.1.1 If you are selling your flat, you can assign the licence at the same time to the purchaser of your flat provided your purchaser is willing to abide by the conditions of the licence. The purchaser should be reminded of the need to inform the company secretary of the registration number of the vehicle to be stored in the garage. A separate permission to assign the licence is not required but you must of course obtain Licence to Assign in respect of the flat (see above)

- 3.1.2 If you are selling your flat but the purchaser does not wish to use the garage you can elect another lessee of a flat at Thorpe Hall to take a new licence. The grant of a new licence by Swanside to that person is entirely discretionary but, provided that person meets the criteria for the grant of a licence, this will not normally be refused (you can charge that person any amount that they are prepared to pay for the licence). You are recommended to obtain Swanside's agreement to this before exchanging contracts to sell your flat.
- 3.1.3 Likewise if you want to give up your garage to another Thorpe Hall lessee without selling your flat, you can elect another lessee of a flat at Thorpe Hall to take a new licence. The grant of a new licence by Swanside to that person is entirely discretionary but, provided that person meets the criteria for the grant of a licence, this will not normally be refused (you can charge that person any amount that they are prepared to pay for the licence).
- 3.1.4 If you are sub-letting your flat, the tenant must be given permission to use the garage. This permission should be given by means of a provision in the tenancy agreement, but it must not create a tenancy of the garage.

### **3.2 How do I obtain a Licence and how much will it cost?**

The following applies if you want the lessee of a different flat at Thorpe Hall to be able to use your garage (see paragraph 3.1 above). As licences will only be granted to leaseholders, and in order to become a leaseholder Swanside will have been satisfied as to references, Swanside does not need to repeat this process for the grant of a licence. You will need to provide to the company secretary the details of the car to be stored and provide the registration documentation to show that the car is indeed owned by the person who will take the licence. There is an administrative fee payable to Swanside's Managing Agents for dealing with this procedure and a sum payable to Swanside's solicitors for drawing up the licence. Please contact us for the current costs. The licence will then require the signature of the proposed licensee and Swanside, which will be arranged by the Managing Agents.

## **4. Alterations**

### **4.1 Why does Swanside need to give permission for alterations to my flat?**

Whilst some alterations may only affect the look of your flat, others may have an impact upon the structure of the building as a whole. Your lease provides that you should ask for permission (licence) to carry out alterations to the pipes and wires leading to and from your flat to enable them to serve a greater number of gas, water and electrical appliances.

### **4.2 What about alterations prohibited by my Lease?**

Other alterations are not permitted under the lease but Swanside may enter into a deed of variation in order to allow such alterations.

### **4.3 Procedure for obtaining Licence to Alter or a Deed of Variation**

Swanside needs to consider on a case by case basis whether to allow you to carry out alterations. In order to ask for permission, full details of the intended alterations will need to be submitted initially to the company secretary who will ask the directors to take a decision as to whether the type of the alterations requested indicate that Swanside should appoint a surveyor to consider the alterations on its behalf. The cost of obtaining a Licence to Alter or Deed of Variation will vary in each instance. Swanside's solicitors will require an undertaking from your solicitor to pay Swanside's costs in relation to the Licence or Deed. In some instances Swanside's costs will include surveyor's costs.

#### **4.4 Unauthorised alterations**

Please note that if you carry out alterations without obtaining the necessary Licence or Deed of Variation, you will be in breach of your lease. Such a breach can, ultimately, result in forfeiture of your lease.

#### **5. Notices**

Within one month of each assignment, mortgage or sub-letting you are required under the terms of your lease to serve notice on Swanside's solicitors. In order to receipt the Notice they will need to see the original document (mortgage, deed of transfer, signed tenancy agreement or counterpart) although copies certified by a solicitor will be accepted in lieu of the originals. There is a small administrative fee for the receipt of each such assignment or other dealing in accordance with the terms of your Lease. Where a flat owner dies any grant of probate / letters of administration must be registered in the same way, and executors or administrators will then need to obtain the necessary Licence for any assignment or sub-letting as if they were the lessee themselves. The same procedure applies to assignment of a garage or garage-space licence at the same time as a transfer of your flat, of which a separate Notice must be given with payment of the registration fee.

#### **6. Requests for Information**

6.1 Upon the sale of a flat the solicitors for a buyer will ordinarily require information from the freeholder (such as details of anticipated future expenditure etc). Leasehold Property Enquiry Forms (LPE1 and LPE2) or other standard enquiries requesting similar information may be submitted to Swanside's Managing Agents (see paragraph 7 below) with payment in respect of their fee.

6.2 Some of the information requested by the above enquiries and any non-standard information may need to be provided by Swanside's solicitors, in which case the Managing Agents will indicate that your solicitors need to request the information from Swanside's solicitors direct. In these instances Swanside's Solicitors will require an undertaking from your solicitors to cover their costs of supplying such information. If, after seeing the request for information it is considered that the cost of providing the information will exceed the initial figure quoted, a revised undertaking may be required. Swanside's solicitors will not provide any information they consider should have been requested from the Managing Agents unless the latter have first declined to provide it.

6.3 Please note that Swanside Residents Association Ltd. cannot answer such queries directly. All requests for information should be made through their Managing Agents or solicitors as appropriate.

#### **7. Shares in Swanside Residents Association Limited**

These are not tied to the leases of flats at Thorpe Hall and are not held by all lessees. If you hold any shares, any sale of the same should be negotiated separately from the sale of your flat, and transfers of shares may be restricted by the company's Articles of Association. Any enquiries about shares and transfers of shares should be directed to the Company Secretary and Swanside's Managing Agents may make a charge for providing information. Following a transfer any share or shares, the transferee must produce the share certificate and completed Stock Transfer Form to the Company Secretary to enable a new Share Certificate to be issued, and once again an administration charge may be payable.

**8. Contacts: Swanside's Managing Agents, Company Secretary and Solicitors**

**8.1 Managing Agents**

Colin Bibra

204 Northfield Avenue, Ealing, London W13 9SJ

T 020 8567 0077

[www.colinbibra.com](http://www.colinbibra.com)

Any correspondence should be marked for the attention of Mr Peter Hodges.

**8.2 Company Secretary**

Mr Peter Hodges of Colin Bibra – address at 8.1 above

**8.3 Solicitors**

Morr & Co LLP

Connect House, 133-137 Alexandra Road, Wimbledon, SW19 7JY.

T 020 8971 1020

[www.morrlaw.com](http://www.morrlaw.com)

Any correspondence should be marked for the attention of Lily Meyer

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**January 2022**