I act for [insert client] in the sale of [insert property address]. As you will know, the flats in this block are “freehold flats”. The vast majority of flats in England & Wales are leasehold, which means that the freehold title to the building is not sub-divided and instead, when a flat is sold for the first time the freeholder will grant a long lease, for anything up to 999 years (but often 99 or 125). The freeholder will then either retain the freehold and manage the block, sell it to a specialist block management company or else transfer it to the leaseholders.

The main advantage of the leasehold system of ownership is that it allows for the creation of a set of rules, called covenants, which govern what flat owners in the block must (and must not) do and which can be enforced by or against them. A well drafted set of rules will help ensure that the block is effectively managed. They include things like not causing a nuisance, ensuring the whole building is insured, contributing to maintenance costs etc. Covenants contained in leases are always enforceable by and against the landlord and tenant for the time being, not just the parties that originally entered into them.

Such covenants can be imposed in respect of freehold land however they are not generally enforceable except against the original parties so that in a block of freehold flats, there is a risk that where one or more flat owners defaults on their obligations, the ability for the rest to properly manage the block is curtailed.

INSERT THIS BLOCK OF TEXT IF NO FORMAL RIGHTS AND COVENANTS EXIST (OR IF THEY ARE NOT EVIDENT FROM THE TITLE) AND IF YOU WANT TO SUGGEST THAT FORMAL SERVCE CHARGE AND INSURANCE ARRANGEMENTS ARE PUT IN PLACE:

[From looking at the titles to all of the properties it appears that there are currently no formal rights or covenants in place. I am therefore proposing that each flat owner enters into a deed, in the form of the draft attached. This deed:

* Grants rights for you and the other flat owners over the communal parts of the block, if any;
* Grants rights of access to the other flats to carry to repairs in case of emergency and reserves rights over yours for the same purpose;
* Imposes an obligation on all of the flat owners to make annual payments towards the repair, maintenance and insurance of the building;
* Obliges a management company (which will need to be set up and which will be owned and controlled by all of the flat owners) to carry out repairs and maintenance, insure the building and collect the service charge payments;
* Imposes obligations on all of the flat owners not to cause a nuisance and generally to behave in a neighbourly manner.

I am also proposing that a restriction in the following format is registered against each flat owner’s title "*No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions clause …. of a deed dated ….. and made between ….. and …. have been complied with"*. This will ensure that each future owner of one of the flats enters into the same obligations.]

OR ELSE INSERT THIS BLOCK OF TEXT IF NO FORMAL RIGHTS AND COVENANTS EXIST (OR IF THEY ARE NOT EVIDENT FROM THE TITLE) AND IF YOU WANT TO SUGGEST THAT INFORMAL SERVCE CHARGE AND INSURANCE ARRANGEMENTS ARE PUT IN PLACE:

[From looking at the titles to all of the properties it appears that there are currently no formal rights or covenants in place. I am therefore proposing that each flat owner enters into a deed, in the form of the draft attached. This deed:

* Grants rights for you and the other flat owners over the communal parts of the block, if any;
* Grants rights of access to the other flats to carry to repairs in case of emergency and reserves rights over yours for the same purpose;
* Obliges each flat owner to contribute a fair proportion as and when required to the costs of maintaining and repairing the parts of the building not included within their title;
* Obliges each owner to maintain and repair the parts of the building they own subject to the others paying a fair proportion of the cost;
* Obliged each flat owner to adequately insure their property and produce evidence to the others as and when requested; and
* Imposes obligations on all of the flat owners not to cause a nuisance and generally to behave in a neighbourly manner.

I am also proposing that a restriction in the following format is registered against each flat owner’s title "*No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions clause …. of a deed dated ….. and made between ….. and …. have been complied with"*. This will ensure that each future owner of one of the flats enters into the same obligations.]

OR ELSE INSERT THIS BLOCK OF TEXT IF RIGHTS EXIST BUT COVENANTS DO NOT (OR IF THEY ARE NOT EVIDENT FROM THE TITLE) AND IF YOU WANT TO SUGGEST THAT FORMAL SERVCE CHARGE AND INSURANCE ARRANGEMENTS ARE PUT IN PLACE:

[From looking at the titles to all of the properties it appears that there are currently no covenants in place. I am therefore proposing that each flat owner enters into a deed, in the form of the draft attached. This deed:

* Imposes an obligation on all of the flat owners to make annual payments towards the repair, maintenance and insurance of the building;
* Obliges a management company (which will need to be set up and which will be owned and controlled by all of the flat owners) to carry out repairs and maintenance, insure the building and collect the service charge payments;
* Imposes obligations on all of the flat owners not to cause a nuisance and generally to behave in a neighbourly manner.

I am also proposing that a restriction in the following format is registered against each flat owner’s title "*No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions clause …. of a deed dated ….. and made between ….. and …. have been complied with"*. This will ensure that each future owner of one of the flats enters into the same obligations.]

OR ELSE INSERT THIS BLOCK OF TEXT IF RIGHTS EXIST BUT COVENANTS DO NOT (OR IF THEY ARE NOT EVIDENT FROM THE TITLE) AND IF YOU WANT TO SUGGEST THAT INFORMAL SERVCE CHARGE AND INSURANCE ARRANGEMENTS ARE PUT IN PLACE:

[From looking at the titles to all of the properties it appears that there are currently no covenants in place. I am therefore proposing that each flat owner enters into a deed, in the form of the draft attached. This deed:

* Obliges each flat owner to contribute a fair proportion as and when required to the costs of maintaining and repairing the parts of the building not included within their title;
* Obliges each owner to maintain and repair the parts of the building they own subject to the others paying a fair proportion of the cost;
* Obliged each flat owner to adequately insure their property and produce evidence to the others as and when requested; and
* Imposes obligations on all of the flat owners not to cause a nuisance and generally to behave in a neighbourly manner.

I am also proposing that a restriction in the following format is registered against each flat owner’s title "*No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions clause …. of a deed dated ….. and made between ….. and …. have been complied with"*. This will ensure that each future owner of one of the flats enters into the same obligations.]

OR ELSE INSERT THIS BLOCK OF TEXT IF RIGHTS EXIST AND COVENANTS EXIST BUT THERE ARE NO RESTRICTIONS AGAINST THE TITLES:

[From looking at the titles to all of the properties it appears that the necessary rights and covenants are in place however there are no restrictions. I am therefore proposing that a restriction in the following format is registered against each flat owner’s title "*No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions clause …. of a deed dated ….. and made between ….. and …. have been complied with"*. This will ensure that each future owner of one of the flats enters into the same obligations.

I am also proposing that each flat owner enters into a covenant with the other flat owners in the following form of the draft attached, so that each current flat owner is bound by the terms of the deed.]

I am proposing this course of action as I believe it is in the best interests of my client and the other flat owners however before you enter into it I recommend that you seek legal advice. I cannot provide that advice as I represent the seller and so would have a conflict of interest. If you do seek legal advice and would like me to correspond with your solicitor, please pass them this letter and / or let me have their details.

I look forward to hearing from you.