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	FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	: CHI/19UH/LSC/2015/0056
Property	: 10,47 & 65 Flaxfield Road, Beaminster, Dorset, DT8 3EY
Applicant	: Shirley J Swaine (65) Angela Jackson (10) Robert J Greenman (47)
Representative	:
Respondent	: Magna Housing Association
Representative	:
Type of Application	: Liability to pay and determination of reasonableness of service charges Leasehold Reform Act 1967
Tribunal Members	: Mr D Banfield FRICS Judge N Jutton BSc
Date of Hearing	: 11 May 2016
Date of Decision	: 31May 2016

DECISION

Summary of Decision

The Tribunal finds that the sums charged to the Lessees for service charge years 2009 to 2016 as set out in the service charge demands produced to the Tribunal are both reasonable and payable.

Background

1. This is an application to determine service charges originally made by the lessee of Flat 65 but, following further applications the lessees of Flats 10 and 47 were joined to the proceedings.
2. The original application challenged service charges for Service charge years 2009 to 2015 and largely concerned the construction of the lease and the definition of communal areas and was to be determined by written representations. However, the Lessee of Flat 10 also challenged the cost of repairs and works to the roof and the matter was therefore set down for a hearing following an inspection of the properties concerned.
3. Late in the morning of the hearing it became apparent that Ms Swaine did not have a full copy of the bundle. Proceedings were adjourned and a copy was provided for Ms Swaine to study its contents over the lunch interval.

The Inspection

4. The Tribunal inspected that part of the estate in which the three properties were situated together with the gardens to Flats 65 and 47. We were accompanied by the Applicants and representatives of Magna Housing.
5. During the inspections we noted the poor decorative order of the fascias to Flat 10, the private gardens of Flats 47 and 65 each with their own drying facilities. We also noted a small area of deterioration to the barge board above Flat 65.
6. We inspected two drying areas either side of the block in which Flat 10 was situated and noted the fresh tarmacadam finishes and recent washing lines. We also noted that whilst some of the blocks on the estate had replacement roofs those blocks in which these flats were situated retained their original roof coverings which, from an external inspection appeared to be in sound condition.
7. We also noted the areas of grass all of which appeared to have been regularly mowed.

The Law

8. For the law relevant to the matter please see the appendix to this decision.

The Leases

9. The leases are largely in common form and make reference to the following relevant matters; (the numbering refers to No 65)
 - Section 1 (5) defines the Demised Premises as those premises specified in the Second Schedule which in turn describes them as the flat and garden together with the surface of the floors, walls and ceilings, all internal walls, windows and doors.
 - Section 1(6) defines the building as (in the case of No 65) as “the property known as 62 63 64 and 65 Flaxfield Road”
 - Section 1(7) defines “the flats” as the flats within the building.
 - Section 1(9) defines “The Landlord’s Property” as “any gardens forecourts courtyards pathways accessways fences walls steps stores garages or other premises used in connection with the residential use of the flats.
 - Section 3. (4) obliges the tenant to keep the interior in good repair and condition including the windows and the glass therein.
 - Section 3(18) requires the tenant to pay a proportion of the Landlord’s Expenses which are defined in the Sixth Schedule as
 - (1) The actual cost of the repairs and of providing the services specified in the Seventh Schedule hereto (including all professional fees incurred in connection therewith)
 - (2) Such sums which may be estimated by the Landlord as to be required to provide a reserve to meet part or all of the future cost of such repairs and services which may arise during the next five years.
 - (3) The fees and costs in managing the Landlord’s Property and the Building.
 - The Landlord’s obligations are set out in the Seventh Schedule and in brief are, at the Tenant’s expense to insure and to repair maintain and decorate the Demised Premises and the Building unless the Tenant is obliged to do so. Also for “the provision of services of any kind whatsoever for the reasonable comfort security safety and convenience of the Tenant or the tenants owners or occupiers of other flats comprised within the Building ...”
 - The Rights granted to the Tenant are set out in the Third Schedule and include at (5) “The use for the purpose of drying washing of such garden areas as the Landlord may from time to time allocate. (6) The use of an external storage shed store as the Landlord may from time to time allocate and (7) The use of paths within the Landlord’s Property and the internal entrance hall staircase and passageways within the Building for the

hall staircase and passageways within the Building for the purpose only of obtaining access and egress from the Demised Premises storage shed and drying area.

10. The following differences were noted (other than section numbering) in the other leases

Flat 10

- The Third Schedule includes a right of way at all times over Flaxfield Road.

Flat 47

- The Third Schedule does not give a specific right for the tenant to use a shed and the drying areas. Sub section (4) does however provide for "The use of paths within the Landlord's Property and the internal entrance hall staircase and passageways within the Building for the purpose only of obtaining access to and egress from the Demised Premises storage shed/dustbin store and drying area"

Applications

11. In her application Ms Swain has challenged the following expenditure from 1/4/2009 to 31/3/2014

- Works to drying area
- Grounds maintenance
- Caretaker services
- Sinking fund Leaseholder communal areas
- Sinking fund External works
- The costs attributable to the "Tersus" report
- She refers to excessive service charge increases of 100% since 2006, failure to maintain woodwork resulting in replacement of fascias etc. the introduction of charges for caretaker services and a sinking fund for Leaseholder communal areas, the response to a formal complaint, confusing and varying sinking funds statements and a lack of trust in the landlord.

12. For Flat 47 Mr and Mrs Greenman challenge the following from 1/4/2013 to 31/3/2016

- Caretaker services
- Grounds maintenance
- Sinking fund Leaseholder communal areas
- Communal drying areas

13. For Flat 10 Mrs Jackson challenges

- Works to drying areas
- The proposed roof replacement works
- The poor state of decorations
- Why paying more than flats 3 to 16.

Hearing

14. At the hearing Mrs Karenza Frear a Senior Lawyer spoke for the Respondent assisted by colleagues, Matthew Parsons - Financial Services Manager; Stephanie Lloyd- Foxe – Project Manager; Gareth Banks – Estates Services Manager and Caren Welsh – Home Ownership Officer. Mr Daniel O'Brien a roofing contractor was also in attendance but was not called upon.
15. It was agreed that the dispute could be grouped as;
 - o Construction of the lease;
 - o Expenditure
 - o Roof works.

Construction of the lease

16. Judge Jutton took the parties through the lease;
17. The 6th Schedule of each lease sets out the Landlord's Expenses. Those are the expenses that may be incurred by the Respondent which it can recover by way service charges from the Applicants. Paragraph 1 of the Sixth Schedule to each lease provides that those expenses will include actual costs incurred by the Respondent in providing the services specified in the Seventh Schedule of the lease.
18. Paragraph 1 of the Seventh Schedule incorporates the covenants set forth in paragraph 14 of Part III of Schedule 6 to the Housing Act 1985 (Mrs Jackson's lease, which is somewhat older, incorporates an identical provision contained in paragraph 13 of Part III of Schedule 2 of the Housing Act 1980).
19. Paragraph 14(2) (b) of Schedule 6 of the Housing Act 1985 (paragraph 13(1) (b) of Schedule 2 of the Housing Act 1980 in Mrs Jackson's lease) provides that there shall be included in the Lease an implied covenant on the part of the landlord "*to keep in repair any other property over or in respect of which the tenant has rights by virtue of this Schedule*".
20. Mrs Frear for the Respondent referred to paragraph 1 of that Schedule (in each case) which provides that the Lease "*... shall not exclude or restrict the general words implied under Section 62 of the Law of Property Act 1925, unless the tenant consents or the exclusion or restriction is made for the purpose of preserving or recognising an existing interest of the landlord in tenants' incumbrances or an existing right or interest of any other person*".
21. The effect Mrs Frear said was to incorporate into each Lease all rights easements and privileges that were previously enjoyed by the secure tenant who had originally acquired their Lease under the Right To Buy legislation. That although the Respondent did not have a copy of the secure tenancy agreement originally enjoyed with

have a copy of the secure tenancy agreement originally enjoyed with each of the properties the understanding was that such tenancy granted rights and privileges over all of the common areas such as footpaths roadways and areas of grass which the Respondent now maintains and in respect of which it seeks to recover a contribution to the cost thereof as part of the service charge.

22. Ms Swaine said that she accepted that she could be charged for grass cutting but challenged the amount of those charges. She considered that with regard to the drying areas unless a facility was "actually used" by a lessee then a charge should not be levied. She pointed out that she had a private garden that provided drying facilities for her flat. She considered that the lease did not permit the inclusion of "Caretaker Services" from 2011/2012.
23. Mr Greenman also challenged the inclusion of the drying areas as a shared cost and pointed out that he too had a private garden with drying facilities and that it was most unlikely that any occupier would wish to walk to the communal drying areas. He also says that the flat occupier has no car and therefore no need to use the parking area behind the building.
24. Mrs Jackson also challenges whether her lease enjoys "communal facilities" and does not consider that she should have to pay a contribution to them.
25. Mrs Frear said if the lease gave the lessee a right to use communal facilities whether they did so or not would not affect the lessee's liability to meet their share of the cost involved. She said the costs of the repairs and maintenance were equally apportioned between each of the flats that had access to the areas and that costs relating to Gerrards Green were not included. Up until 2011 the cost of the caretaker service had been met centrally without any recharge to lessees. However the lease permitted the charge to be made and it was now policy so to do.

Expenditure

26. Ms Swaine said that she had never seen a caretaker and didn't know what they did. There was little for them to do as tenants kept the area in a good state. She challenged whether the cost of a report on asbestos (The Tersus Report) was properly chargeable as it was not clear how costs had been apportioned. She said that costs had increased disproportionately to inflation and that service charge costs had increased from £206.16 pa to £453.12 pa over her nine year period of ownership. She considered the time spent travelling by the caretaker to be excessive and hence costs charged were unreasonable.

27. Mr Greenman referred to the excessive cost of cutting "a tiny bit of grass" which in any event his son (who occupied Flat 47) had not seen done.
28. Mrs Jackson said that the leylandii tree said to have been removed had never been located. She provided her own washing line in the communal drying area which had then been replaced by Magna. The drying areas need weeding and she cannot understand why she is paying more in service charges than other flats.
29. Gareth Banks explained that the caretaker dealt with fire alarm checks, bulb changes, litter picking and removal of waste. They were charged on an hourly basis and time sheets were kept. Where flats did not have common parts they were not charged for fire alarm checks or bulb changing. 45 minutes per week were currently spent although this should now reduce following the decision of the local authority to collect waste direct rather than from paladins in designated waste areas which then needed cleaning. He explained that the method of showing travelling time had changed to what was considered to be a fairer and more transparent system.
30. Tersus have a contract to survey all of Magna's properties on a rolling basis. They inspect the exterior and take samples of likely locations for asbestos such as soffits and barge boards. Each report is charged to the property concerned and may vary depending on whether one or two people are required.
31. Charges in respect of the communal areas are charged equally to all residents on the estate whereas repairs to individual buildings will be shared between the flats within that particular building.
32. There appeared to be some confusion in respect of the sinking funds referred to in the service charge statements. In 2012 "Sinking Fund – Leaseholder Communal Areas" appeared for the first time without any explanation. In 2012 and 2013 it was at £36 per year (£3 per month) but in 2014 it rose to £84 and remained at that figure to date. Conflicting evidence was given by Magna representatives as to what items of expenditure came from the Leaseholder Communal Areas as opposed to External Works, Communal Areas or the other sinking funds maintained.

Roof works

33. It became clear that this complaint related to the proposed replacement of roofs which were the subject of Section 20 consultations in 2014 but, following the consultation had not been proceeded with. Minor repairs had been agreed to Flat 10 but not yet commenced

Decision

Construction of the Lease

34. Section 62 of the *Law of Property Act 1925* provides that a Conveyance of land (and for the such purposes the Act defines "Conveyance" to include a Lease) shall be deemed to include so as to convey with the land amongst other things all privileges easements rights and advantages which appertained to or were reputed to appertain to the land at the time of the Conveyance (Lease). The Tribunal accepts that the effect of those provisions taken together is to provide that the Applicants under the terms of their respective Leases enjoy all the rights and privileges formerly enjoyed by the historic secure tenant of their respective properties. That as such the effect of the incorporation of paragraph 14(2) (a) of the Sixth Schedule to the *Housing Act 1985* (paragraph 13 (1) (b) of Schedule 2 of the *Housing Act 1980* in Mrs Jackson's Lease) is to include in the Landlord's Expenses such expenses that the Respondent reasonably incurs in repairing and maintaining those common areas. That would include the costs of retaining the services of a "caretaker" for the purposes of collecting litter from those common areas.
35. Even if the Tribunal were wrong on that point it notes that Part II of the Seventh Schedule of the Lease in each case provides that the Landlord's Expenses may include the provision of services of any kind whatsoever which the Respondent provides for the "*...reasonable comfort security safety and convenience of the Tenant ... including the provision of any equipment fixtures or apparatus in connection therewith*". That in the view of the Tribunal entitles the Respondent to recover as service charge payment costs that it reasonably incurs in the provision of services to which the Applicants benefit including by way of example the provision of litter collecting.
36. Whether or not a lessee chooses to take advantage of a facility offered by virtue of the terms of their lease is immaterial. For example it may be more convenient to use a drying line in a demised garden but that is not the test. The drying areas are available to use and the lease requires that lessees meet the cost of them and other communal facilities.
37. We accept that the wording of Mr and Mrs Greenman's lease does not refer specifically to the use of the drying areas however the reference to the use of pathways leading to such areas suggest to the Tribunal that a similar right is enjoyed.
38. We therefore find that the lessees are obliged by virtue of Section 3(18) of their leases to meet the Landlord's expenditure including maintaining "The Landlord's Property" as defined in Section 1(9).

Expenditure

39. From the confusion shown by Magna representatives at the hearing in explaining the function of the various sinking funds it seems clear that whatever efforts are made to explain the operation of the service charge accounts it is failing to satisfy the lessees. The Respondent's statement at section 3 is rather more helpful in that the Leasehold Communal Areas Sinking Fund is described as being used for Day to Day response repairs whereas the External Works Sinking Fund is designed to meet Planned or Major Works.
40. The Tribunal does not find the fund's descriptions particularly helpful for the lessees to understand what they are being asked to pay and we were pleased to note that there was some acknowledgement of this by Magna's representatives.
41. Despite the lack of clarity in the sinking fund descriptions the Tribunal does not find that excessive amounts have been charged to them. As was explained at the hearing, sinking funds or reserves are a means of spreading the cost of unexpected or substantial expenditure. The money paid remains the lessees' property until properly expended on a service charge item and unless excessive the Tribunal is unwilling to reduce them. In this case the Tribunal finds the charges not to be excessive and are therefore payable.
42. Challenges were made to the amount charged for grass cutting and caretaker services. In 2015 these amounted to under £40 for Flat 65. We accept that communal bin areas are likely to require attention at times and that on any residential development periodically there will be rubbish to be removed from communal areas. The areas of grass appear well maintained and relatively extensive.
43. Ms Swain says that service charge expenditure is in excess of inflation and Mrs Jackson says that she pays more than some other flats. As has been seen, the amount charged to the service charge depends on the cost of works required. In some years the work may be less, in some more. As such a comparison with changes in RPI is not material. We are satisfied that the leases require some expenditure to be divided equally between all lessees on the estate whereas expenditure on individual blocks is divided between flats within that block. As such expenditure between blocks may well vary.
44. From the Tribunal's experience of service charges generally they do not find the amounts charged to be excessive.
45. The Respondent has explained to the Tribunal's satisfaction that the Tersus report was charged on the basis of time spent and was the amount charged by Tersus in respect of Flat 65. As such the Tribunal determines the sum to be payable.

Roof works

46. The works the subject of Magna's consultation process had not proceeded and in the case of Flat 10 had resulted in some repairs being substituted. That these works had not yet been completed was not something over which the Tribunal has jurisdiction. Should sums be charged to them in the future the Lessees may at that time if they so wish challenge such sums on the grounds that the delay has increased costs.
47. The complaints in respect of the area of deterioration to the barge board of Flat 65 and the poor decoration to Flat 10 are, as explained above, not within the Tribunal's jurisdiction until expenditure has been incurred and a charge made to the Lessees. Mrs Swain has said in her application that a failure to decorate has increased costs. However no satisfactory evidence upon which the Tribunal may make a finding has been produced.
48. Mrs Swain accepted at the start of the hearing that the Tribunal were unable to deal with her complaints in respect of the Landlord's complaints procedure and issues of trust.
49. **In summary, the Tribunal finds that the sums charged to the Lessees for service charge years 2009 to 2016 as set out in the service charge demands produced to the Tribunal are both reasonable and payable.**

D Banfield FRICS
31 May 2016

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and

after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Law of Property Act 1925

62 General words implied in conveyances

- (1) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or

reputed to appertain to the land, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, other buildings conveyed, or any of them, or any part thereof.

(3) A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quitrents, rentscharge, rents seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or, at the time of conveyance, demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

For the purposes of this subsection the right to compensation for manorial incidents on the extinguishment thereof shall be deemed to be a right appertaining to the manor.

(4) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.

(5) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6) This section applies to conveyances made after the thirty-first day of December, eighteen hundred and eighty-one.

205 General definitions

(1) In this Act unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

(i) “Bankruptcy” includes liquidation by arrangement; also in relation to a corporation means the winding up thereof;

(ii) “Conveyance” includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will; “convey” has a corresponding meaning; and “disposition” includes a conveyance and also a devise, bequest, or an appointment of property contained in a will; and “dispose of” has a corresponding meaning;