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## **Enfranchisement** | Leasehold Enfranchisement and rights of first refusal. A Guide for leaseholders

### **Introduction**

Leasehold flat purchasers normally hope the value of their investment will increase over time, although in today's climate this can no longer be guaranteed. Moreover, it has to be kept in mind that a lease is a wasting asset: as it gets shorter, its value decreases and the Landlord's freehold value increases. There are options, which this guide outlines, for leaseholders either individually to purchase lease extensions or collectively with other leaseholders, to purchase the freehold. There are also leaseholder's rights of first refusal, should the landlord seek to sell or otherwise dispose of its interest. These rights can not only empower tenants to control their freehold but can secure or enhance the value of their flat for a longer period.

In valuation terms it is very important to bear in mind the '80 Year Rule', because where leases have 80 years or more left to run, the landlord does not receive any sum attributable to 'Marriage Value', which is the extra value brought about by the freehold and leasehold interest being under one control, with the participating leaseholders being able to extend leases at no cost. The cost to the tenant is therefore significantly higher once a lease term drops below the 80 Year period.

Leaseholders have other statutory rights, such as to challenge service charges and other leasehold management matters, which are outside the scope of this guide, but please feel free to contact us should you wish to discuss such matters further.

### **Collective Enfranchisement**

The right for leaseholders who hold long leases (being leases granted for a term over 21 years) to purchase the freehold and any intermediate leasehold interests of the block along with any common areas, which they have a right to use. The benefits of such a purchase include: (a) the ability to grant new 999 leases; (b) to take over the management and maintenance of the block; (c) to exploit assets by selling or letting areas, such as the roof space for development, telecom masts, surplus parking or garages and the sale of shares in the freehold company or lease extensions to non participating leaseholders and (d) increasing flat's values. There are also disadvantages to consider. The leaseholders become responsible for management of the block, which can be difficult and time consuming, even if a managing agent is employed, and the leaseholders will have ultimate responsibility for decisions on the management and maintenance, insurance, compliance with fire and other statutory requirements, handling disputes between owners and enforcing breaches by individual leaseholders.

The statutory requirements for a collective enfranchisement are complex. In summary;

- there must be more than 2 flats;
- at least two thirds of the flats have to be held on long leases;
- there must not be more than 25% of the internal floor area used for non residential use
- and the number of participating leaseholders must equal at least half the flats in the block.

Example: For a block of 24 flats, at least 12 flats must be held on long leases and at least 6 qualifying leaseholders must participate.

There are certain exceptions to qualifying Landlords, leaseholders and buildings which are beyond the scope of this guide. But again please feel free to contact us should you wish to discuss such matters further.

The process is complex, with Statutory Notices and time limits to comply with, and can take many months to be completed. It is therefore vital that leaseholders take advice from experienced Solicitors and Surveyors. A valuation is needed which must contain a reasonable figure. A valuer will advise upon the minimum and maximum figures which are likely to be payable, which will give leaseholders a budget to decide whether the purchase is affordable. Once the leaseholders have served a notice upon the Landlord, they are responsible for the Landlord's legal and valuation fees. In some cases not all leaseholders wish to participate in the purchase, in which case the participating leaseholders will have to cover the cost of funding the non participating leaseholders. There are ways of recouping such additional contributions at a latter date, but beyond the scope of this guide.

The leaseholders need to appoint a party to purchase the freehold called the 'Nominee Purchaser'. This is normally either up to four leaseholders,

who will hold the freehold on trust, or a company, which the participating leaseholders will hold shares in. Participating leaseholders should enter into a 'Participation Agreement' which will include details of the participating leaseholders, the respective contributions to the purchase price and fees (which may not be equal if the flats are of varying sizes or values), decision making and reporting, and dispute resolution.

A statutory notice claiming the right to enfranchise is served upon the Landlord signed by all participating leaseholders. Time delays can arise, if some leaseholders are non residents or overseas. The Landlord has two months to serve a counter notice either admitting or denying the right to purchase and indicating the price acceptable. The Landlord may also indicate whether it requires a lease back of any flats.

Following the Landlord's counter notice, there is a period of six months for the parties to agree the price. Failing this, the Leaseholders must make an application to the Leasehold Valuation Tribunal, otherwise there is a deemed withdrawal of the notice.

## Individual Lease Extensions

Long leaseholders, with at least two year's ownership, may purchase a 90 year extension to their existing lease term, materially to improve the marketability and value of the property. For example a lease with a remaining 75 years can be extended to 165 years. The right can be exercised more than once. The new lease will be generally on the same terms, but parties can apply to vary any defects. The process is otherwise similar to a collective enfranchisement in respect of valuations, notices and time limits.

A qualifying tenant is entitled to a lease extension both before and after a collective enfranchisement has been exercised. In the event of a pending collective application, the lease extension is suspended pending the outcome of the collective application.

## The Right of First Refusal

Qualifying tenants holding long leases of flats have a collective right to acquire their landlord's interest in a building upon a disposal by the freeholder. The disposal may not be of the whole building, as the right applies where a small area is to be disposed of, for example roof top developments and common parts. Landlords are required to serve an offer notice upon qualifying tenants prior to a disposal setting out the terms and the qualifying tenants can either accept or reject the landlord's offer. The tenants cannot put forward a counter offer. If the tenants do not accept the offer, then the landlord can make the disposal, at any time within twelve months to a third party, provided the terms are identical to those offered to the tenants.

If a landlord fails to comply with the statutory provisions, the tenants are within certain time limits able to purchase the disposal from the purchaser on the same terms and the landlord is liable to prosecution for having committed a criminal offence.

## Leasehold Enfranchisement Group

Our enfranchisement group is a close knit team of property lawyers and support staff with a strong reputation in this field and broad experience over the entire property sector. Whether acting for landlords or leaseholders of flats or houses, the group is well placed to undertake all types of work, from acting for landlords or leaseholders on individual or multiple lease extensions or the collective sale or purchase of two-flat buildings to very substantial multi-let blocks, at all times offering a sophisticated level of legal expertise in a client focused and cost sensitive environment.

The team's experience and resources means it is well placed to undertake complicated time critical deals, and indeed members of the team have acted for clients in a number of reported cases. Whilst experience of this kind is necessary should matters progress to this stage, the group is committed to completing transactions via the quickest and most cost effective route – usually without recourse to the court system.

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