

## Statutory lease extension - flats

### Legislation

Statutory right upon qualification under the 1993 Leasehold Reform Housing and Urban Development Act as amended by the 2002 Commonhold and Leasehold Reform Act (1993 Act) to acquire a lease extension of a flat for an additional 90 years at a peppercorn ground rent by serving a notice under Section 42 of the 1993 Act. Please note the tenant does not have a right to vary the lease in other ways save for in very limited circumstances.

### Qualification

- The tenant must have a long lease which was originally granted for a term in excess of 21 years. There are other types of long lease but this is the main one.
- The tenant must have owned the flat for at least two years. They must be registered as the proprietor at the Land Registry for at least two years prior to serving notice. No need to be resident.

### Exceptions

- A tenant will not qualify if they have a business of commercial lease, for example over a shop or office space.
- A landlord is exempt if they are a charitable housing trust and the flat is provided as part of its charitable functions

### Process

- Obtain valuation advice to assist in a figure to insert in the Section 42 notice. It is advisable to instruct a valuer to inspect the property and prepare a report.
- Serve the notice, giving the landlord at least two months' to respond with a counter notice. Specify the date for response.
- If a landlord denies the right, for example a tenant does not qualify, the landlord must seek a declaration from the County Court
- If a landlord challenges the validity of notice, the County Court can ask them to reject and re-serve
- Usually, a landlord's counter notice will accept the right but counter the premium offered; if so, parties can negotiate for two months. If an agreement on the terms cannot be reached, parties have a further four months window to apply to the first-tier tribunal to determine terms which cannot be agreed. Parties can still negotiate during this window and withdraw from the tribunal process if an agreement is reached.
- Once parties agree terms or the tribunal makes a decision (and the right to appeal it has surpassed) on those terms, the new the lease must be completed within two

months from this date. If not, the parties have a further two month window to complete or to apply to the County Court to enforce completion.

### **Assignment of the benefit of the notice**

The tenant can assign the benefit of the notice to a buyer of the flat allowing them to avoid having to wait two years before they qualify. This is usually done by a separate notice of assignment to be signed by the buyer and seller, along with references in the sale contract. The notice is normally served following exchange of contracts.

### **Marriage value**

This is the part of the premium payable which reflects the potential increase in the value of the flat as a result of the lease extension. This can be a contentious point as 50% of this is payable to the landlord as part of the premium. However, where there are 80 or more years remaining on the lease at the date of the Section 42 notice, marriage value is not payable.

### **Costs**

The tenant is liable to pay the landlord's reasonable legal and surveyor costs in relation to the lease extension. Although each party bears their own valuer negotiation fees and any fees incurred in connection with the tribunal. The tenant is able to make an application to the tribunal to have these costs determined if they are thought to be unreasonable. The key test is, would the landlord have incurred the same costs had they been personally liable?

NB: this is purely a guide which outlines the basics. You are advised to obtain proper legal and other professional advice before proceeding

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