

## Buying a 90 year extension of your flat lease (Leasehold Reform, Housing and Urban Development Act 1993)

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**CATEGORY:**  
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Do you qualify to buy a 90 year extension?

As a preliminary, you will need to check whether you are a 'qualifying tenant' for the purposes of the Act.

In order to qualify, you must be a flatowner holding a lease granted for a term of over 21 years.

You will also need to have owned the flat for at least 2 years.

All we will need from you is a completed questionnaire and for you to either forward to us your Lease and other title deeds or write to the firm/institution holding them asking it to forward them to us. We will then confirm whether the qualification criteria laid down by the Act are satisfied on the basis of the information provided in the completed questionnaire and having checked the provisions of your Lease.

There are circumstances in which a freeholder can resist a tenant's claim. This will be the case where at least two thirds of all the long leases on which flats in the building are held are due to expire within the period of 5 years commencing on the date of the leaseholder's notice of claim and the freeholder intends to redevelop the building in a manner which necessitates regaining vacant possession of the building.

### Preliminary steps

Having established that you qualify for a 90 year lease extension, you will need to make a preliminary assessment of the premium payable. At this stage, some valuation advice from a specialist valuer will generally be essential.

### Landlord's right to determine lease on redevelopment grounds

You should be aware that the landlord has a right to take possession of the flat in the last year of the original lease and in the last 5 years of the new lease on redevelopment grounds provided that the landlord pays compensation to the flatowner for loss of the flat.

The other associated costs of proceeding should be borne in mind. In addition to your valuer's fees, there will be legal costs to bear - not only yours but also any incurred by the freeholder and the costs incurred by anyone with an intermediate leasehold interest. You will also be responsible for valuers' fees incurred in relation to the valuation exercise by the landlord(s). These costs (particularly those of the landlord's valuer) will be very difficult to estimate at the outset, and so only a broad indication of their likely level can be given.

We will check the ownership structure of the building in which your flat is situated. If necessary, we can serve a notice on your immediate landlord or an intermediate landlord or the person to whom you pay rent (eg the managing agents) requiring the recipient to give comprehensive information in relation to the various property interests in the building.

We will also be able to enquire whether the recipient has received any application from other leaseholders in the building who intend collectively to acquire the freehold. Although you would probably already know of any such application, it is important because if such an application has been made, any other dealings by the landlord (including the grant of lease extensions) are 'frozen' for the duration of the leaseholders' collective enfranchisement application procedure.

The recipient of the notice must respond within 28 days.

Before you claim your right to an extended lease, you should seek valuation advice from a specialist valuer. The Act's valuation provisions are very technical but, in broad terms, the price payable by a leaseholder will comprise the following elements:

- the capitalised value of the landlord's right to receive ground rent;
- the diminution in value of the landlord's interest in the flat (ie the devaluation of the freehold reversion);

- any compensation payable to the landlord for any loss which the landlord may suffer (eg where there is a diminution in the value of the landlord's interest in property other than the flat as a result of the grant of the new lease); and
- 50% of the 'marriage value' (ie the difference between (i) the combined value of the existing lease and the landlord's interest and (ii) the value of the flat once that lease has been extended).

The last of these elements will not be payable if your lease has more than 80 years left to run at the date you serve your notice of claim. Where there are intermediate leasehold interests to be bought out, the price for these will also have to be paid and will be calculated by reference to the number of years the lease in question has to run, any profit rent (the difference between the rent received and that paid under the lease) and an assumed yield. Compensation may also be payable to the intermediate landlord as set out above.

Having established that you are in a position to proceed, it is worth considering a direct approach to the freeholder (and where appropriate any intermediate landlord) or the managing agents to see whether the freeholder is prepared to co-operate voluntarily. If he is, this will help to keep matters straightforward and costs as low as possible. You will then need your valuer's advice before making an offer to open negotiations with the freeholder as to the price you should pay for the lease extension. Once the price has been agreed, solicitors can deal with the legal aspects of the acquisition.

If the freeholder (or any intermediate landlord) is not prepared to co-operate, you will need to follow the procedure laid down by the Act.

## Claim

Whether or not a preliminary notice of enquiry is served, the claim procedure will be initiated by the service of a tenant's Notice by which you claim to exercise your right to acquire an extended lease of your flat. In essence, this Notice sets out the basis of your claim giving details of your interest in the flat and the (realistic) price which you propose to pay for the extended lease. The price to be included in the Notice should be agreed with your valuer.

Your Notice must specify the date by which the landlord must respond, which must be not less than 2 months after the date of your Notice.

We register a notice or land charge at the Land Registry (as appropriate) to protect your rights as against any purchaser of the freehold interest.

At any time after your Notice of claim has been served, the landlord may:

- require payment of a deposit of 10 per cent of the purchase price proposed in your Notice (subject to a £250 minimum)
- require you to 'deduce title' to your Lease within 21 days. We will already have your title deeds and so be able to comply
- exercise rights of access to your flat (to value it) upon not less than 10 days' notice.

## Landlord's Counter-notice

The landlord must serve a Counter-notice before the date specified in your Notice of claim (not less than 2 months after the date of your notice). In the Counter-notice the landlord will either admit or contest your claim to a new, extended lease and may propose terms for the new, extended lease. (If contested, any dispute is ultimately referable to the County Court within 2 months of the date of service of the Counter-notice.)

## Conveyancing steps

Once the landlord's Counter-notice has been received (or in any event once 2 months have elapsed since service of your notice), you may call upon the landlord to produce evidence of its title to the freehold (within 28 days).

We check the landlord's title and make any necessary enquiries within 14 days to which the landlord must reply within a further 14 days.

## Agreeing the price and terms of the lease

Once your right to bring your claim is admitted/established, your valuer and the landlord's valuer negotiate the price to be paid by you for the new, extended lease. In most cases, the terms of the new lease are being agreed at the same time with the landlord's solicitors.

If the price – or (in some cases) the terms of the lease – cannot be agreed, the dispute may be referred to a Leasehold Valuation Tribunal ('LVT') in which case you will incur significant further costs.

Fortunately, the vast majority of claims are settled without the need to go to the LVT.

After the first 2 months of this negotiation period have elapsed (but in any event before 6 months have elapsed) either you or the landlord can apply to the LVT to determine the matter in question. In most cases landlords will do this as a matter of course, but if they do not, we shall do so on your behalf.

Once all the terms of the purchase have been agreed (or determined by the LVT), the statutory regulations provide for the new lease to be prepared by the landlord's solicitors (within 14 days of that agreement). The new lease will be on substantially the same terms as your existing lease, except that it will be for a term expiring 90 years after the expiry date of your existing lease and the rent will be a 'peppercorn' ie nil.

In practice, as mentioned above, the terms of the lease are generally agreed while the valuation aspects are being debated.

## Completion

The Act provides that following agreement of the draft lease, either you or the landlord may serve a notice requiring completion within 21 days. However, in practice, there is generally some flexibility over completion which will often take place within a month or so of the price and terms being agreed.

On completion, the purchase price is paid and the executed original lease and counterpart lease are exchanged.

#### Post-completion

If applicable, Stamp Duty Land Tax at the following rates is paid within 1 month of completion:

|  |                               |
|--|-------------------------------|
| £0 – £125,000  | nil                           |
| £125,000+ – £250,000   | 1% on the whole of the price  |
| £250,000+ – £500,000   | 3% on the whole of the price  |
| £500,000+ – £1m  | 4% on the whole of the price  |
| £1m+   | 5% on the whole of the price  |
| Over £2m   | 7% on the whole of the price  |
| Over £2m (purchased by non-natural persons' without the benefit of relief) | 15% on the whole of the price |

We then make an application to the Land Registry for the registration of the new lease and the closure of the title to the 'old' lease (and for the cancellation of the 'notice'/land charge' registered against the landlord's interest to protect your claim). If you have an existing mortgage, it will automatically be switched from the 'old' lease to the new, extended lease.

#### Withdrawal

You may unilaterally withdraw at any time, if for example you are unhappy with the level of premium. This is very unusual because your valuer should be able to give you a fair idea of the premium you are likely to have to pay at the outset. The effects of such a withdrawal are twofold:

- you are prevented from bringing another claim under the Act for a period of at least 12 months (but this does not prevent you from joining with other tenants in a claim to acquire the freehold interest collectively); and

- you remain liable for the reasonable costs of the freeholder and any other relevant landlords.

What if other tenants apply to acquire the freehold?

As a 'qualifying tenant' it is open to you, if invited, to join with the other tenants in their application. Indeed, they will need the co-operation of at least half of the qualifying tenants in the building if they are to be able to proceed.

Any application by a tenant for an extended lease will, as mentioned above, be 'frozen' until the outcome of that freehold claim has been determined. After that, however, the lease claim can once more be pursued.

Acquiring a new, extended lease would not prevent you from joining at a later date with other tenants in the building who may collectively seek to buy the freehold. Of course, you would expect your contribution to the purchase price to be reduced accordingly in those circumstances.

## Conclusion

The right to acquire an extended lease may be an attractive alternative to joining with other tenants in the building to acquire the freehold interest, particularly if the building is well-managed.

If you do wish to make a claim to purchase a 90 year lease extension, then we would be happy to advise on all aspects of the matter and to give an estimate of the likely costs.

Experience shows that the vast majority of claims proceed in a straightforward manner if the solicitors and the valuer work as an effective team. We can put you in touch with specialist valuers with whom we have worked on numerous successful lease extension claims.

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