

Lease extensions

Your legal right

By Alan Zeffertt

As a qualifying leaseholder, you will have the right to claim an extension of your existing lease of an additional 90 years at a peppercorn rent (ie rent free).

Your statutory right is contained in the Leasehold Reform Housing and Urban Development Act 1993 (as amended) and this legislation sets out the procedures which must be followed by a flat tenant to claim this right.

This sheet explains briefly the procedures involved in exercising your statutory right to claim a lease extension.

Qualification requirements

Briefly, a flat tenant must have:

- Owned the property for a minimum period of 2 years. You do not need to have lived in the property for this period; and
- Own a "long lease". This includes a lease in excess of 21 years when originally granted and also a shared ownership lease where the tenant's share is 100%. The present unexpired term of the lease is not relevant.

Please note: The right will not apply if your landlord is a charitable housing trust and the flat is provided as part of the charity's functions, nor will it apply to a commercial/business tenant. Some buildings are also excluded from this right, for example, National Trust properties and Crown properties, although the Crown may be willing to comply with the legislation.

Procedures

Once the qualification requirements have been satisfied, a 'Notice of Claim' can be served on the freeholder. You should first seek advice from a qualified valuer with regard to the likely premium to be paid for the lease extension. Although the valuer may not be able to give an exact figure, he/she will be able to give a good indication of the valuation figure and suggest best and worst case figures. Once the Tenant's initial Notice has been served, it can be assigned with the Lease when the flat is sold. The Buyer of the flat can then proceed immediately with the claim without having to meet the 2 year qualifying period.

Important other matters

You should consider how to finance the transaction. You will not only be responsible for your own professional fees, but also for those of the surveyor and solicitor working for the freeholder. In the event of your withdrawing from your claim, after serving the Notice, you will still be liable for all such professional fees incurred up to that point. Your finance should therefore cover not only the premium for the lease extension, but also all professional fees.

It is important that certain information is gathered before service of any Notice, since it must be accurate to avoid any mistakes which may render the Notice invalid. In that case, you would have to wait another 12 months before you would be able to claim again. This could be an important consequence because it is likely to result in a higher premium being paid for the lease extension.

At any time after receipt of your Notice of Claim, the freeholder is entitled to require payment of a deposit. This would amount to 10% of the premium you propose in your Notice, or £250.00, whichever is the greater.

Once the Notice of Claim has been served, the freeholder has a 2 month period in which to reply with their 'Counter-Notice'. In most cases the freeholder will admit the claim, but counter-proposes a higher figure for the premium to be paid for the lease extension. Negotiations then take place between the parties, usually through their valuers, to reach agreement on the premium.

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Once agreement is reached, the form of extended draft lease will then be negotiated between the solicitors for the parties. If you have a mortgage secured against the flat, your lender will need to consent and will require a deed of substituted security to be put in place.

In the (unlikely) event that the respective valuers do not reach agreement on the premium to be paid, or if other terms cannot be agreed between the parties, either party can apply to the Leasehold Valuation Tribunal for a determination of those outstanding terms. This must be done no earlier than two months and no later than six months after the date of service of the Counter Notice by the freeholder. If an application is made to the Leasehold Valuation Tribunal, each party is usually responsible for their own costs in this respect.

Please note:

This factsheet is intended as a brief guide only and does not seek to summarise all of the provisions of the legislation which is complex. It should not be relied on by you and you should take specific professional advice relating to the particular circumstances of your own case.

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