

Your legal right to buy the freehold of a block of flats

Your legal rights

By Alan Zeffertt

This fact sheet deals with the rights for a qualifying majority of leaseholders to compel the Landlord of their building to sell the freehold to them.

These rights are granted by the Leasehold Reform Housing and Urban Development Act 1993 as amended by the Commonhold and Leasehold Reform Act 2002.

Does your Building qualify?

In order to qualify, the building must:

- Have not more than 25% of the internal floor area which is non residential.
- At least two-thirds of the flats must be let to 'qualifying leaseholders'.

The minimum number of leaseholders must be not less than half of the total number of flats in the building. Where there are only 2 flats, both must participate.

Please note: there is no right of collective enfranchisement (although there is a right to apply for a lease extension) if:

- The building is a conversion into 4 or fewer flats and the Landlord has owned it since before the building was converted and also he or an adult member of his family has lived there for the past 12 months
- The freehold includes any track, bridge or tunnel of an operational railway.
- The building is within a cathedral precinct, or is a National Trust or Crown property.

Are you a qualifying leaseholder?

To qualify, you must own a 'long lease', and not be a business or commercial tenant. But you no longer need to satisfy a residency test, nor do you need to have owned the lease for any minimum period.

A 'long lease' is defined as including:

- A lease for a term of years absolute in excess of 21 years when originally granted. Please note that the present unexpired term is not relevant.
- A shorter lease which contains a clause giving a right to perpetual renewal.
- A lease terminable on marriage or death or an unknown date.

- A leaseholder who has held over following the expiry of a long lease and the landlord has not served notice terminating the tenancy.
- A shared ownership lease where the leaseholder's share is 100%.

What are the usual procedures?

- You should first take legal advice to ascertain your right to claim the freehold.
- The next step is usually to obtain a valuation from a suitably qualified valuer. This is to ascertain what he considers the price should be for the freehold purchase. You will need this not only to find out the extent of your financial commitment, but also, the valuation figures will be used in the statutory notice which must be served on the freeholder.
- Your solicitors will carry out the legal process including obtaining land registry entries of the various freehold and leasehold titles and copies of the leases. They will prepare the Initial Notice ("IN"), the plan to be attached to the IN, and any Participation Agreement to be signed by all participating leaseholders. It is good practice to register a notice against the freehold title.
- After the IN has been served, the freeholder has at least two months to serve a Counter Notice ("CN"). In the CN the freeholder can either reject your IN on the basis that it is legally invalid or accept the IN but dispute the price, or simply accept the notice and the price. In most cases, the freeholder will accept the IN but reject the price. At that point, the valuers representing you and the freeholder will commence negotiations over the price.

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- If the surveyors cannot agree on the price to be paid within two months of the date of the CN, then an application can be made to the Leasehold Valuation Tribunal ("LVT") to determine the price.
- Please note: the participating leaseholders are jointly liable for the reasonable legal costs and surveyor's costs of the freeholder for dealing with the IN. This should be taken into account when estimating what your total outlay The freeholder is however responsible for his own professional costs in responding to your application to the LVT. Please also note that if at any time your IN is deemed to have been withdrawn, the participating leaseholders will be liable to pay the freeholders solicitors and valuers costs to date, and they will be unable to serve another IN for one year from the date of the deemed withdrawal.
- It is usually advisable to form a new limited company, to act as the vehicle for the purchase of the freehold title
- Once a price has been agreed or decided by the LVT, a contract is then entered into with the freeholder within 2 months of agreement being reached. Frequently, the parties proceed straight to completion. The freeholder can demand, on exchange of contracts, a deposit of 10% of the price subject to a minimum sum of £500.
- If the freeholder does not serve a CN or delays in completing the transaction, an application will need to be made to the court.

Other matters to note

The timing of the whole process from start to finish will depend on various factors including how co-operative the freeholder is. However, it is not unusual for the whole process to take up to 18 months, especially if the case is referred to the LVT or the court.

In order to save time and costs, participating leaseholders should appoint a representative who will be their authorised agent.

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