



COMMONHOLD AND LEASEHOLD REFORM ACT 2002

LEASE
EXTENSION
Getting Started



Introduction



This leaflet is not meant to describe or give a full interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties then seek specific advice.

The right provided by the 1993 Leasehold Reform Act (as amended) is for the grant of a new lease for a term of 90 years, plus the present unexpired term, all at a peppercorn rent (that is, rent free).

The formal procedure is started by the service of the Tenant's Notice on the landlord and it then follows a prescribed route. Although this is the beginning of the formal process for acquiring the 90-year extension, it should follow a period of preparation to ensure that you are fully equipped and advised to complete the acquisition.

There is a substantial amount of work to be completed before you start:

- *Checking eligibility (including identifying the 'competent landlord' – see page 3)*
- *Selecting and instructing professional advisers*
- *Assessing the premium*
- *Establishing the finance*
- *Gathering information*
- *Preparing the Notice*
- *Preparing for the subsequent procedures*

While the order in which these tasks are undertaken is a matter for you and your advisers, these are all subjects which should not be neglected. Once the Notice has been served, the procedure is running and you will be subject to demands for information and compliance with deadlines; a default at any stage could endanger the action. You will be liable for the landlord's professional fees from service of the Notice, whether you complete or not.

The procedures are relatively simple and the qualifications and conditions are there as safeguards to both parties. There is no reason why you should not be able to complete a lease extension application successfully.

It should be borne in mind that if an application for a lease extension is made, it will be suspended if the other leaseholders make an application simultaneously for the freehold. Similarly, during the currency of an application for collective enfranchisement, a flat owner cannot apply for a lease extension.

Checking eligibility and starting the process

You should first check that you meet the qualification requirements, that your lease is a long lease and that you have owned it for the last two years. Full details of the criteria are set out in the Qualification section below (see page 8).

In most cases the immediate landlord will be the freeholder, and therefore the obvious person for the flat owner to serve his Notice on. However, there will be cases where the immediate landlord possesses an intermediate lease which is too short to give the flat owner a 90-year extension.

This is not an obstacle to your right to a new lease. You will need to identify the competent landlord who has sufficient interest to grant the lease (see *Gathering information, pages 2 and 3*).

Instructing professional advisers

For a successful application you are recommended to appoint a valuer and a solicitor.

In addition to their general advisory capacity the roles of the two professionals include:

The valuer

- providing the 'best and worst' case valuation, in order to best advise you the possible outcome of the negotiations;
- advising on the amount of the offer to be made in the Notice;
- responding to the landlord's Counter-Notice;
- negotiation and settlement of the price and other terms of the lease, including representation at the Leasehold Valuation Tribunal (LVT).

The solicitor

- preparation of information for the application;
- service of the Notice on the competent landlord and copies to other landlords;
- response to landlord's requests for information to support the claim;
- conveyance of the new lease.

You should ensure that your chosen advisers have full knowledge and experience of the relevant legislative practices and procedures.

While LEASE does not recommend any particular professional advisors, lists of solicitors and surveyors claiming expertise in the legislation are available from us.

Assessing the premium payable

The legislation does not formally require a full valuation for an application for a new lease but it is strongly recommended that you do not proceed without proper valuation advice.

Valuation is far from an exact science and it will be virtually impossible for the valuer to provide an accurate estimation of the eventual settlement figure. The valuer should be able to provide a 'best and worst' figure, valuing from both the leaseholder's and the landlord's perspective and, from local experience, anticipating areas of claim and counter-claim. There is no such thing as a finite, fixed price for a new lease and you should be aware, from the beginning, of the likely range within which the price will be settled, so as not to be surprised at a later stage.

In considering the likely premium you should also bear in mind the leaseholders' liability for the landlord's costs. The eventual cost of the new lease will be the premium plus both your own and the landlord's 'reasonable' legal and valuation costs, except any costs which are incurred in connection with proceedings before an LVT.

Further details on assessing the premium payable are available in our leaflet 'Valuation for Lease Extension'.

Gathering information

Prior to the service of Notice, you will need to amass all necessary information:

- to ensure the Notice is correct and valid;
- to respond to any challenge from the landlord during the period after service of the Notice.

You will need to obtain the following information:

- i) the identity of the 'competent landlord' – a person, or company, name and address;
- ii) details of any intervening or head leases and the identity and address of the relevant lessees;
- iii) a copy of your own lease and the registered title.

The 'competent landlord' is the landlord with a sufficiently superior interest in the property as to be able to grant the 90-year extension – that is, an interest over 90 years longer than your present lease. In most cases this will probably be your immediate landlord if he is the freeholder or if he is a head-lessee with a lease which is sufficiently long. However, in some cases your immediate landlord may be a head-lessee with a lease only a few days, or a few years, longer than yours and therefore you need to identify the landlord with sufficient interest to grant you the new lease. To identify the competent landlord you will need to know the details, especially length of term, of any intermediate landlords who may be between you and the freeholder.

Some of this information you may already know; the remainder can be obtained by a number of means – from rights to information under Landlord and Tenant legislation, from the records of the Land Registry or by the service of Information Notices:

- **Landlord and Tenant legislation** – you are entitled to obtain details of the name and address of your landlord under rights provided by the Landlord and Tenant Act 1985. The information, if requested, must be provided within 21 days and failure to do so is an offence. Your ground rent demands should also carry the same details.

A problem here is that your immediate landlord may not necessarily be the competent landlord for the purposes of the Act.

- **Land Registry** – so long as the property is registered (most are) you are entitled to inspect the register and to obtain copies of the entry relating to the freehold. The entry will provide the name and address of the registered owner and details of any other interests in the freehold, including headleases and mortgages. There is a small fee for copies of the register.

There are a number of District Land Registries serving the country and you should contact the nearest office to find the Registry serving the area in which your property is located.

- **Information Notices** – Section 41 of the 1993 Act provides a right for leaseholders to serve notices on the freeholder, the landlord (if different) or any other persons with an interest in the property, requiring details of that interest.

You can therefore require from the freeholder details of any intermediate leases, including the name and address of the lessee and the terms of the lease. The Information Notices can also require sight of relevant documents, for example giving details of service charges or surveys.

The recipients of the Notices are required to respond within 28 days. The service of the Notices does not formally start the application for the new lease or commit you in any way and there is no liability for costs.

Suitable forms for S41 Notices are published by Oyez Forms and are available from the Solicitors' Law Stationery Society Ltd, Oyez House, P O Box 55, 7 Spa Road, London SE16 3QQ or from the Oyez shop at 144 Fetter Lane, London EC4.

Establishing the finance

You will need to know, before you begin, where the finance for the new lease will come from. More urgently you must commit funds to the professional fees of the valuer and solicitor. In the event of your withdrawal, after serving the Notice you will still have to pay your own, and the landlord's costs, and funds should be established for this purpose, and for paying the premium.

Preparing the Tenant's Notice

The Notice triggers the statutory procedures for acquiring the new lease and the leaseholder is liable for the landlord's reasonable costs as from the date he received the Notice. It is therefore important that the Notice contains no inaccuracies or misdescriptions because, although these can be corrected by application to the county court, it is an expense that should be avoided. An incomplete Notice can be rejected as invalid.

If the competent landlord is not the immediate landlord, then the original Notice will have to be served on the competent landlord and copies on the other landlords. The Notice to the competent landlord should specify to whom copies are being given.

A protection for leaseholders is the ability to register the Tenant's Notice with the Land Registry, either as a Class C(iv) Land Charge in unregistered land or by a notice or caution in registered land. This provides protection for the leaseholder against the landlord's sale of the freehold since any purchaser of the freehold, subsequent to the registration of the Tenant's Notice, will take the freehold subject to the application for the new lease. The procedure will therefore be able to continue as though the new owner had originally received the Tenant's Notice.

The service of the Tenant's Notice also fixes the 'valuation date' as the same date as the Notice. The valuation date is when the variables affecting the price are set – for example, the remaining number of years left on the lease, the present value of the flat and its assumed future value.

Therefore, however long the negotiation or determination of the price takes, it will be based on the factors applying on the date of service of the Tenant's Notice.

Leaseholders are advised to instruct a solicitor for the preparation and service of the Notice.

The information required in the Notice is set out in the Tenant's Notice section on page 9 and a suitable form is obtainable from Oyez, address as above.

Absent landlords

If, after all reasonable efforts, the landlord cannot be found, this should not prove an obstacle to application for a new lease; the issue can be resolved in other ways.

- If the landlord is a company in receivership, then the Tenant's Notice may be served on the Receiver; similarly, if the owner is an individual who is bankrupt, the Notice may be served on the Trustee in Bankruptcy. Both the Receiver and the Trustee are acting as landlord for the time being and are equally bound by the 1993 Act to respond, as landlord, in the service of a Counter-Notice and grant of the new lease.
- If the landlord just cannot be found, then the Tenant's Notice cannot be served. In this case the leaseholder may make application to the

county court for a Vesting Order. If the court is satisfied as to the leaseholder's eligibility for a new lease then it will, in effect, grant the lease to the leaseholder in the landlord's absence. The court will usually refer the case to the Leasehold Valuation Tribunal for determination of the premium.

Preparing for subsequent procedures

After the service of the Tenant's Notice the landlord is entitled to require evidence of the leaseholder's title to the flat and his period of ownership. The landlord has a period of 21 days from the date of service of the Tenant's Notice in which to request the information. Where this information is required, it must be provided within 21 days and you should therefore ensure that your solicitor is fully equipped with all necessary information and documents to enable response within the time limits. In the event that these are not met the Tenants' Notice would be deemed withdrawn with costs payable to the landlord. Where a Tenant's Notice is withdrawn or deemed to be withdrawn, it cannot be served again for another 12 months.

The landlord also has the right to inspect the flat for the purposes of a valuation, subject to three days notice.

Deposit

The landlord is entitled at any time after receipt of the Tenant's Notice to require the payment of a deposit. This may be 10% of the premium proposed in the Tenant's Notice or £250, whichever is the greater.

The landlord's Counter-Notice

The landlord must serve his Counter-Notice by the date specified in the Tenant's Notice; this must:

- agree your right to the new lease and accept your terms (or propose alternative terms);

or

- not admit your right and give reasons, which will need to be determined by the county court;

or

- claim right of redevelopment; the landlord can refuse to grant the new lease if he can prove to a court that he intends to demolish and redevelop the building. This only applies to applications where the remaining period of the lease is less than five years from the date when the notice was served.

Where, after service of the landlord's Counter-Notice, the leaseholder and the landlord cannot agree on the price or some other aspects of the conveyance, there is a statutory period for negotiation of at least two months but not more than six months. After the initial two months either party can apply to the Leasehold Valuation Tribunal for an independent determination on the issue. Clearly, your professional advisers must have all relevant documents at hand to deal with such an application.

Further details are available in our leaflet 'Application to the Leasehold Valuation Tribunal'.

In cases where the landlord fails to serve a Counter-Notice by the date specified in the Tenant's Notice the leaseholder may apply to the court for a Vesting Order. This application is not for a court order requiring the landlord to serve the Counter-Notice, but effectively takes the matter out of his hands in a request to the court to grant the new lease to the leaseholder in the landlord's default. The court will grant the order on the terms proposed in the Tenant's Notice.

The application must be made to the court within six months of the date on which the Counter-Notice should have been received.

Assignment of the application

Once the Tenant's Notice has been served (and registered) it may be assigned with the lease. This means that a leaseholder can serve the notice and then sell the flat with the benefits of the application. The purchaser will be able to proceed with the application immediately, without having to meet the two years ownership qualification. This can be of assistance in cases where a present short term of lease presents mortgage difficulties for a prospective purchaser.

Personal representatives

If a leaseholder who qualifies for the right to a new lease dies before making an application his personal representatives may exercise the right for a period of up to two years following grant of probate or letters of administration.

Terms of the new lease

You should be aware of the legislative requirements for the terms on which the new lease is to be granted:

- to be at a peppercorn rent (ie no rent) for the whole of the term (the 90 years plus the present unexpired term);
- to be on the same terms as the existing lease, subject to minor modifications and certain statutory exclusions and additions:
 - i) modifications – to take account of any alterations to the flat, or the building, since the grant of the existing lease (eg reference to gas lighting or coal stores), or to remedy a defect in the lease.
 - ii) exclusions – since the 1993 Act provides a right to perpetual renewal of the lease, any existing clauses relating to renewal, pre-emptions or early termination are to be excluded.
 - iii) additions – a requirement not to grant a sub-lease of sufficient length so as to confer on the sub-lessee a right to a new lease under the Act.
- the landlord's redevelopment right – the new lease must also contain a clause giving the landlord the right to repossession of the flat for the purposes of redevelopment. This right does not arise until the end of the term of the existing lease and is subject to a court application and the payment of full compensation to the leaseholder for the full value of the remaining 90 years. This will not cause any difficulties in mortgaging the flat.

Further advice and guidance is available from the Leasehold Advisory Service at any time during the preparation stage or following commencement of the action.

Procedures and statutory time limits



- Leaseholder serves S41 Information Notice (discretionary)
 - Landlord must respond within 28 days
- Leaseholder serves S42 Tenant's Notice
- The valuation date will be fixed as the date of service of the S42 Tenant's Notice
- Landlord may request additional information, but he must do so within 21 days of receipt of the Tenant's Notice
 - Leaseholder must respond to this request within 21 days
- Landlord must serve a Counter-Notice by the date specified in the Notice. This date must be at least two months from the date of service of the Tenant's Notice
- Where the landlord fails to serve the Counter-Notice, leaseholder must apply to court within six months for a Vesting Order
- After service of the Counter-Notice either party may apply to the Leasehold Valuation Tribunal. This must be done at least two months from, but within six months of, the date of service of the Counter-Notice
- Leasehold Valuation Tribunal determination becomes final after 28 days. Appeals must be made within this period to the Lands Tribunal, but only with the leave of the LVT
- After Leasehold Valuation Tribunal decision is final landlord must provide draft lease within 21 days
- Period of two months after decision becomes final for parties to enter into the new lease
- If the period above elapses without entry into new lease, then leaseholder must apply to court within a further two months requiring the landlord to meet his obligations

Qualification



Qualifying as a leaseholder

To be a qualifying leaseholder you must own a long lease and have owned it for the past two years.

A long lease is:

- a lease of a term of years absolute in excess of 21 years when originally granted*;
- a shorter lease which contains a clause providing a right of perpetual renewal;
- a lease terminable on death or marriage or an unknown date (including the so called 'Prince of Wales' clauses);
- a leaseholder having held over at the expiry of a long lease, and the landlord has not served a notice terminating the tenancy;
- a shared ownership lease where the leaseholders' share is 100%.

*The present unexpired term is not relevant; qualification is governed by the original term of the lease when first granted.

But, even if the leaseholder satisfies these criteria, he or she will not be a qualifying leaseholder if either of the following cases applies:

- the landlord is a charitable housing trust and the flat is provided as part of the charity's functions;
- the leaseholder is a business or commercial tenant.

The building

Some properties are completely excluded from the right to a new lease:

- buildings within a cathedral precinct;
- National Trust properties;
- Crown properties*.

*Although the Crown is not bound by the legislation the Minister has made a statement to the House of Commons that the Crown will be prepared to comply with the principles of it.

The Tenant's Notice



The requirements of the Tenant's Notice are set out in S42(3) of the Leasehold Reform Act 1993. It must contain the following:

- the full name of the leaseholder and the address of the flat;
 - sufficient information about the flat to identify the property to which the application relates;
 - details of the lease including its date of commencement and its terms;
 - the premium proposed for the new lease and or other amounts payable where there are intermediate leases involved*;
 - the terms that the leaseholder proposes for the new lease; (if different from the present lease);
 - the name and address of his representative if one has been appointed;
- and

- a date by which the landlord must give his Counter-Notice, which must be not less than two months from the date on which the Tenant's Notice is served.

*The premium quoted in the Notice may not be the price eventually agreed after negotiation or determined by the LVT, but it will be the figure from which the landlord calculates the deposit he requires (*see page 5*). The premium proposed must be realistic – the temptation to quote a very low figure in order to reduce the amount of deposit must be avoided or the Notice runs the risk of being found invalid.

Useful addresses

Leasehold Valuation Tribunals

London

10 Alfred Place, London WC1E 7LR
Tel: 020 7446 7700

Northern

1st Floor, 5 New York Street, Manchester M1 4JB
Tel: 0845 100 2614 Fax: 0161 237 3656 or 0161 237 9491

Southern

1st Floor, Midland House, 1 Market Avenue, Chichester PO19 1JU
Tel: 0845 100 2617

Midlands

2nd Floor, Louisa House, 92-93 Edward Street, Birmingham B1 2RA
Tel: 0845 100 2615 or 0121 236 7837 Fax: 0121 236 9337

Eastern

Great Eastern House, Tenison Road, Cambridge CB1 2TR
Tel: 0845 100 2616

Wales

1st Floor, West Wing, Southgate House, Wood Street,
Cardiff CF1 1EW
Tel: 029 2023 1687

Other useful addresses

Association of Residential Managing Agents (ARMA)

178 Battersea Park Road, SW11 4ND
Tel: 020 7978 2607 Fax: 0207 498 6153
Email: info@arma.org.uk Website: www.arma.org.uk

Association of Retirement Housing Managers (ARHM)

Southbank House, Black Prince Road, London SE1 7SJ
Tel: 020 7463 0660 Fax: 020 7463 0661
Email: enquirers@arhm.org Website: www.arhm.org

The Royal Institution of Chartered Surveyors (RICS)

12 Great George Street, Parliament Square, London SW1P 3AD
Tel: 020 7222 7000

The Federation of Private Residents' Associations

PO Box 10271, Epping CM16 9DB
Tel: 0871 200 3324 Email: www.fpra.org.uk

The Leasehold Advisory Service (LEASE)

31 Worship Street, London EC2A 2DX
Tel: 0845 345 1993 or 020 7374 5380 Fax: 020 7374 5373
Email: info@lease-advice.org Website: www.lease-advice.org



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