

# Lease Enfranchisement

The statutory right of collective enfranchisement (or purchase of freehold) is the right provided by the Leasehold Reform Housing and Urban Development Act 1993 to enable qualifying leaseholders to request the freehold of their building is sold to their nominee purchaser. Where there is any intervening interest, like a headlease, this must generally be acquired as part of the purchase by the leaseholders.

Clarion Housing Association Limited will agree to collective enfranchisement of qualifying properties in cases where there are enough qualifying leaseholders.

If leaseholders wish to pursue a collective enfranchisement application they may choose to follow either the statutory procedure or Clarion Housing Association Limited's own informal procedure.

Either way, leaseholders will be liable to pay the reasonable costs incurred by Clarion Housing Association Limited, whether or not the application proceeds to completion.

## 1. Criteria

Upon receipt of a request for lease enfranchisement the Purchase and Disposals team will first check the property complies with legislative requirements. In order for the building to qualify:

- there must be a minimum of two flats in the building;
- at least two-thirds of the flats must be leasehold;
- no more than 25% of the internal floor area to be in non-residential use.

Where the building qualifies, Purchase and Disposals will then need to establish that there are enough qualifying leaseholders for a successful action. The minimum number of participating leaseholders must equal half the total number of flats in the building. Where there are only two flats in the building, both flats of qualifying leaseholders must participate. To qualify for lease enfranchisement a leaseholder must own a "long lease", which is:

- a lease of in excess of 21 years when first granted;
- a shorter lease which contains a clause providing a right of perpetual renewal;
- a shared ownership lease where the leaseholder's share is 100%.

But, even if the leaseholder satisfies the above criteria, he or she will not be a qualifying leaseholder if any of the following cases apply:

- the landlord is a charitable housing trust and the flat is provided as part of the charity's functions;
- the leaseholder owns more than two flats in the building;
- the leaseholder has a business or commercial lease.

In cases where there the qualification criteria are not met the team will provide a full written explanation.

## 2. Planning Enfranchisement

Where sufficient numbers of leaseholders are prepared to proceed, it is advisable that they enter into a formal participation agreement amongst themselves to govern joint actions including rights of voting, the negotiation and agreement of terms, and individual financial contributions. In small blocks, or where amounts involved are small, it may be possible to dispense with the agreement by everyone paying their share up-front.

### 3. The Nominee Purchaser

The nominee purchaser is the person who will acquire the freehold and become the new landlord. The nominee purchaser must be decided upon at an early stage because he or she will conduct later stages of the process and, on completion, will be responsible for the management of the building. The nominee purchaser can be a person, one of the leaseholders, or a corporate person, a trust or a company formed by the leaseholders for the purpose. The most common format is a company wholly owned by the leaseholders, in which case the company must be established at the outset. A solicitor, managing agent or accountant will be able to advise how to establish a company and can produce the Memorandum and Articles to reflect the purpose of the company and to govern voting rights and control of shares.

### 4. Right to participate (proposed)

The Commonhold and Leasehold Reform Act 2002 provides a right for all qualifying leaseholders in the building to participate in the purchase. The legislation includes a proposed requirement for service of a formal invitation to participate to all qualifying leaseholders. This proposal has not yet been passed into law, but participating leaseholders may still find it useful to ensure that all leaseholders are aware of their proposals.

### 5. Establishing a cost fund

Leaseholders will need to agree at the outset how they intend to finance the acquisition of the freehold, including valuation and legal fees in addition to any premium payable. In the event of leaseholders having to withdraw, they will still have to pay their own and their landlord's costs.

### 6. Professional advisors

At some point in the action leaseholders are advised to appoint a valuer and a solicitor. In addition to their general advisory capacity the roles of the two professional advisers include:

The surveyor:

- providing 'best and worst' valuation advice to fully appraise the leaseholders of the possible outcome of the negotiations;
- advising on the amount of the offer to be made in the Initial Notice;
- responding to the landlord's Counter-Notice;
- negotiation and settlement of the price;
- advice on structural and repair condition and implications for future maintenance costs;
- advice on future management.

The solicitor:

- preparation of information;
- setting up the company;
- service of the Initial Notice;
- response to landlord's requests for substantiation of claim;
- the conveyance of the title;
- amendment of lease terms after enfranchisement.

Leaseholders should ensure their chosen adviser has full knowledge and experience of the legislation, practices and procedures. Lists of solicitors and surveyors claiming expertise in lease enfranchisement legislation may be found at [www.lease-advice.org](http://www.lease-advice.org)

### 7. Estimating the purchase price

On behalf of Clarion Housing Association Limited the Purchase and Disposals team strongly recommend that leaseholders first obtain a lease enfranchisement valuation from an independent RICS registered surveyor in order to provide an idea of the likely purchase figure prior to commencing the action. Although unable to provide an

accurate estimate of the eventual purchase figure, the surveyor should provide a 'best and worst' figure, valuing from both leaseholders' and the landlord's perspective and anticipating areas of claim and counter-claim. The eventual cost to each leaseholder will be the share not only of the purchase premium, but also of both the landlord's and the leaseholders' legal and surveyor fees.

## **8. Procedure option (1): Statutory**

### **A. The Initial Notice**

The Initial Notice triggers the statutory procedures for acquiring the freehold and the participating leaseholders are jointly and individually liable for the landlord's costs as from the date he receives the Notice. The Initial Notice must be served on the landlord at their registered company address which is: level 6, 6 More London Place, Tooley Street, London SE1 2DA.

It is therefore important that the Notice is complete and contains no inaccuracies that may invalidate it. It is advisable for participating leaseholders to instruct a solicitor for the preparation and service of the Initial Notice.

A protection for the enfranchising leaseholders is provided by the right to register the Initial Notice with the Land Registry, either as a Class C(iv) Land charge in unregistered land or as an 'estate contract' in registered land by a Unilateral Notice under the Land Registration Act 2002. This provides protection against the landlord's sale of the freehold by ensuring the enfranchising procedure can continue as though the new owner had originally received the Initial Notice.

The service of the Initial Notice also fixes the 'valuation date' as the same date that the Initial Notice is served. The valuation date is the date on which the variables affecting the price of the freehold are set,

for example, the remaining number of years left on the leases, the present values of the flats and their 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 the service of the Initial Notice.

The requirements of the Initial Notice are set out in S13(3) of the Leasehold Reform Act 1993. The Initial Notice must include:

- details of the property to be acquired, including a plan. This must include details of any additional land the leaseholders wish and have a right to acquire, e.g. garages, and any proposed rights of way over land not acquired;
- a statement showing that the premises qualify for the right of collective enfranchisement on the relevant date;
- details of any leasehold interests to be acquired, e. g. an intervening head lease, and any flats subject to mandatory leaseback to the freeholder;
- the price proposed;
- the full names and addresses of all the qualifying leaseholders in the property and sufficient details of their leases to show that they are long leaseholders;
- the name and address of the nominee purchaser;
- the date by which the freeholder is to provide the Counter-Notice (at least two months after service of the Initial Notice is given).
- The Initial Notice must be signed by all the participating leaseholders (there is no provision for persons acting under power of attorney).
- The Initial Notice must be served on the freeholder and any other person known or believed to be a relevant landlord (a person with a leasehold interest proposed to be acquired by the action).

After the service of the Initial Notice the landlord is entitled to require evidence of the participating leaseholders' title to their flats. The landlord has a period of 21 days from the giving of the Initial Notice in which to request the information. In the event that title is not deduced, the Initial Notice would be deemed withdrawn, with costs payable to the landlord. Where an Initial Notice is withdrawn, or deemed to be withdrawn, a new notice cannot be served again for another 12 months, beginning on the date of the withdrawal.

The landlord has the right to inspect the property, including the participating leaseholders' flats, subject to 10 days' notice given to the occupier.

## **B. The landlord's Counter-Notice**

Circle Housing Group must respond to the Initial Notice within the deadline provided. The Counter Notice will confirm the landlord's agreement to the transfer of the freehold interest to the leaseholders, provided it is correct. Before instructing solicitors to draw up the landlord's Counter Notice the Purchase and Disposals team will instruct an independent RICS registered surveyor to recommend the sale price. The Purchase and Disposals team will then instruct solicitors to issue the Counter Notice which will include the price and terms on which the landlord is prepared to sell.

The landlord's Counter-Notice must be served by the date specified in the Initial Notice. This must:

- agree your right to the freehold and accept your terms (or propose alternative terms)
- or, not agree your right and give reasons why not (which will then need to be determined by the county court)
- or, neither admit nor deny entitlement, but state that an application is to be made to court for an order that the right to

enfranchise cannot be exercised on the grounds the landlord intends to redevelop the whole or a substantial part of the building. This can only apply where at least two-thirds of all the leases in the building are due to terminate within a period of five years from the date of service of the Initial Notice.

In the unlikely case that your landlord fails to serve a Counter-Notice by the date specified in the Initial Notice, the participating leaseholders may apply to the county court for a Vesting Order to transfer the freehold to the participating leaseholders in the landlord's default. The court, if satisfied of the right to enfranchise, will grant the Order on the terms proposed in the Initial Notice. The application must be made to the court within six months of the date on which the Counter-Notice should have been received.

Following service of the Counter Notice, both parties' valuers will negotiate the purchase price. At the same time, respective solicitors will negotiate the terms of the legal document transferring the freehold interest to the nominee.

Where, after service of the Counter-Notice, the nominee purchaser and landlord cannot agree on the price or some other aspects of the conveyance, then after the initial two months, following service of the Counter-Notice, either party can apply to the Leasehold Valuation Tribunal for an independent determination. This application must be made at least two months from, but within six months of the date of service of the Counter Notice.

If the leaseholder does not make an application to the First-tier Tribunal (Property Chamber) and all the terms are not agreed to, the application will be deemed withdrawn. The leaseholder will be required to pay the landlord's costs and prevented from making another application to purchase the freehold

interest for 12 months beginning on the date the notice is withdrawn.

## 9. Procedure option (2): Informal

This is where no notice is served pursuant to the provisions of the Leasehold Reform Housing and Development Act 1993. Instead, leaseholders may informally approach their landlord by signed written request addressed to Purchase and Disposals, Clarion Housing Association Limited, Reed House, Peachman Way, Broadland Business Park, Norwich NR7 0WF or scanned and emailed to [sales.admin@clarionhq.com](mailto:sales.admin@clarionhq.com).

In cases where the property qualifies and there are enough qualifying leaseholders the Purchase and Disposals team will instruct an independent RICS registered surveyor to recommend the purchase premium. At this stage you will be required to pay the surveyor's fee directly to the valuer. A quote for the fee will be provided at point of contact. Our lease enfranchisement offer will reflect the recommendations of the independent surveyor and will be valid for a period of three months. You will be entitled to receive a summary of the surveyor's report.

In order to proceed with the lease enfranchisement your nominee purchaser must confirm the following in writing:

- Acceptance of the proposed purchase price.
- Willingness to pay the landlord's legal fees expected to be up to £1,000.
- Willingness to pay the landlord's administration fee of £250 (+VAT).
- Contact details for the solicitor acting for the nominee purchaser.

There is no right to buy the freehold by this informal procedure and consequently leaseholders cannot apply to the First-tier Tribunal (Property Chamber) to determine any terms. However, depending on the

nature of any agreement it may be enforceable through a County Court.

## 10. Completion

The solicitor acting for Clarion Housing Association Limited will liaise with the nominee purchaser's solicitor to prepare the Transfer of Freehold (and granting of new leases for any leasebacks as appropriate). Once solicitors have agreed a completion date the Purchase and Disposals team will provide a closing balance of account, to include apportionments of ground rent and service charges as well as any outstanding subaccount actuals from previous years.

At the point of completion the nominee must pay the purchase price and the landlord's legal and administration fees Clarion Housing Association Limited will no longer bear any responsibility for maintenance, management or and insurance.

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