

Briefing Note: Collective Enfranchisement

An Introduction to the Guide

This guide is aimed at Lessees who may be interested in compelling their Landlord to sell to them, the Freehold of the Building within which their flat is situated. It is designed to illustrate the requirements and process involved in collective enfranchisement and is designed to be a summary of the points to consider rather than detailed technical advice. This guide should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

1. Background

Under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') owners of residential flats were given the right to compel their freeholder to sell the freehold to them at the market price.

There is a statutory procedure to follow for enfranchisement. This procedure includes the preparation and service of notices upon the Landlord and any other interested party. Strict time limits are provided for within the statute and these must be adhered to if the notices are to be effective.

The advantages to enfranchisement are far reaching with the most common incentives being:-

- To enable management and improve maintenance of the building
- To secure your investment in the property
- To extend the leases
- To decrease liability for service charges
- To increase the potential value of your property

There are advantages to lessee's acquiring the freehold of their building prior to their leases reaching 80 years unexpired. If any of the leases have 80 years or less to run then 'marriage value' will become relevant and an additional sum will be payable to the freeholder in relation to this, possibly increasing the premium payable for the purchase.

2. Qualification for Participation

Before proceeding with enfranchisement it is essential that the qualifying requirements set out by the Act are considered and can be met:-

- The flats must all be in a self contained building
- No more than 25% of the building can be used for commercial space
- The original leases must have been granted for a period of over 21 years (a 'qualifying tenancy')
- At least 2/3^{rds} of all of the flats in the building must be 'qualifying tenancies' (whether or not participating)

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Summary:

A guide and summary of the requirements and process involved in collective enfranchisement.

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- At least 50% of the leaseholders must participate, or 100% if the building consists of 2 flats only.

Once it is established that all of these conditions have been satisfied the enfranchise process can begin.

3. Preliminary Considerations

Collective enfranchisement is a statutory procedure with a strict timetable. Notices that need to be served can be held as invalid if these time limits are not adhered to, which can lead to additional delays and costs. It is advisable to prepare in advance of serving the Initial Notice exercising the right to enfranchise. Matters to consider and discuss with us will include:-

- **A Participation Agreement** – this serves to set out the terms of the purchase from the beginning. These agreements are not compulsory but are highly recommended to ensure that all lessee's involved, understand their place in the process and further are aware from the beginning of their financial involvement.
- **Instructing a Specialist Surveyor** – a specialist surveyor will be able to advise on the potential best and worst price that you could expect to pay in relation to the freehold. This will help you to assess a realistic value to include within your Initial Notice which will prevent unnecessary delays and cost.
- **Setting up a Right to Enfranchise Company (RTE Company)** – it is not currently compulsory for the freehold to be purchased by a RTE Company. However, if there are over 4 lessee's participating in the purchase we would advise that a company limited by guarantee is formed and each lessee becomes a member.
- **Identifying the Freeholder** – Official Copies of the title to the freehold should be obtained from the Land Registry so that the identity of the relevant freeholder can be confirmed. It is imperative that the correct parties are served with any notices and identified at an early stage in the process.

4. The Initial Notice

Once all of the preliminary matters have been considered everything will be in place for the Initial Notice to be served. The Initial Notice sets out the following:-

- Details of the freehold property to be purchased
- Any rights to be granted to the
- Confirmation of the Lessee's ability to enfranchise
- The proposed purchase price for the freehold and any other property to be purchased
- The name of the purchaser, i.e. the RTE Company or the individuals. The purchaser is then known as the Nominee Purchaser
- Details of the qualifying tenants participating

The Initial Notice is then signed by all of the qualifying tenants and served on the freeholder. The notice will specify a date of no less than 2 months from the date of the notice, by which the freeholder must have replied, accepting or rejecting the claim to enfranchisement.

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The service of the Initial Notice fixes the 'valuation date' as the same date that the Initial Notice was served. The valuation date is important as it fixes the date on which the variables affecting the price of the freehold are set, i.e. terms remaining on leases, present values of flats etc.

5. The Counter Notice

The freeholder has the right to accept or reject the lessee's claim to enfranchise. It is likely that within the specified time period for reply the freeholder will investigate the value of the freehold and employ a surveyor themselves for this purpose. The freeholder has the right to access the property in order to assess the claim to enfranchise and the value.

The Counter Notice given by the freeholder must do one of three things:-

- Admit that the lessee's are entitled to exercise their right to enfranchise in relation to the property
- State that the lessees are not entitled to exercise the right and give subsequent reasons why
- Confirm that although they may or may not have the right to enfranchise the freeholder wishes to redevelop all or a substantial part of the premises

In addition to admitting that the lessee's have the right to enfranchise the freeholder is able to counter propose terms. This allows the freeholder to suggest an alternative value for the freehold interest, limit the rights claimed and request a leaseback of any relevant property.

If no Counter Notice is served by the freeholder then it may be necessary for the nominee purchaser to apply to the Court for determination of the terms and a final order.

6. Determination of Terms of the Right to Enfranchise

The Counter Notice will determine whether there are any terms of agreement in dispute which will lead to two possible outcomes:-

- **No terms in dispute** - the freehold purchase can proceed and will proceed to transfer as soon as possible, or within 21 days at the most. This will involve a Transfer document being signed by the freeholder and the purchase price being handed to them as consideration through solicitors. The Transfer will then be registered at the Land Registry and the freehold transferred into the nominee purchaser.
- **Terms in dispute** – if there are terms identified to be in dispute in the Counter Notice then both parties will have a period of two months from the date of the counter notice to try and reach an agreement. If the negotiations are successful then the matter will move to completion. If however, terms remain in dispute and there seems to be no prospect of agreement, either party may apply to the Leasehold Valuation Tribunal (LVT) for determination.

7. Application to the LVT

Application for determination of terms at the LVT must be made no later than the end of the period of six months from the date of service of the Counter Notice. If no application is submitted to the LVT within this time period the claim to enfranchise is deemed as withdrawn.

On considering the application, the LVT may decide to have a paper hearing, based on the evidence provided, or a personal hearing where all parties and expert evidence may be called upon.

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A decision will then be given by the LVT which will confirm the terms of agreement. Both parties will then be expected to enter into a binding contract within an 'appropriate period' and complete the transfer of the freehold. If there is a delay then either party can make an application to the County Court requesting a final order and directions as to how and when the transfer should be completed.

8. Determination of Value

The provisions for determining the price payable for the freehold are set out in the Act and are lengthy and detailed which is why it is advisable to employ the use of a surveyor for advice.

Generally speaking the price of the freehold will be made up of two values:-

- **The Open Market Value** – this is the amount at which, on the valuation date, the freehold might have expected to be sold at if being sold by a willing seller.
- **Marriage Value** – this amount is a variable amount depending on the terms of the Leases currently affecting the freehold title. If leases have over 80 years to run no marriage value will be payable. However, if the leases granted have expired to a term of less than 80 years, then the freehold reversion is suggested as 'worth more' to the freeholder. This is due to the fact that once the lessee's have purchased the freehold they can grant new long leases to themselves for no additional cost and without the need for additional ground rents.

Both of these values are subject to many variations and considerations which can vary from time to time. Comparisons can be used for other freehold purchases in your area but particular attention must be paid to the fact that these may vary massively depending on the individual circumstances.

9. How much will it Cost?

The cost of the process depends on the route that the enfranchisement takes and in addition the amount of participating lessee's involved. At the initial appointment we will give you full details of our charging rate and an estimate of the overall cost to you based on the individual case. We will also provide you with details of any disbursements that we will need to incur on your behalf and update you regularly as to whether the cost is expected to change due to applications to the LVT etc.

The nominee purchaser will also be responsible for the freeholders costs incurred in relation to the matter after service of the Initial Notice. Liability for the freeholders legal fees, surveyors fees and incidental costs will be payable by the lessee's and if a participation agreement is entered into this will set out the proportion payable by each individual.

If the matter makes it to the LVT then liability of the freeholder's costs are likely to abate. The LVT has very limited powers to award costs and therefore each party should be liable for their own costs.

Any group exercising Collective Enfranchisement should be aware that there are provisions waiting to be implemented in relation to Stamp Duty Land Tax (SDLT) and enfranchisement, allowing an exemption. At present however, if the purchase price of the freehold is over £175,000 then SDLT will be payable at the relevant percentage.

The purchase of the freehold will also attract Land Registry fee's which will vary depending on the final price agreed for the purchase.

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10. How long will it Take?

There is no set time limit for the process of enfranchisement. The set up, a valuation, giving legal advice and organising all of the participating lessee's may take up to 3 months.

The time scale from this point could vary between a few months (if the freeholder accepts the claim) to a year to 18 months (if there is a dispute in relation to the claim and the terms cannot be agreed). Additional time should be anticipated if applications to the LVT or County Court are necessary.

However, once all of the terms of the contract are agreed, a period of up to two months for the completion and registration of the ownership of the freehold can be anticipated.

If you would like to know more about this topic or our other legal services, please contact:

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