

Leasehold Property - Collective Enfranchisement

Introduction

This guide 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') Lessee's of residential flats were given the right to compel their Freeholder to sell the freehold to them at market value.

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

The advantages to enfranchisement to Lessee's are far reaching, with the most common incentives being:-

- To enable lessee's to manage and maintain the building
- To secure investment in the property leasehold property
- To extend the term of the leases
- To possibly decrease liability for service charges
- To increase the potential value of the leasehold properties

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

Both the building and Lessee's must meet certain criteria set out in the Act before a claim for enfranchisement can be pursued. These are:-

- 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)
- 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 Lessee's can begin the enfranchisement process.

Briefing Note

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Summary:

A guide and summary of the requirements and process involved in collective enfranchisement for Lessee's and Freeholders.

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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 frames are not adhered to. This can lead to additional delays and costs. It is advisable for Lessee's to seek specialist legal advice 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 enfranchisement. This will help assess a realistic value to include within the 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 and other Interested Parties**– Official Copies of the title to the freehold should be obtained from the Land Registry so that the identity of the relevant Freeholder and third parties 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 Lessee's
- 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, no less than 2 months from the date of the notice, by which the Freeholder must have replied, accepting or rejecting the Lessee's claim.

The date of service of the Initial Notice then fixes the 'valuation date'. This will be the date on which the Initial Notice was served. This 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.

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5. The Counter Notice

The Freeholder has the right to accept or reject the lessee's claim to enfranchise. Within the specified time period for reply the Freeholder should investigate the Lessee's claim to enfranchise and employ a surveyor to undertake an assessment of the value of the freehold and other interests being claimed. The Freeholder has the right to access the leasehold properties in order to assess this..

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
- State that the Lessees are not entitled to exercise the right
- 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.

It is imperative that the Freeholder serves a Counter Notice as if they fail to do so then the nominee purchaser will be able to apply to the Court for determination of terms and a final order without evidence from the Freeholder being considered.

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 First Tier Tribunal (FTT) for determination.

7. Application to the FTT

Application for determination of terms at the FTT 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 FTT within this time period the claim to enfranchise is deemed as withdrawn.

On considering the application, the FTT 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 FTT 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 for both the Lessee's and Freeholders to employ the use of a surveyor.

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. 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 FTT etc.

The nominee purchaser will 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.

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

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 FTT 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 legal services, please contact Melanie Verth on 01323 435900 or mjv@gabyhardwicke.co.uk

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