

Leasehold Property - Lease Extensions

Introduction

This guide is designed to illustrate the requirements and process involved in lease extensions under the Leasehold Reform, Housing and Urban Development Act 1993, 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

Leases are wasting assets, the value of which diminishes over time. Traditionally, leasehold interests have been granted to tenants for fixed periods of usually 99 or 125 years. Once this term has expired the property returns to the ownership of the Landlord without any form of compensation payable.

The Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') provides individual Lessee's with the right to extend their leases for an additional term of 90 years after the present term expires and to have their ground rent reduced to a peppercorn per annum.

The main advantage for extending an individual residential lease is value. This is due to the fact that as a lease becomes shorter, its value diminishes. This means the leasehold interest will become more difficult to sell and mortgage and may not be so attractive to potential purchasers.

There are financial advantages to Lessee's acquiring a lease extension prior to their lease reaching 80 years unexpired. Due to 'marriage value', you can expect to pay anything up to 50% more to extend a lease with a term of 79 years remaining than you would if you extended when there were 80 years remaining. It is also worth noting that mortgage lenders do not like lending on leasehold properties which have terms of less than 70 - 75 years remaining.

Although Lessee's have this statutory right to extend, it should be noted that a Lessee can approach their Landlord at anytime to see if they would be willing to extend the lease by way of negotiation. By dealing with the matter this way it may be possible to keep costs down and proceed with an extension without delays or time limits. The Lessee's statutory right to extend will not be affected by any initial approach to the Landlord and therefore, this may be a preliminary consideration.

2. Qualification for the Right to Extend

A Lessee must ensure that they meet the qualifying requirements set out by the Act before proceeding with a statutory lease extension. These are:-

- The Lessee must own a long lease (i.e. a lease of a residential property which was originally granted for a term of over 21 years)
- The Lessee must have been the registered owner of the property at the Land Registry for a period of over 2 years

Once it is established that these requirements have been met an application for a lease extension pursuant to the Act can be considered.

Briefing Note

Reviewed July 2017

Summary:

A guide and summary of the requirements and process involved in extending a residential long lease for use by Landlords and Lessee's.

Author: Melanie Verth

For detailed advice on all leasehold property matters please contact:

Melanie Verth
Partner

01323 435900

mjv@gabyhardwicke.co.uk

Leasehold Property - Lease Extensions

3. Preliminary Considerations

The statutory route for a lease extension is a procedure which is subject to a strict timetable. Notices that need to be served can be held as invalid if time limits are not adhered to or qualifications not met. This could lead to additional costs and delays. It is advisable to seek specialist legal advice in advance of service of the Initial Notice. Matters to consider and discuss with us will include:-

- **Instructing a Specialist Surveyor** – a specialist surveyor will be able to advise on the potential best and worst premium that you could expect to pay for the extension. This will help the Lessee assess the realistic value to include within an Initial Notice.
- **Identifying the Relevant Landlord** – it is imperative that the correct Landlord is identified before service of the Initial Notice. An Immediate Landlord will not necessarily be the Competent Landlord who is capable of granting a lease extension. Official Copies will need to be obtained from the Land Registry to assess the relevant parties and to ensure that there is sufficient interest in the property to grant the extension.
- **Funding and Mortgage Lenders** – once advice has been sought in relation to the valuation of the premium, consideration should be given to the availability of funding. The Landlord can request a payment of a 10% deposit or a sum of £250 (whichever is the greater) upon service of the Initial Notice. The remainder will then have to follow upon completion. Further, if the property is subject to a mortgage then it will be necessary for the lenders consent to the new lease to be sought and a Deed of Substituted Security to be entered into.
- **Ground Rent and Service Charge Payments** – it should be noted that these payment must be paid up to date upon grant of the new lease. Consideration should therefore be given as to whether there are any arrears or outstanding payments due.
- **Determination of the Terms to be Varied** - the Act confirms that the new rent in the extended lease will be a peppercorn and that the term will be extended to a further 90 years after the term date of the existing lease. In addition to this any party to the lease can request that other existing terms are varied or even suggest that a complete new lease is substituted. This may be relevant if the old lease is considered out of date or defective in some way. If any such variations are suggested it will be necessary for both parties to consent. If they do not then the variation will not be possible.

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:-

- The address of the property
- The particulars of the existing lease
- The premium proposed for the extension
- Any new terms which should be included in the new lease

The Initial Notice is then signed by the applicant personally and served on the relevant Landlord and any other relevant third parties, being parties to the lease, i.e. management companies and sureties. A date of no less than 2 months from the date of the notice will be specified by which the landlord must have replied, accepting or rejecting the request for an extension.

Leasehold Property - Lease Extensions

The date of the Initial Notice fixes the 'relevant date'. This is important as it fixes the date upon which variables affecting the premium are set i.e. the term remaining on the lease, the present value of the property etc.

Lessee's will be advised that as soon as the notice is served that they should arrange for details of the notice to be registered against the freehold title to ensure that it binds any future purchaser.

Landlords will be advised that upon receipt of an Initial Notice a deposit should be requested on account of the premium. This will be the greater of (i) £250 or (ii) 10% of the premium proposed by the Lessee. This is payable by the Lessee within 14 days of request.

5. The Counter Notice

If the Lessee has the right to a lease extension as a qualifying tenant then the Landlord has to accept the Lessee's claim. If the Lessee does not qualify then rejection is permitted. Once the initial Notice is received then the Landlord should, within the specified time frames, i) request proof that the Lessee has the right to a lease extension and ii) request payment of the deposit and iii) enter the property with a surveyor to obtain a valuation for the relevant premium.

A Counter Notice should then be prepared and served and must do one of three things:-

- Admit that the lessee has a right to a new lease
- State that the lessee is not entitled to a new lease
- Confirm that although they may or may not have the right to a new lease the landlord wishes to redevelop the premises of which the flat forms a part of

If the landlord admits that the lessee has the right to a new lease they can also state which proposals are accepted and which are rejected which will lead to one of two outcomes:-

- **No terms in dispute** – if the Landlord agrees to the proposals of the Lessee or negotiations resolve any dispute then the new lease should be prepared by the landlord and served on the lessee within 14 days. The Lessee can then seek to make any amendments which should be returned to the Landlord within 14 days. The Landlord will then have a further 14 days within which to make further amendments or put together engrossment copies of the lease for execution prior to completion. A completion notice can be served by either party once the lease is approved noting that completion will take place after the expiration of 21 days after service of the notice.
- **Terms in dispute** – if there are terms in dispute then both parties will have a period of two months from the date of the counter notice to try and reach an agreement. If no agreement can be made either party may apply to the Leasehold Valuation Tribunal (LVT) for determination.

If the Landlord fails to serve a Counter Notice in the specified time period then the Lessee can apply to court for a new lease on the terms set out in their Initial Notice.

Leasehold Property - Lease Extensions

6. Application to the First Tier Tribunal (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 the new lease 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.

A decision will then be given by the FTT which will confirm the terms of agreement. Both parties must then adhere to the time frame as detailed above in Section 5, as if no terms are in dispute.

7. Determination of Value

The provision for determining the price payable for the new lease is set out in the Act and the calculation is one based on the following:-

- **The Diminution in Value of the Landlords Interest** – roughly speaking this is seen as the difference between (a) the value of the Landlords interest in the Lessee's flat prior to the grant of the new lease and (b) the value of his interest after the lease is granted. There are many integral assumptions that are made in the calculation of this value and expert advice should be sought.
- **Marriage Value** – this amount is a variable amount based on the value of the Landlords interest. In crude terms it can be determined that if a lease has over 80 years to run then no marriage value will be payable and vice versa.

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

8. Mortgages Existing on the Property

If there is a mortgage on the Landlords title then consent will usually need to be obtained before looking to register the new lease at the Land Registry. This is normally in the form of a letter of consent from the lender confirming that the terms of the lease are acceptable to them.

If the leasehold title has a mortgage then additional consent will also need to be sought in the form of a Deed of Substituted Security. This is a document which confirms to the lender and the Land Registry that the old lease has been substituted for the new lease and that the new lease should remain subject to the existing mortgage. There can be some administration fees payable to the lender in these circumstances and this will be an additional cost that should be considered. When the terms of the new lease have been determined we will contact the lender on your behalf asking for their approval and deed for signature.

9. How much will it Cost?

The cost of the process depends on the outcome of the Initial Notice and Counter Notice. At our 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.

Leasehold Property - Lease Extensions

The Lessee becomes responsible for any relevant persons costs incurred after service of the Initial Notice. Liability for the Landlords legal fees, surveyors fees and incidental costs will be payable upon completion and if the claim is withdrawn at any time cost will be payable up to that date.

The new lease will need to be registered at the Land Registry and these fees will vary depending on the final price agreed for the lease.

10. How long will it Take?

There is no set time limit for the process of a lease extension. The initial valuation and legal advice may take up to 3 months.

The time scale from this point could vary between a few months (if the landlord accepts the claim) up to a year (if there is a dispute in relation to the claim and the terms cannot be agreed). This additional time should be expected if applications to the FTT or County Court are necessary.

However, once all of the terms of the new lease are agreed a period of up to 3 months for the completion and registration of the new lease can be expected.

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

Gaby Hardwicke
33 The Avenue
Eastbourne
East Sussex
BN21 3YD

Tel: 01323 435900
Fax: 01323 435901
www.gabyhardwicke.co.uk