



INTRODUCTION

This Fact Sheet sets out details relating to collective enfranchisement (buying the freehold of the building) for leaseholders of flats. These rights are contained in the Leasehold Reform Housing and Urban Development Act 1993 as amended. The rights relate to flats only. There are similar rights for houses contained in separate legislation but these rights are not dealt with here.

We have tried to make this Fact Sheet easy to understand but we have not attempted to cover every aspect of the legislation. It is not intended, therefore, for this Fact Sheet to be a substitute for professional advice. There is a separate Fact Sheet dealing with the right to renew or extend leases of flats.

In general, the right to enfranchise applies to leases of flats which were originally granted for a fixed term of more than 21 years. The value of such leases diminishes as the lease gets shorter and prospective purchasers may find it difficult to obtain mortgages secured on leases with less than 50 or 60 years left to run. This is one of the possible reasons that long leaseholders may wish to either renew/extend their lease or alternatively, to purchase the freehold of their building. You may also be dissatisfied with the management of the building. It is important to note that the right to enfranchise (i.e. purchase the freehold) is a collective right for a group of leaseholders, whilst lease renewal is an individual right for leaseholders to buy a longer lease to replace their existing lease.

ENFRANCHISEMENT

Subject to certain conditions, leaseholders of flats have the right to enfranchise their building as a group if they and their building qualify. They have this right even if the freeholder or landlord does not wish to sell. This is known as the right to enfranchise. To exercise this right the group of leaseholders have to appoint a "Nominee Purchaser" to act throughout the process and who will then own the freehold after the process has been completed. Once the freehold has been purchased, the leaseholders (through the Nominee Purchaser) can decide how they want to manage the building, for example by appointing a Manager to do so on their behalf should they not want to manage the building themselves.

To have these rights you must be a "qualifying tenant". This means that you must be a long leaseholder of a flat. It does not matter if your lease has less than 21 years left to run and you do not have to be the person who was first granted the lease. It must, however, have been granted originally for a period in excess of 21 years. Typically, this may have been for 99 or 125 years.

If you are a qualifying tenant you can only buy the freehold with a group of other qualifying tenants if your building satisfies the following criteria:

- There must be two or more flats in your building. If there are only two flats, both must participate in the exercise.
- At least two thirds of all the flats in your building must be held on long leases.

- Not more than 25% of the internal floor area (apart from common parts such as stairs) of the building is in non-residential use or intended for non-residential use, for example as a shop or an office.
- The number of tenants participating must also equal at least half of the flats in the block.

For example, in a block of 12 flats, at least eight flats must be held on long leases and at least six long leaseholders would need to participate in the enfranchisement process. There are also a number of exceptions set out in the Act which must be checked before proceeding further.

The Property

The right to enfranchise is the right to buy as a group, the freehold of the building and any leases superior to those of qualifying tenants (for example head leases). This right also includes the right to purchase the freehold of any property and areas of your leases which you are allowed to use, for instance, gardens, garages and parking spaces. It does not include, however, any parts of the building not let to qualifying tenants, for instance shops, offices and flats let on short leases. In these circumstances, you can still purchase the freehold but you must then grant a “leaseback” to the former freeholder of those parts which are not included. There are also certain terms which must be included in such a leaseback.

The Nominee Purchaser

At the outset, you have to name someone to act for you throughout the process. This person is called the Nominee Purchaser and who will own the freehold after the enfranchisement process has been completed. It is important, therefore, to decide early on how you want the building to be owned and run in the future. It is common practice for a company to be set up by the leaseholders specifically to own the freehold, although it is also possible to enfranchise in your own names.

The Costs

You will have to pay the freeholder a fixed price for the purchase which is calculated in accordance with the terms of the Act. The way this is calculated is complicated and you will need professional advice from a valuer experienced in such matters at the earliest opportunity. The price payable to enfranchise includes three elements:

1. The open market value of the building, assuming the leaseholders are not in the market to buy;
2. Half of any marriage value that may be payable - although there is no marriage value payable where a lease has more than 80 years to run; and
3. Any compensation that may be payable to a landlord for severance or other losses.

In addition, the Nominee Purchaser must pay the freeholder’s reasonable costs incurred during the enfranchisement process. The Nominee Purchaser will also incur its own costs in obtaining valuations, professional advice, etc. Estimates of these costs should be obtained at the earliest opportunity so that you can ensure that you and the other qualifying tenants are in a financial position to proceed before starting the process.

The Enfranchisement Process

1. Before you start

If you feel you do not have sufficient information to decide whether you wish to proceed, you can serve a notice on the freeholder requiring him to provide you with the full name and address of the

freeholder, the names and addresses of all those who hold other interests in the building and details of those interests and any other relevant information.

2. Further Considerations

Before proceeding further, you should, at this early stage, ensure that:

- Your building satisfies the rules;
- At least two thirds of the flats in the property are held on long leases;
- The number of tenants participating in the enfranchisement is at least half the total number of flats in the block; and
- You and your other qualifying tenants are in a financial position to proceed.

3. Beginning the Process

The enfranchisement process starts when the leaseholders, as a group, give notice to the freeholder. This is known as the Initial Notice and it commits you to pay the freeholder's reasonable costs from the date that it is served. There is no prescribed form but in the Notice you must give certain details about you and your fellow qualifying tenants, the extent of the property you wish to purchase and the price you are willing to pay. The freeholder then has two months in which to serve a counter-Notice where the freeholder can either accept your rights to enfranchise or seek to challenge them. If your rights are accepted, the freeholder can either accept the terms you suggest or put forward different ones.

4. Agreeing the Terms

Thereafter the Nominee Purchaser and the freeholder are allowed time to agree the terms of the transaction. The parties must enter into a binding contract within two months of the date when terms are agreed. The sale/purchase can then proceed in the normal way and on completion, the purchase monies and costs are paid to the freeholder who then transfers the freehold to the Nominee Purchaser.

5. Further Action

If you cannot agree terms with the freeholder, then the terms of the transaction will have to be decided by either the Court or the Leasehold Valuation Tribunal. The Court deals with disputes about whether the rights apply to you and the Leasehold Valuation Tribunal deals with disputes over the terms on which you buy the freehold, including the price.

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Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.