



Factsheets

Lease Extension



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Introduction

This factsheet provides an outline of the right to extend the lease of a flat in England & Wales under the Leasehold Reform Housing and Urban Development Act 1993.

A lease is a form of contract and it states contractual obligations of a leaseholder and those of the competent landlord. When purchasing a leasehold property you are agreeing to abide to the covenants and to fulfil certain obligations of such lease. The lease agreement will cover all aspects regarding your property and can help you understand some commonly asked questions such as the extent of any common parts or maintained areas, what falls within your demise, what your percentage of service charge is, how much your ground rent is per annum and how many years there are remaining on the lease.



Lease extension of flats – Leasehold Reform Housing and Urban Development Act 1993.

The lease on a flat will begin to depreciate from the commencement date, which in turn causes the cost of the lease extension to increase year on year.

Every lease is gradually losing value, the shorter any unexpired term becomes, the less it is worth and therefore the lease extension becomes more expensive. A short lease is usually more difficult to sell.

This factsheet explores the leaseholder's statutory right to extend their lease. Alternatively, it may be possible to negotiate a lease extension with your Landlord, this is known as an informal agreement. There are no set rules with an 'outside of the Act' agreement and the landlord could refuse to extend your lease as they have no obligation to do so. If the landlord is willing to propose informal terms, they may offer a shorter lease length than what the leaseholder is entitled to under the Act and they may retain/increase the ground rent as an associated term. It may be worth enquiring about an informal agreement first, as it may be the case (and often is) that a sole valuer will be appointed to provide the valuation for both parties.

The Leasehold Reform, Housing and Urban Development Act 1993 (as amended by subsequent Acts) allows leaseholders to exercise their right in order to obtain a 90 year extension to the current unexpired term

with a peppercorn ground rent. Certain legal criteria must be adhered to for a leaseholder to qualify. The act allows a leaseholder to add 90 years to what is left on the existing lease at a peppercorn rent. This means no ground rent is payable on completion of the lease extension. The ground rent that may have been stated within the original lease would be extinguished. For example, if a lease had 60 years remaining the new, extended lease would be for 150 years.

If a leaseholder has been the registered owner, personally or through a company for 2 or more years and the original lease was granted for more than 21 years, they have the right to extend the lease for an additional 90 years to their current unexpired term. This is known in the industry as the formal route and it involves the service of a Section 42 Notice under the Leasehold Reform, Housing and Urban Development Act 1993 after first obtaining a valuation of the proposed lease extension cost. The Landlord is entitled to a premium (the price) for the lease extension based upon a formula set out in the Leasehold Reform, Housing and Urban Development Act 1993. There is a substantial amount of work to be completed before the leaseholder can start the process. Eligibility will need to be checked against the qualifying legal criteria in order to exercise such right under the Act. The competent landlord must also be identified and confirmed so that the



notice is served upon the correct party. Once eligibility has been checked the leaseholder will need to instruct professional advisers, namely surveyor and solicitor. The surveyor will assess the premium payable based upon inspection of the property. Once the valuation report has been completed the leaseholder must establish finance, if needed to fund the premium payable. The solicitor can then prepare the notice based upon the surveyor's valuation report. Once the section 42 notice has been served preparation for subsequent procedures must be completed. There are vital diary dates that need to be adhered to under the Act once notice has been served.

The leaseholder will need to instruct a surveyor to calculate the premium payable. The surveyor will inspect the property, however, in some cases a desktop report may suffice. The report will provide the leaseholder

with a realistic valuation and indicates valuation scenarios, along with a figure to insert into the section 42 notice. The section 42 notice will be served upon the competent landlord. The competent landlord is the landlord with sufficient interest in the property as to be able to grant the 90 year extension. The immediate landlord in most cases will be the freeholder, conversely, there are cases where the immediate landlord possesses an intermediate lease or head lease which is too short to give the flat owner a ninety year extension. This is not an obstacle; however the leaseholder/ leaseholders legal representative will need to identify the competent landlord who has sufficient interest to grant the lease.

If the competent landlord cannot be located, also known as an absent landlord, then the leaseholders' Notice cannot be served. The

leaseholder may submit an application to the county court for a lease extension, as a Vesting Order. If the court is satisfied as to the leaseholder's eligibility for a new lease then it will, in effect, grant the lease to the leaseholder in the landlord's absence. The court will usually refer the case to the Tribunal for determination of the premium. Therefore the leaseholder must still supply a valuation report in order to justify any premium they are contending.

The valuation varies upon the value of the unit, the ground rent payable and if marriage value is applicable. Marriage value is only applicable with leases under 80 years. When extending the lease the freeholder is entitled to compensation, which is known as the Premium payable.

The Valuers job is to assess the three following components:

A. Capitalisation of the Ground Rent.

The remaining ground rent will be capitalised for the remainder of the term and the yield adopted will depend on the amount of ground rent payable and the review pattern if any.

B. Reversion

In theory the freeholder has the right to have the leasehold unit revert back at the end of the lease which consequentially will be delayed by an extra 90 years when

extending under the Act. Therefore the freeholder will need to be compensated for deferring the unit by the additional 90 years.

C. Marriage Value

This only applies where the lease length falls below 80 years. Above 80 years no marriage value is applicable hence the lease extension is so much cheaper.

Marriage value is the additional value which is realised by merging the existing interests (short lease and freeholder) compared to the new long leasehold value.

The total of all three of these calculation components will be the premium payable which means the amount the freeholder is entitled to receive.

A section 42 notice will be served upon the freeholder to start the process this is usually prepared and served by a legal representative. The freeholder will have a two month period to respond with the response date being stated within the section 42 notice. Within these two months the freeholder can request access to the flat for their own valuation, deduction of title and payment deposit. The freeholder will then serve a counter notice (section 45 notice) based upon their own valuation. The leaseholder is liable for the freeholders legal and valuation fees as stated under the Act. The fees must be

reasonable under section 60. If the fees are deemed unreasonable the leaseholder can apply to the tribunal for cost determination.

Once the Tenant's Notice has been served it may be assigned with the lease. This means that a leaseholder can serve the notice and then sell the property with the benefit of the claim being passed to the potential purchaser on completion of the sale. The purchaser will be able to proceed with the application immediately, without having to meet the two years ownership qualification. This can be of assistance in cases where a present short term lease presents mortgage difficulties for a prospective purchaser.

In addition to the premium being agreed the lease terms must also be agreed in order for the lease extension to be completed. Legislative requirements require the lease to be at a 'peppercorn' rent (effectively zero rent) for the whole of the term, the 90 years plus the current unexpired term. The lease must be on the same terms as the existing lease, subject to minor modifications and certain statutory exclusions and additions: modifications – to take account of any alterations to the flat, or the building, since the grant of the existing lease or to remedy a defect in the lease. Exclusions – since the 1993 Act provides a right to perpetual renewal of the lease, any existing clauses relating to renewal, pre-emptions or early

termination are to be excluded. Additions – a requirement not to grant a sub-lease of sufficient length so as to confer on the sub-lessee a right to a new lease under the Act. The landlord's redevelopment right – the new lease must also contain a clause giving the landlord the right to repossession of the flat for the purposes of redevelopment. This right does not arise until the end of the term of the existing lease and is subject to a court application and the payment of full compensation to the leaseholder for the full value of the remaining 90 years. This will not cause any difficulties in mortgaging the flat. If the section 42 notice figure and section 45 notice figure differs, the respective valuers will seek to narrow the valuation variables that may be in dispute via negotiation. If an agreement is reached there is no need to apply to the First Tier Property Tribunal for determination.

If the freeholder's and leaseholder's respective parties cannot reach agreement either party can apply to the First Tier Property Tribunal within 6 months of the counter notice date but not before two months after the counter notice date. The tribunal decision is based on evidence from both parties in order for them to determine the correct premium that should be applied for the lease extension.

Summary of the Process

- Service of section 42 notice. The valuation date will be fixed at the date of the notice.
- Competent Landlord must serve a Counter-Notice (section 45 notice) by the date specified in the notice. This date must be at least two months from the date of service of the section 42 notice.
- If the landlord fails to serve the section 45 Counter-Notice, the leaseholders must apply to the county court within six months in order to obtain a vesting order.
- If the premiums differ within the two notices, the surveyors may be instructed to negotiate a premium payable by exchanging valuations and narrowing any valuation variable that may be in dispute.
- If an agreement cannot be reached then either party may apply to the Tribunal. Application must be lodged no sooner than two months from, but within six months of, the date of service of the Counter-notice.
- The Tribunal determination becomes final after 28 days. Appeals must be made within this period to the Lands Tribunal but only with the leave of the Tribunal.
- After the Tribunal decision is final, the landlord must provide a draft lease within 14 days.
- Period of two months after decision becomes final for parties to enter into the new lease.
- If the period above elapses without entry into new lease, then leaseholder must apply to court within a further two months requiring the Landlord to meet his obligations.

ATTENTION LEASEHOLDERS!

- ✓ Increase the value of your property
- ✓ Make it more attractive to buyers
- ✓ Save money by acting now!

If you own a leasehold property, the cost to renew your lease goes up with each year that passes. Once it drops below 85 years lenders consider it a high risk, making selling or remortgaging more difficult and below 80 years the cost to extend increases much more quickly.

There are different ways to renew your lease, speak to our professional experts to establish the best option for you.

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