

A GUIDE TO LEASEHOLD ENFRANCHISEMENT

The vast majority of flats are sold on a leasehold basis to ensure enforceability of covenants (including contributions towards service charge).

There are significant problems in obtaining mortgages on flats with remaining terms of less than 60 years. Many flats in this part of the world were constructed/converted in the 1960s and 1970s, and it follows that those properties in particular can cause significant problems when the owners come to sell. In fact some mortgage lenders will refuse to lend on properties with a lease of less than 75 years outstanding.

Legislation over the past 30 years has introduced various rights to assist leasehold owners of residential flats. This note deals with collective purchase of the freehold, otherwise known as enfranchisement.

Leasehold Enfranchisement

There are a number of worthwhile advantages to a collective purchase of the freehold by a number of flat owners. As new freeholders you can grant yourselves lease extensions without further payment being made and indeed the individual flat leases can be updated. Moreover, if there is prospect of further development/redevelopment affecting the site, the flat owners will collectively be in charge, with no need to share "profits" with a separate freeholder.

In general terms fifty percent of the flat owners will need to participate in a purchase. There is no requirement for participating tenants to be resident within the block, nor is there any requirement for a period of ownership.

Calculating the cost of enfranchisement is a skilled valuation task, and a specialist surveyor should be instructed.

In most cases the purchase will be carried out by way of a limited company, the shareholders of which will be the participating flat owners. It will be necessary to appoint a director and the secretary from amongst the flat owners, but it may be that a greater number of the owners will wish to become directors.

The solicitors acting for the participating flat owners/their company will prepare and serve a formal "initial notice" on the freeholder and intermediate landlords incorporating the "offer figure" recommended by their valuer. The freeholder should within two months serve a "counter notice" stipulating his own proposal as to the price, following which the respective valuers will negotiate on price and attempt to agree a figure. If negotiations fail then application to the Leasehold Valuation Tribunal (LVT) must be made within six months from the date of the counter notice. LVT proceedings will doubtless take several months to run their course, possibly longer, but the Tribunal will ultimately fix the price, together with any other relevant terms/covenants, assuming that both the notice and the application are in proper order. Most enfranchisements are agreed between the parties without having to go to the LVT.

Please ask for Anthony Harris

Our normal office opening hours are:- Monday to Friday 9.00 - 1.00 & 2.00 - 5.00
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