

LACEYS GUIDE TO THE RIGHT TO LEASE EXTENSION OF FLATS UNDER THE LAW AS OF 1 JANUARY 2005

What is it?

This is a right for certain flat owners to buy a new lease to their flats on payment of a premium. The new lease is for a period of 90 years from the end of the existing term.

There are detailed rules in relation to who is able to do this and as to the procedure to be followed precisely and what should be paid for it.

What are the advantages of doing this?

The advantages depend on the particular circumstances but may include one or more of the following:

- The shorter a lease gets the less value it has although in practice usually there is little reduction in the value of a lease which has more than 80 years to run. Once a lease has less than 70 years to run some difficulty may be experienced in selling the property leading to a reduction in value.
- Most leases will have a ground rent. The landlord is under an obligation to replace this with a requirement to pay only a nominal figure (a "peppercorn" rent).
- The new lease can be modified to take into account any alterations that were made to the flat after the grant of the existing lease.
- The price that is paid is not the full valuation of the benefit to be acquired by the flat owner. This is particularly so for leases that have more than 80 years to run when the "Initial Notice" is served.

Reasons not to do it

- There is a right for some flat owners to join together to buy the freehold of the building and the benefit of any leases between their own and the freehold i.e. head leases. This is known as collective enfranchisement. Some flat owners may prefer to own their own freehold so as to be able to manage and control the block generally, the enfranchisement procedure does require considerable co-ordination amongst the participators.
- If the freeholder is not the current landlord, then there may be lengthy negotiations over the terms of the new lease. Any additional negotiations with intermediaries where the freeholder is seeking to implement a new lease can be costly
- Professionals such as valuers and solicitors need to be employed and a contribution must be made towards the freeholder's valuation and legal fees.

The advantages of doing this however usually outweigh the disadvantages and the costs of doing so are usually substantially outweighed by the increase in the value of the flat.

Who qualifies?

Most tenants will now qualify. The detail needs to be checked by a specialist but the basic rules of qualification for each flat are:

- The flat was let originally on a lease of at least 21 years granted for residential purposes.
- The tenant must have held the lease for 2 years before giving notice of the desire to extend the lease.

The basic steps to be followed

- Initial check of eligibility.
- Obtain initial valuation from specialist valuer.
- Instruct solicitor and make payment on account of costs.
- Solicitor obtains deeds and gathers detailed information in relation to the flat, the landlord/freeholder and any other person who has an interest in the building and prepares the "initial notice" to serve on freeholder. This is on a compulsory form and gives details of the flat, the applicants, the price offered and the terms required for the new lease.
- Solicitor serves Initial Notice on freeholder and any head landlords and registers it
- Solicitor proves title within 21 days if required to do so by freeholder
- Flat owner gives freeholder access on 3 days notice if required
- Flat owner pays landlord 10 of premium or £250 (whichever is greater) as deposit within 14 days of Landlord's notice
- Freeholder serves counter notice on solicitor within 2 months of Initial Notice saying whether accepts flat owner has rights and if so counter proposal on price
- Valuers negotiate on price and solicitors on other terms
- Unresolved disputes over price or terms referred by solicitor to Leasehold Valuation Tribunal within 6 months of freeholder's counter notice
- Flat owner puts solicitor in funds for balance of price and costs
- Solicitor completes the lease between the flat owner and the freeholder
- Solicitor registers the lease and any deed of substituted security for mortgage at Land Registry and complies with any mortgagees' requirements

What will it cost?

The premium price to be paid for the lease extension is the total of the following:

- An amount to compensate the landlord for loss of rent and postponement of the day he gets the flat back.
- The freeholder's share of the "marriage value". The marriage value is the increase in value of the flat arising from the extension. The freeholder's share of that is now fixed at 50 of the "marriage value" and for a lease with more than 80 years left at the date of the Initial Notice it will be taken as nil.

- In addition payment must be made to any landlord of a lease between the flat owner and the freehold for the value of those leases although in practice sums paid for this are likely to be small or nil.

Once the Initial Notice has been served, irrespective of whether the matter completes, the participating flat owner is liable to contribute towards the freeholder's and other relevant landlord's costs although this does not include the cost of a hearing before the Leasehold Valuation Tribunal itself, where each side will bear its own costs.

Why choose Laceys?

Laceys has a specialist team of two partners, an assistant solicitor and a paralegal (non legally qualified assistant). Some of the benefits are:

- Specialist knowledge avoids technical mistakes in this difficult and rapidly changing area of practice.
- Our development of efficient systems means we are able to spend less time doing the work and so reduce the cost to you (solicitors usually charge on a time basis for this type of work).
- Whenever possible the partners supervise the other members of the team in doing the work so that much of it is done at a lower hourly rate (ask for our terms of business to see the rates).
- We can do our work quickly and so keep the momentum going in the process to help drive the matter through to a conclusion; it is difficult enough for you to manage your group through the process without having a solicitor who delays.

This is a basic guide that applies to most situations but may not apply to yours. It also does not go into detail.

For further advice and a more detailed estimate of our fees, contact us:

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