



## **Enfranchisement: Forced Freehold Purchase of blocks of flats**

### **Leasehold Reform Housing and Urban Development Act 1993 (“the 1993 Act”)**

#### **Do I have the right to purchase the freehold of my block of flats?**

Tenants of certain long leases of flats have rights:

- To acquire the freehold (on a collective basis).
- To the grant of a lease extension.

The rights were introduced by the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) and have been amended and extended by subsequent legislation, principally the Housing Act 1996 (HA 1996) and the Commonhold and Leasehold Reform Act 2002 (CLRA 2002).

This note is an outline only of the main conditions for collective enfranchisement in relation to flats. The legislation contains further detailed rules that apply in certain circumstances, as well as important procedural requirements.

#### **The right**

The right is a collective right for the tenants who hold long leases (leases granted for a term of over 21 years) to buy the freehold (and any intermediate leasehold interests) of the building together with any common areas, such as gardens and parking areas, which the tenants have the right to use.

#### **The purchaser**

The purchase is made by a nominee purchaser. There are at present no restraints on who the nominee purchaser may be. Typically it will be a special purpose company owned by the tenants who participate in the enfranchisement. Any particular individual tenant who qualifies to participate in the collective enfranchisement but who is not needed to make up the numbers, has no right to participate.

#### **Those that do not qualify for right to enfranchise**

If there are any parts of the building that are let on short leases (leases granted for 21 years or less) or there are non-residential parts let to business tenants, the tenants of

such parts do not qualify for the right to collective enfranchisement and cannot participate. The 1993 Act includes provisions for these parts to be leased back to the original freeholder on a 999 year lease.

### **Registering the right to enfranchise**

Once exercised, the right to enfranchise is registerable against the freeholder's title as a land charge or notice.

### **Assigning the right to participate**

The right to participate can be assigned with the lease by a tenant who is participating in the collective enfranchisement process, for example should the tenant sell his leasehold interest during the enfranchisement process he may assign his right to enfranchise at the same time to the purchaser. The personal representatives of a participating tenant who dies can continue to participate.

### **There are several conditions that must be satisfied for the right to collective enfranchisement to arise**

#### **The building**

The building must be either the whole of a self-contained building or a structurally separate part of such a building that is divided vertically from the other parts. It must satisfy the following conditions:

- It must contain two or more flats held by qualifying tenants and at least two thirds of all the flats in the building must be held by qualifying tenants.
- No more than 25% of the internal floor area (excluding common parts) is occupied or intended to be occupied for non-residential use. Under the 1993 Act as originally enacted, the maximum non-residential element was 10%. The increase in the non-residential element limit will allow collective enfranchisement for more mixed-use blocks (for example, developments with retail units on the ground floor and flats in the upper storeys).

In *Crafrule Ltd v 41-60 Albert Palace Mansions (Freehold) Ltd* [2010] EWHC 1230 (Ch) (27 May 2010) the High Court confirmed that a self-contained part of a building, within the meaning of section 3 of the 1993 Act, is capable of qualifying for enfranchisement even if

it could be subdivided into two or more qualifying self-contained parts. The Court of Appeal has upheld the High Court's decision.

### **Excluded buildings**

Several specified types of building are excluded from the right to collective enfranchisement:

1. Certain buildings that have a resident freeholder.

The right of collective enfranchisement does not apply if all of the following apply:

- a. the building is a conversion (that is, not a purpose built block);
  - b. the building contains a maximum of four flats;
  - c. the freeholder (or an adult member of the freeholder's family) has lived in one of the flats as his or her only or main residence for the previous twelve months; and
  - d. the freeholder was the freeholder at the time of the conversion.
2. Crown properties are in general excluded, but the Crown will nevertheless allow enfranchisement in some cases.
  3. Buildings where the freehold is owned by the National Trust as part of its inalienable estate.
  4. Buildings within a cathedral precinct.
  5. The freehold of the property must not include the track of an operational railway. This is an additional exclusion introduced by the CLRA 2002, which will affect properties where a block of flats is built over a railway line. It does not affect blocks of flat that adjoin a railway line.

### **The leases and the tenants**

If the building qualifies, there are still further conditions to be satisfied.

1. At least two thirds of the flats in the building must be held by qualifying tenants.
2. The notice initiating the collective enfranchisement process must be given by the tenants of at least half the flats in the building and all the tenants who give the

notice must be qualifying tenants. If there are only two flats in the building, the two-thirds requirement necessarily means that the tenants of both flats must give the notice.

A "qualifying tenant" is a tenant who holds a long lease. A long lease is a lease that was granted for a term of more than 21 years, and is neither of the following:

- A business lease under Part II of the [freeholder and Tenant Act 1954](#) (LTA 1954).
- A lease granted by a charitable housing trust for the purposes of its charitable functions.

### **Certain other leases also qualify.**

Where a flat has been underlet and the underlease satisfies these conditions, it is the undertenant who is the qualifying tenant for that flat.

If a tenant owns three or more flats in the building in respect of which it would, prima facie, be the qualifying tenant under these rules, it is not the qualifying tenant in relation to any of them.

There is no requirement for a tenant to have owned the lease for any particular length of time.

### **How much? - Purchase price**

The tenants have to pay the freeholder for the freehold. The purchase price is made up of the following elements:

- The open market value of the freeholder's interest in the building.

If there are intermediate freeholders, then the open market value of the interests of all them is payable. The open market value is assessed at the date on which the claim to exercise the right to collective enfranchisement is made.

- Marriage value.

The tenants under the existing leases have a special interest in buying the freehold. If the tenants buy the freehold, they will acquire an unencumbered freehold out of which they may grant 999 year leases at no premium or money rent. That structure will usually be

worth more than the sum of the value of the existing leases and the freehold subject to those leases. The amount of that extra value is known as marriage value. The longer the unexpired residue of a lease, the lower the marriage value will be.

The freeholder is entitled to half the marriage value, except where a lease has 80 years or more left to run, when it is assumed that there is no marriage value in connection with that lease and so none is payable.

- Compensation for severance.

If enfranchisement lowers the value of other property belonging to the freeholder, the tenants must pay compensation for this.

### **Deposit**

The freeholder may require the nominee purchaser to pay a deposit on exchange of contracts in pursuance of the Initial Notice. The amount of the deposit required shall be £500 or 10% of the purchase price agreed or determined by a leasehold valuation tribunal, whichever is the greater. The deposit must be paid by the nominee purchaser to the reversioner's solicitor or licensed conveyancer as stakeholder.

### **Procedure – We want to go ahead, what now?**

If a sufficient number of Lessees are prepared to take part in an enfranchisement claim, the first step is to obtain a valuation from a suitably qualified surveyor as to the likely premium that will be payable for the freehold. You should consider whether the participants are able to bear their fair share of this cost together with their legal fees, surveyor's fees and the freeholder's legal and surveyor's fees for the preparation and service of the counter notice and dealing with the transfer, for which they will also be liable.

If sufficient interest remains and the finances are manageable for those interested, we will write to each of the lessees that wish to take part and set out the procedure that will be followed, which is set out below.

We will prepare a Participation Agreement shortly which will contain the details of every Lessee intending to take part in the enfranchisement process.

The Lessees that wish to take part in the enfranchisement process will be required to sign against their name on the Participation Agreement, and this will prevent them from withdrawing from the process later on, which is potentially damaging to the process as a whole and will result in the remaining parties having to find additional funds to make up the difference.

We would usually request funds on account from every participating Lessee at the outset of the matter in the sum of £750.00-£1,000.00 as a show of commitment to the purchase process. Requesting payments on account at the outset enables all participating Lessees to show their commitment to the process.

The freehold title will ultimately at the conclusion of the enfranchisement process be owned by a company set up by the participants for that purpose and the idea is that all flat owners taking part in the transaction would then be given a share in the limited company which will be incorporated specifically for that purpose. The first step is to set up an independent company. The name of the company will along the lines of be [NAME OF BLOCK] Freehold Limited, although the company name can be changed at any point in future once matters have been completed.

### **Preparation and service of the Initial Notice**

Having ascertained the interested lessees together with payments on account we will then prepare and serve upon the freeholder an Initial Notice under the 1993 Act. This notice then has to be registered at the Land Registry in order to protect your interests in the event (as is often the case) that the freeholder decides to simply transfer the freehold to a different limited company thereby avoiding liability. Registration at the Land Registry will prevent this.

Once the Initial Notice has been served the freeholder then has approximately two months in which to serve a Counter Notice either accepting the right to collectively enfranchise or denying it. In the usual course of such matters freeholders will serve a Counter Notice during the last week or two of this period agreeing to the right to purchase the freehold but specifying a premium which is inevitably higher than that which is stated in the Initial Notice.

The Act sets out a formula for calculating the premium which has to be paid hence the need for you to obtain advice from a suitably experienced and qualified surveyor. The difficulty is that the Act is drafted in such a way that the formula can be interpreted in different ways so that inevitably the premium which is suggested by the Lessee's surveyor is less than that which is calculated by the freeholder's surveyor and generally speaking

one normally settles the premium somewhere in between.

If your freeholder fails to serve a Counter Notice within the required two month period after the Initial Notice has been served we then will make an application to the County Court for a Vesting Order and effectively the freeholders are then excluded from taking part in the process. However, assuming they do serve a Counter Notice the parties then have a two month negotiation window to try and agree the terms of acquisition. Assuming terms are not agreed completely, we would then make an application to the First Tier Tribunal (Property Chamber) ("FTT") for a determination of the unresolved terms. Again, this application has to be made at least two months and no later than six months after service of the Counter Notice by the freeholder.

Even taking into account acting with due expedition it ordinarily takes at least twelve months to force through a sale of the freehold reversion and therefore the sooner we get started the better.

### **Applications – FTT and/or County Court**

If you have to make an application to the FTT or the County Court you will need to know what our fees will be. This of course is determined by the amount of time that we spend dealing with the matter, but it is mitigated against by the fact that you will all be contributing to our fees rather than paying them individually. The table of estimated fees with this advice note gives an idea of the fees applicable. It is usual but not certain that, should Court proceedings be required and be successful, the Court will order that the majority of your Court costs be paid for by the freeholder, or deducted from the premium at the conclusion of the freehold purchase.

Once the terms are agreed and the freehold is transferred to the Lessee's company, each of the leases held by the participating tenants can be extended to (for instance) 999 years at a premium of £1 in accordance with the participating lessees' Participation Agreement.

Enclosed with this advice note is a table setting out our estimated fees for the enfranchisement process which details separately the conveyancing fees associated with concluding the transfer of the freehold to the company and extending the participants' leases to 999 years.

You are only responsible for payment of the freeholder's legal fees of serving any Counter Notice (but not negotiating) and you are also responsible for payment of any conveyancing charges when and if a transfer has been ordered or agreed. You are not responsible for payment of the freeholder's legal fees for contesting the matter in the FTT or the County

Court. You are however responsible for payment of the freeholder's surveyor's fees for providing the valuation for the counter notice and they are probably in the region of about £2,500.00 plus VAT for a block of 8 flats, and will probably be more in larger blocks and less in smaller blocks.

Jamieson Alexander  
222 Temple Chambers  
3-7 Temple Avenue  
London, EC4Y 0DB

e: [office@jamiesonalexander.co.uk](mailto:office@jamiesonalexander.co.uk)  
t: +44 (0) 330 2000 017  
f: +44 (0) 207 681 3777  
w: [jamiesonalexander.co.uk](http://jamiesonalexander.co.uk)