



A brief guide to Collective Enfranchisement

The right for qualifying tenants to purchase the freehold of their building was introduced by the Leasehold Reform Housing & Urban Development Act 1993 ('LRHUDA 1993').

It is a right, subject to qualification, for the owners of flats in a building, and sometimes part of a building, to come together and buy the freehold of that building.

Qualification

The First step would naturally be to ensure that the building qualifies.

LRHUDA 1993 provides that to qualify a building must:

- consist of a self-contained building or part of a building;
- contain two or more flats held by qualifying tenants; and
- the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

What is a qualifying tenant?

A tenant would be a qualifying tenant if they own a leasehold flat under a long lease i.e. a lease granted for a term of more than 21 years when first granted.

Are there any exceptions?

- if the building is a building with a resident landlord and it does not contain more than four units;
- if more than 25% of the internal floor area of the building, excluding any common parts in respect of which both the commercial and residential tenants have a right to use (they shall be taken to be occupied, or intended to be occupied, for residential purposes), is used or intended to be used solely for commercial purposes;
- if the freehold title includes any track of an operational railway including any bridge, tunnel, culvert, retaining wall or other structure used for the support of, or otherwise in connection with, the track.

then the freehold of the building cannot be acquired via collective enfranchisement.



Who can be the nominee purchaser?

In short, anyone can. It can be one of the qualifying tenants, a corporate entity, or a trust. In most cases it will be a company.

What next?

The nominee purchaser should in the first instance instruct both a valuer and a solicitor to assist.

A valuer will be able to provide the nominee purchaser with the 'best and worst' valuation advice as well as advise on the amount of the offer to be made in the offer notice ('the Initial Notice').

The valuer will also be best placed to assist the nominee purchaser in responding to the freeholder's Counter-Notice ('the Reversioner's Counter-Notice') and with any negotiation and settlement of the price.

A solicitor will be able to assist the nominee purchaser collating all the information necessary for the Initial Notice including drafting and serving the Initial Notice.

The solicitor will also be best placed to assist where you have an absentee landlord and need to make an application to Court. If the court is satisfied with the efforts made and qualification, then it will, in effect, sell the freehold to the tenants in the freeholder's absence subject to the nominee purchaser making an application to the First-tier Tribunal (Property Chamber) ('FTT') to determine the price.

The landlord has a period of 21 days from the date of service of the Initial Notice to request evidence of the qualifying tenants' title to their flats. If the landlord requests this information it must be provided within 21 days, if the titles are not provided (or any title of a qualifying tenant cannot be provided that is necessary to meet the qualification to serve an Initial Notice), the Initial Notice would be deemed withdrawn, with costs payable to the freeholder.

What is the Procedure?

The procedure to be followed is similar to that for a statutory lease extension. It is therefore important to be aware that most of the time limits imposed on the procedural stages of the claim are strict and a failure to do something within the required time frame can have dire consequences for the defaulter.

- The Initial Notice

The qualifying tenants can serve a preliminary notice on the freeholder, the landlord (if different) or any other person with an interest in the property to obtain information about their respective interests. Thereafter, they serve the Initial Notice which amongst other things needs to state (s.13 LRHUDA 1993):

- a) *"specify and be accompanied by a plan showing—*
- (i) the premises of which the freehold is proposed to be acquired by virtue of section 1(1),*
 - (ii) any property of which the freehold is proposed to be acquired by virtue of section 1(2)(a), and*
 - (iii) any property over which it is proposed that rights (specified in the notice) should be granted in connection with the acquisition of the freehold of the specified premises or of any such property so far as falling within section 1(3)(a);*
- b) *contain a statement of the grounds on which it is claimed that the specified premises are, on the relevant date, premises (to which the right to enfranchise applies);*
- c) *specify—*
- (i) any leasehold interest proposed to be acquired under or by virtue of section 2(1)(a) or (b), and*
 - (ii) any flats or other units contained in the specified premises in relation to which it is considered that any of the requirements in Part II of Schedule 9 to this Act are applicable;*
- d) *specify the proposed purchase price for each of the following, namely—*
- (i) the freehold interest in the specified premises, or, if the freehold of the whole of the specified premises is not owned by the same person, each of the freehold interests in those premises]*
 - (ii) the freehold interest in any property specified under paragraph (a)(ii), and*
 - (iii) any leasehold interest specified under paragraph (c)(i);*
- e) *state the full names of all the qualifying tenants of flats contained in the specified premises and the addresses of their flats, and contain in relation to each of those tenants,*
- (i) such particulars of his lease as are sufficient to identify it, including the date on which the lease was entered into, the term for which it was granted and the date of the commencement of the term,*

- f) *state the full name or names of L the person or persons appointed as the nominee purchaser for the purposes of section 15, and an address in England and Wales at which notices may be given to that person or those persons under this Chapter; and*
- g) *specify the date by which the reversioner must respond to the notice by giving a counter-notice under section 21.”*

It is important to register the Initial Notice at HM Land Registry in order to protect it and ensure that any disposal of the freehold following service is subject to the Initial Notice and binding on the new freeholder.

- The Reversioner’s counter-notice

The freeholder must serve his counter-notice by the date specified in the Initial Notice.

The counter-notice must either:

- agree the nominee purchaser’s right to the freehold and accept the terms;
- agree the nominee purchaser’s right to the freehold and propose different terms;
- not agree the nominee purchaser’s right to the freehold and give reasons why not; or
- neither admit nor deny the nominee purchaser’s right to the freehold, but state that an application is to be made to court for an order that the right to enfranchise cannot be exercised on the grounds the freeholder intends to redevelop the whole or a substantial part of the premises.

The Notice must also specify any leaseback proposals.

If the freeholder fails to serve the Counter-Notice by the date specified in the Initial Notice, then the nominee purchaser can apply to Court for a vesting order, to acquire the freehold on the terms proposed in the Initial Notice (in effect gaining the freehold by default). This application must be made within six months from the date specified in the Initial Notice, otherwise the Initial Notice is deemed withdrawn.

- Disputes

If the Counter-Notice disputes qualification, the nominee purchaser must apply to the court, within two months of Counter-Notice, for a declaration that Initial Notice is valid.



If terms cannot be agreed after service of the Counter-Notice then either party may apply to the FTT. This application can be made any time after two months, but within six months of, the date of service of the Counter-Notice.

The above applications must be made within the time limits set out above or the Initial Notice will be deemed withdrawn, and a new notice cannot be served for a period of 12 months. In addition, the freeholder is entitled to seek payment of his reasonable costs.

Completion

Once the terms have been agreed or determined by the First-tier Tribunal (Property Chamber), then the acquisition of the freehold continues as a transactional conveyancing matter and will be completed in the usual way.

If you have any queries concerning Collective Enfranchisement please contact our team on 0118 959 7711 who will use their in-depth knowledge to provide you with sound, pragmatic advice.

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