

A brief guide to Lease Extensions

What is a lease extension?

A lease extension is the process of adding years back on to the lease and extending the time a tenant has before the property reverts back to the ownership of the Landlord.

The Leasehold Reform, Housing and Urban Development Act 1993 gives the qualifying tenant the right to extend their lease by a further 90 years (in other words, 90 years added to however many years are left on the lease), without payment of any further ground rent.

The freeholder is legally obligated to comply with the qualifying tenant's request on condition that the following three criteria are met:

- (a) The property must be a flat
- (b) The qualifying tenant has owned their flat for at least two years
- (c) The lease has an original term of at least 21 years

I want to buy a leasehold flat and would like to extend my lease - do I need to wait two years?

No, not necessarily, the leaseholder serving the notice requesting a lease extension, known as a s.42 Notice, must have owned the property for at least two years. It is therefore possible for the vendor to serve the s.42 Notice and then to assign the benefit of the Notice, and thereby the ability to extend the lease, to the purchaser. A tenant's notice must be assigned in conjunction with a contemporaneous assignment of the lease.

Why should I extend my lease?

A lease is a diminishing asset which means that as time goes by it becomes shorter and less valuable. As the lease devalues, it will be more difficult to obtain a mortgage and as a result the flat will at the same time become more difficult to sell.

What happens if I have less than 80 years on my lease?

As set out above, it becomes more expensive to extend the lower the amount of years remaining on the lease and once the lease drops below 80 years the cost of the lease extension tends to increase quite dramatically due to the inclusion of Marriage Value in the calculation of the cost.

What is 'Marriage Value'?

The marriage value is calculated as the difference between what the property is worth in its current state with a lease of less than 80 years, and what the value would be with the new lease. The freeholder or landlord is entitled to 50% share of the marriage value under the terms of the 1993 Act. Any lease with more than 80 years remaining can be extended without paying any marriage value at all, which is why it is important to extend the lease before the term left drops below 80 years.

How long will I be able to extend my lease for?

A leaseholder has the statutory right to extend their lease by adding 90 years to what is left on their existing lease. For instance, if you have 65 years left on your lease you will be given a new lease of 155 years. It is also possible in some circumstances to agree an extension of perhaps a shorter period with the Landlord, for a lower cost. This is known as a voluntary lease extension, and as the name implies, your landlord has a choice whether to agree to that or not. The landlord may impose other terms in a voluntary lease extension, which could harm the value of your flat and make it difficult to sell, so you should always seek professional advice from a solicitor first.

How much will it cost?

The eventual cost of the new lease will be the premium plus both your own and the landlord's "reasonable" professional costs such as legal and valuation fees. Stamp duty may also be applicable. The price depends on several variables, such as the value of the flat, the existing and future ground rent payments, and the length of the current lease. A Surveyor will carry out a valuation of the property and determine the likely extension premium. The surveyor is likely to calculate a range for the premium which will be used in the s.42 Notice. The premium payable is then negotiated between the parties.

What is a Section 42 Notice?

A Section 42 Notice (also known as 'the tenant's notice') is the formal notice used by a leaseholder to exercise the right to acquire a new lease of the flat following the statutory lease extension process. The tenant's notice is served on the leaseholder's landlord.

What is the Procedure?

The procedure to be followed is very similar to that for collective enfranchisement. 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 tenant's notice

The tenant can serve a preliminary notice to obtain information. Thereafter, he serves his notice of claim (in this case called the tenant's notice of claim) which amongst other things needs to state:

- (a) a description of the flat
- (b) sufficient particulars to establish that the lease qualifies
- (c) the premium being offered
- (d) the terms of the new lease and
- (e) the date by which the landlord must give the counter-notice, being a date not less than two months from the date of service of the tenant's notice.

- The Landlord's counter-notice

The landlord can respond initially by serving a procedural notice requiring payment of a deposit and asking the tenant to prove title.

The landlord may also request access for his surveyor to inspect the flat for the purpose of carrying out a valuation.

Within the period specified in the tenant's notice, the landlord must serve his counter-notice.

He must in the first instance state whether the tenant's claim is admitted. If it is not, then the leaseholder must decide if he wishes to dispute the rejection through the courts.

If the claim is admitted, then the counter-notice must state, amongst other things:

- (a) which of the proposals contained in the tenant's notice are acceptable and
- (b) which of the proposals contained in the tenant's notice are not acceptable and what the landlord's counter-proposals are.

In many instances the landlord will accept the claim but dispute the premium.

- Disputes

If either the terms of the lease or the premium remains in dispute after two months following the date of the counter-notice, then either party can apply to the First-tier Tribunal (Property Chamber) for the remaining issues in dispute to be determined.

This application must be made within six months following the date of the counter-notice or the claim is deemed withdrawn, and the leaseholder is unable to serve a new notice for a period of 12 months.



Completion

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

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

Darryn Harris

Associate – Solicitor

Disclaimer

The contents of this article are intended for general information purposes only and shall not be deemed to be, or constitute, legal advice. We cannot accept responsibility for any loss because of acts or omissions taken in respect of this article. Please contact us for the latest legal position.