

# Residential Long Leaseholders

A guide to your rights and responsibilities



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## Introduction

This advisory book tells you about the rights and responsibilities which currently apply to long leaseholders<sup>1</sup> in England. Some of these rights and responsibilities also apply to long leaseholders of properties in Wales, and if this is the case, you should refer to the specific paragraph for Wales below to establish which ones apply.

It is primarily for long leaseholders of flats (including maisonettes) and houses, but may also be of interest to landlords and their agents. In this booklet 'tenant' is used to describe both long leaseholders and other tenants.

## Important Note

### Commonhold and Leasehold Reform Act 2002 (the 2002 Act)

The 2002 Act provides for a number of changes that will affect the rights and responsibilities of leaseholders in England and Wales. The Act gained Royal Assent on 1 May 2002. Part 2 of the Act makes key changes to the existing leasehold legislation in England and Wales. The leasehold provisions of the Act are being brought into force in stages, and at different times for England and Wales (See 'Wales' below).

## Implementation of the provisions in the 2002 Act

### England

For leasehold properties in England, the first phase of provisions came into force on 26 July 2002. The second phase came into force in England in two parts, on 30 September 2003 and 31 October 2003 and the third phase came into force February 2005. A fourth phase of provision came into force from 1 October 2007. Details of these provisions can be found in Chapter 9.

There are further provisions yet to be brought into force for England (see Chapter 8), although at the time of printing it was not possible to confirm when these provisions would be commenced. This version of the booklet does not therefore take account of those provisions described in Chapter 8.

<sup>1</sup> Broadly, a long lease is a lease originally granted for more than 21 years. It does not matter that it may only have 21 years or less to run. Other leases may qualify as long leases. If you believe this applies in your case you would need to seek independent advice.

### Wales

For leasehold properties in Wales, the first phase of provisions came into force on 1 January 2003. Details of these provisions can be found in Chapter 9. The second phase came into force 30 March 2004 and the third phase on 31 May 2005. A fourth phase of provisions came into force from 30 November 2007.

As for England, there are further provisions that will need to be brought into force although it is not possible to confirm when these provisions are likely to be commenced (see Chapter 8).

Therefore, if your property is in Wales, you would be best advised to establish the current position by contacting the Welsh Assembly Government, and by also seeking independent advice, before taking any action. The contact details for Wales can be found in Chapter 11.

### General

*This book is not meant to give a full interpretation of the law; only the Courts can do that. Nor does it cover every case or provide advice. You should check carefully to see if the qualifying or other conditions in each section apply to you and if you are in any doubt about your rights or duties, please take independent professional advice.*

# 1

## **Leasehold flats & houses**

A summary of your rights and responsibilities

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### This Chapter

- explains the relationship between a long leaseholder and his landlord. It describes the rights long leaseholders have to control the management of their building. Some of your rights will be contained in your lease but some are given by various Acts of Parliament;
- does not give a full description of the procedures involved in exercising the rights discussed and may not, for example, cover all the time limits or qualifying conditions that could apply;
- does not cover the right to enfranchise (buy the freehold), the right to extend a lease, the right of first refusal or the right to manage. These rights are explained later on in this booklet.

If you are considering exercising any of the rights covered by this chapter, you are strongly advised to take professional advice at an early stage.

### The leasehold system

#### What is the leasehold system?

Almost all flats in England and Wales are leasehold, as are many houses. As a long leaseholder (ie a tenant under a long lease) you have bought the right to live in your property for a fixed number of years. However, your landlord (who may be the freeholder) retains the right to enforce the tenant's obligations in the lease and, in a building containing flats, retains ownership and responsibility for the common parts of the building and possibly other common areas which you have use of under your lease – eg a garden. The property will also revert to the landlord when the lease expires, unless either the freehold is purchased (enfranchisement), the lease is extended, or rights to stay on in the property as a renting tenant are exercised. (Further information about these rights can be found in the chapters *Leasehold Houses – your right to buy the freehold of your house or extend your lease*; *Leasehold Flats – your right to buy the freehold or renew your lease*, *Leasehold flats – Right of First Refusal for long leaseholders and other tenants*; and *Leasehold flats and houses – security of tenure for long leaseholders where the lease is running out*).

You may hold your lease direct from the freeholder or from an intermediate leaseholder (ie you may be a sub-tenant). Therefore, where this chapter refers to 'your landlord' this means your immediate landlord.

In addition, a landlord will often appoint a managing agent to carry out some or all his duties.



## What are the terms of the lease?

Your lease is important and you should make sure you have a copy. A lease is a private contract between you and your landlord and sets out the rights and duties of both the landlord and the leaseholder. It will normally set out who is responsible for looking after different parts of the building, who is responsible for insuring it, and may restrict how the property may be used (for example, business activities may be banned). It may also contain conditions about disposals of the lease (for example, the landlord's permission may be required before you sell the property). The lease will usually require the leaseholder to pay ground rent and may also require leaseholders to reimburse the landlord for any expenditure he makes on the building, through a regular service charge.

Your lease will allow you to occupy the property for a fixed number of years (this period is called 'the term' of the lease). Most 'owner occupiers' have long leases, typically for 99 or 125 years when first granted.

The length of the lease reduces over time from the date when it was originally granted. The outstanding term will therefore depend on what was left when you took over the lease. The lease will also expire automatically at the end of the term, although most long leaseholders have a statutory right to stay on as renting tenants at the end of the lease, buy the freehold or extend their lease. (Further information about these rights is contained in the chapters *Leasehold flats and houses – security of tenure for long leaseholders where the lease is running out*; *Leasehold Houses – your right to buy the freehold of your house or extend your lease*; and *Leasehold Flats – your right to buy the freehold of your building or renew your lease*).

In the event of any query or dispute, the parties to the lease should first refer to the lease itself, preferably with professional assistance, before deciding what action to take.

## Can I change the terms of the lease?

You can vary any of the terms of your lease by agreement. In addition, you have the right to apply to a Leasehold Valuation Tribunal (LVT) on specific grounds to vary your lease. (See section in this chapter on varying your lease).



## Repairs and Management

The terms of the lease will set out responsibilities for the management of your building:

- For flats, where the freeholder owns the building, a common arrangement is that the freeholder is responsible for keeping the structure in good repair, and maintaining and cleaning any common parts, recovering these and any management costs through a service charge levied on the leaseholders.

Leaseholders will usually be responsible for the internal decoration and repair of their flats

- For houses, it is common for a tenant under a long lease to carry all responsibilities for the repair to the house.

You should note however, that not all leases are the same and you should consult your own lease, (if necessary with the help of a professional adviser), to work out both your own obligations and those of your landlord.

### Ground Rent

Most long residential leases require ground rent to be paid on a particular day and possibly in a particular manner, whether or not the landlord demands payment. However, changes to legislation now mean that landlords must serve a written notice in a particular form on you before ground rent becomes payable.

The notice must specify the amount due, the date by which payment is to be made and (if different) the date on which the amount would have been payable under the terms of lease. The notice must also contain any other information that is prescribed by Regulations.<sup>2</sup>

For the landlord to request payment of ground rent on the date specified in the lease the notice must be given at the latest, 30 days before the payment date, but cannot be given any earlier than 60 days before the payment date. The landlord is also prevented from making any additional charge in respect of the rent unless they have issued a written notice, and the ground rent is still unpaid after the due date. The landlord is also prevented from starting forfeiture action (ie to re-enter and take possession of the property) unless they have issued a written notice, and the ground rent is still unpaid after the due date.

### Forfeiture

If you breach any of the terms of the lease your landlord may have a right to forfeit the lease and recover possession of the property. However, legislation provides a range of measures to protect leaseholders. Where property is lawfully occupied as a dwelling, the landlord cannot reenter the premises without a court order. A landlord is also required to serve a notice before exercising the right to forfeit the lease. This must specify the breach and give the leaseholder the opportunity to remedy the breach or to compensate the landlord for the effects of the breach. In addition, the landlord is prevented from taking forfeiture action in respect of the nonpayment of service charges

<sup>2</sup> The Landlord and Tenant (Notice of Rent) (England) Regulations 2004. Statutory Instrument 2004/3096 and The Landlord and Tenant (Notice of Rent) (Wales) Regulations 2005. Statutory Instrument 2005/1355.

unless the charge has been either agreed or admitted by you or determined by a court, tribunal or by arbitration. There are also a number of opportunities during the legal proceedings for the leaseholder to put matters right and avoid forfeiture of the lease. However, the law in this area has been improved.

Landlords can only take action when a court, LVT or arbitral tribunal has determined that a breach of a covenant or condition of a lease has occurred, and any notice of forfeiture cannot be served until 14 days after a final determination has been made.

The landlord also cannot take forfeiture action for outstanding debts of service charges, administration charges or ground rent that are less than £350, unless the amount or any part of it has been outstanding for more than three years. Administration charges for nonpayment of an outstanding amount will not be taken into account in determining whether the £350 limit has been exceeded. Details of the amount and period are set out in Regulations.<sup>3</sup>

## Your rights to ensure good management

### Introduction

There are other rights and duties in addition to those set out in your lease. Where your landlord does not carry out his duties there are various statutory provisions available which may enable you to take him to court or a LVT to enforce your rights. In some cases failure of a landlord to carry out a duty is a criminal offence for which a local housing authority may prosecute.

### Approved codes of practice

The Secretary of State and the National Assembly for Wales also has the power to approve codes of practice governing residential property management. These are statements of the law or good practice and if there is a dispute, the codes can be used as evidence of what management standards ought to apply. In addition, departure from the codes is a ground for the appointment of a manager (see section on appointment of a manager). The following codes of practice have so far been approved:

- The Association of Retirement Housing Managers (covering private sheltered retirement housing)
- The Royal Institution of Chartered Surveyors (two codes, one covering properties where service charges are paid, and the other where rent only is paid).

<sup>3</sup> The Rights of Re-entry and Forfeiture (Prescribed Sum and Period) (England) Regulations 2004. Statutory Instrument 2004/3086 and The Rights of Reentry and Forfeiture (Prescribed Sum and Period) (Wales) Regulations 2005. Statutory Instrument 2005/1352.



### What legal rights do I have?

- The right to information about the landlord
- The right to seek recognition for a tenants' association (RTA)  
(The rights of a Recognised Tenants' Association (RTA) are described below.)
- The right to information about service charges and the right to challenge the reasonableness of those charges
- The right to be consulted about major works and long term agreements
- The right to information about insurance
- The right to a management audit
- The right to take over the management of your block without having to prove the landlord has failed in his duty to manage the property (known as the Right to Manage or RTM)
- Where the landlord has failed in his duty to manage the property, the right to ask a LVT for the appointment of a manager. (This particular right can lead to compulsory acquisition of the landlord's interest in the building)
- The right of compulsory acquisition of the landlord's interest in the building in certain other circumstances.

These rights are explained in more detail in the following sections of this booklet.

### Landlord's name and address

Your landlord must:

- notify you of an address in England or Wales where you can serve notices (for example in connection with court proceedings). This may be the address of a representative such as a solicitor. So long as they fail to do this, any rent or service charges falling due are treated by statute as not payable and do not become payable until they give you this information
- put his name and address on any written demand for service charges or rent. If he does not do this, any part of the demand which consists of a service charge is treated by statute as not payable until he gives you this information
- if the address on the demand is outside England or Wales, an address in England or Wales for the service of notices must also be given.

If the landlord is a company, you can write to the landlord for the names and addresses of all the directors and the secretary of the company.

If a new landlord takes over the property, he must tell you in writing and give you his name and address before the next rent demand is due or within two months of the assignment, whichever is the later. If he fails to do so it is a criminal offence, punishable by a level 4 fine (up to £2,500).

### Recognised Tenants' Associations (RTA)

You may wish to join with other tenants in a tenants' association. The association can then seek formal recognition from either your landlord or a Rent Assessment Panel. Rent Assessment Panels in England are part of the Residential Property Tribunal Service. In Wales they are sponsored by the Welsh Assembly Government. This right applies whether you own a house<sup>4</sup> or a flat. RTAs have certain *additional* rights to information over and above those available to the individual tenant (see list above for the rights enjoyed by an individual tenant).

A RTA can:

- ask for a summary of service charge costs incurred
- inspect accounts and receipts for the property in relation to service charge costs
- ask to be consulted about the appointment or reappointment of a managing agent; and
- appoint a surveyor to advise on any matter relating to service charges. The surveyor will have the right to see and copy supporting documents held by the landlord, to inspect common parts, and to appoint assistants.
- be consulted about qualifying works or long term agreements where they represent some or all of the tenants.

To gain recognition from the landlord, the Secretary of the association should ask the landlord for a written notice of recognition. Once your landlord has recognised the association, he must give six months' notice should he wish to withdraw recognition.

Alternatively, you may apply to your local Rent Assessment Panel for a certificate of recognition. This will be granted at their discretion. Usually the certificate will be for four years, but the Panel may cancel it if recognition is no longer appropriate.

As a general guide, an association should represent at least 60 per cent of the flats in the block in respect of which variable service charges are payable. Contact details of the Rent Assessment Panels are given in Chapter 11.

<sup>4</sup> This is most likely to be relevant for leaseholders of houses in estates.



### Can I be consulted about the Managing Agents used?

As an individual leaseholder you have no statutory right to be consulted about the appointment of managing agents for your property, unless a landlord proposes to enter into a contract with an agent of more than 12 months and the cost to any individual leaseholder under the agreement will be £100 a year or more. If so, the landlord must consult with each leaseholder and the RTA before proceeding, and must have regard to any observations made. See the section 'Consultation on qualifying long term agreements' below for more information.

However, a RTA may ask the landlord to consult the association about the appointment, or the continuing employment, of an agent. Where, at the time the request has been made by a RTA no managing agent was employed, then, before making such an appointment the landlord must send a notice to the association stating:

- the name of the proposed managing agent
- which obligations of the landlord the agent will carry out; and
- a period of at least a month beginning with the date of service of the notice to comments on the proposed appointment, to be sent to a name and address in the United Kingdom.

If, at the time of the consultation request by the RTA, your landlord already employs an agent, they should send a notice to the association stating:

- what duties the agent is responsible for; and
- a reasonable period within which the association may comment on the performance of the managing agent and the desirability of that agent continuing their duties.



## Service charges

### Introduction

If you pay service charges, your lease will usually set out the items of expenditure for which you are liable. Where your property is a flat within a block, your lease may also say what share of the overall charge for the block you will be required to pay, and when. Any advance payment must be of a reasonable amount.

Your lease may also allow your landlord to operate a 'sinking' or 'reserve' fund towards funding large items of expenditure that may arise. Contributions towards these funds must be of a reasonable amount. You may also be liable to contribute towards services even if you do not take advantage of them. For example, if you live on the ground floor, you may have to contribute

towards the maintenance of a lift or, if you live in sheltered housing, you may be required to contribute towards the cost of a warden.

Service charge and sinking or reserve fund contributions shall be held on automatic statutory trusts, as is any interest on the money. The statutory trust means the money belongs to the contributing leaseholder(s) except to the extent that it is used properly for authorised service charge purposes. If your landlord becomes insolvent, the money cannot be touched by the landlord's creditors.

A landlord can only recover costs for service charges within a limited period of time. He has 18 months from the time the costs were incurred to write to the relevant leaseholders about the charges. If he fails to do this, he cannot recover the costs of those charges.

### What are my rights in relation to service charge demands?

- You have the right to obtain a summary of the costs on which the service charge is calculated
- Following receipt of a summary you have the right to look at the accounts, receipts and other documents on which the summary is based
- You have the right to be consulted about major works and long term agreements
- You have the right to challenge the reasonableness of any service charge or of the standard of works or services, even where works are proposed.

These rights are explained in further detail later in this chapter and booklet.

### What should I expect from the landlord when receiving a demand for service charges?

From 1st of October 2007 a demand for the payment of a service charge must be accompanied by a summary of your rights and obligations in relation to the charges and must contain the information prescribed in Regulations.<sup>5</sup>

### Can I ask my landlord for information on service charges?

An individual leaseholder or the secretary of recognised tenants' association may ask the landlord for a summary of the costs on which the service charge is based. You may do this at any time but your landlord need only provide the information once for the same period.

Your landlord must provide you with a summary of the costs for the last service charge accounting year, or, where accounts are not kept by accounting year, for the 12 months preceding your request.

<sup>5</sup> The service charges (Summary of Rights and Obligations) (England) Regulations 2007/1257.

The summary should show:

- how the costs relate to the service charge demand, or if they will be included in a later demand
- any items for which your landlord did not receive a demand for payment during the accounting period
- any items for which a demand was received and for which no payment was made during the accounting period
- any items for which a demand was received and for which payment was made during the accounting period; and
- whether any of the costs relate to works for which an improvement grant has been or is to be paid.

The summary should be supplied within one month of the request or within six months of the end of the accounting period covered by the summary, whichever is the later. Where the service charge is payable by the tenants of more than four dwellings, the summary must be certified by a qualified accountant as a fair summary and sufficiently supported by accounts, receipts and other documents produced to the accountant.

Where your landlord is a public sector body, one of their officers who is a qualified accountant may certify the summary, but otherwise the accountant must be independent of your landlord.

### Can I inspect the accounts or receipts?

A leaseholder, a tenant paying service charges, or the secretary of a recognised tenants' association, can ask the landlord in writing to see accounts, receipts and other supporting documents. This must be done within six months of receiving the landlord's summary. The landlord must provide an opportunity for the inspection and copying of documents for two months beginning no more than one month after the date of the request.

Your landlord cannot charge for inspecting documents, but he can make a reasonable charge for providing copies. A surveyor appointed by a tenants' association has the right to inspect documents free of charge (but, under the terms of some leases, the landlord may be entitled to include in his management costs the cost of providing these inspection facilities). The landlord must allow the surveyor to take copies of documents, subject to a reasonable copying charge.

### Information held by a superior landlord

This only applies where the superior landlord has incurred some or all of the relevant costs in the summary. If, as a result of this, your landlord does not have all the supporting documents, he must request this information from the



superior landlord, who must reply within a reasonable time. Where the service charge summary (or a part of it) depends on information held by a superior landlord, the time within which your landlord must supply the summary (or that part of it) to you can be extended as is reasonable in the circumstances.

In addition, your landlord must give you or the RTA secretary, the superior landlord's name and address. You or the secretary may then ask the superior landlord in writing for an opportunity to inspect their accounts etc (see above).

It is a criminal offence if your immediate or superior landlord does not provide a summary or inspection facilities as required by statute, and does not have a reasonable excuse.

### Can I challenge service charges?

If you pay service charges that are variable and consider that you should not have to pay for an item, that the quality of work is inadequate, or that a charge is not reasonable, then you may have the right to challenge that part of your service charge at a LVT. You can also seek a determination on works or services that are proposed in the future.

### When am I not allowed to apply to the LVT?

No application may be made to a LVT if:

- the matter has already been agreed or admitted by the tenant
- the matter has been determined by a court
- the matter has been or is to be referred to an arbitral tribunal where agreement to go to arbitration has been reached *after* a particular dispute has arisen
- the matter has been the subject of determination by an arbitral tribunal where agreement to go to arbitration was reached *after* a particular dispute has arisen.

However, the tenant is not to be taken as having agreed or admitted any matter solely because they have made a payment. Consideration should be given to seeking independent legal advice in cases where payment has been made.

You should, of course, first check your lease to see if your landlord can charge for all the services billed. You should then discuss the problem with your landlord, as you may be able to negotiate a reduction or an improved service.

The right to challenge service charges, how to apply to a LVT, and other such information is explained further in Chapter 7 – 'Applying to a Leasehold Valuation Tribunal (LVT)'.



### Consultation about Service Charges

Section 20 of the Landlord and Tenant Act 1985 (as amended by section 151 of the 2002 Act) requires that a leaseholder must be consulted before the landlord carries out works above a certain value or enters into a long-term agreement for the provision of services.

If you are unsure whether you should be consulted about service charges you will need to ascertain certain information. Because different circumstances will apply in different cases, you will be best advised to seek your own professional advice to establish what rights you have to be consulted and when. Free initial advice can be obtained from LEASE. Their contact details can be found at the back of this booklet.

#### Consultation on qualifying long-term agreements

Where a landlord proposes to enter into an agreement for the provision of works and/or services for a period of more than 12 months, and the cost to any individual leaseholder under the agreement will be £100 a year or more, he must consult before proceeding. The contract could be, for example, for maintenance of the lift, a door-entry system or an alarm system in a retirement scheme, for window or other cleaning, for garden maintenance, or simply for supplies of materials. However, contracts of employment are exempt from the consultation procedure.

The landlord must serve a notice on each leaseholder (and on the secretary of the recognised tenants' association (RTA) if one exists) which:

- must describe in general terms the proposed agreement (or specify the place and hours where a description of the proposed agreement can be inspected. If facilities for making copies are not made available, on request and free of charge, the landlord must provide a copy of the description)
- sets out the landlord's reasons for considering it necessary to enter into the agreement
- if the agreement consists of or includes qualifying works, sets out the landlord's reason for considering it necessary to carry out those works
- invites observations in writing, states where the observations should be sent
- states the date by which such observations should be delivered
- invites the leaseholder and the RTA, to nominate a person from whom the landlord should try to obtain an estimate.

The consultation period should be at least 30 days from the date of the notice. The landlord shall, after considering any observations received, proceed to obtain estimates from his chosen contractors. If a leaseholder or the association nominates an alternative contractor, the landlord must also try to obtain an estimate from that contractor.

Upon receipt of the estimates, the landlord must then serve a further notice on the leaseholders and the RTA, setting out those estimates and include a statement which:

- identifies the proposed contractor
- identifies any connection between the contractor and the landlord
- where reasonably practicable, includes an estimate of the relevant contribution for each leaseholder, and where that is not reasonably practicable, an estimate of the landlord's expenditure as regards the building or other relevant premises under the proposed agreement
- includes a statement as to the provision (if any) for the variation of any amount specified in, or to be determined under, the proposed agreement
- where the proposed agreement relates to the appointment of a managing agent, includes a statement as to whether the agent is a member of a professional body or trade association, for example, the Royal Institution of Chartered Surveyors, the Association of Residential Managing Agents, or the Association of Retirement Housing Managers, and whether he subscribes to a code of practice or voluntary accreditation scheme
- contains a statement of the intended duration of the agreement
- summarises previous observations made by the leaseholders to the landlord and sets out the landlord's response to them.

Again, the notice must invite observations in writing and state the address and timescale (minimum 30 days) for receipt of these observations.

Where the landlord has entered into the agreement he shall within 21 days of entering into the agreement write to each tenant and any RTA, stating his reasons for making that agreement, or specify a place and the hours at which a statement of those reasons may be inspected. Where the landlord received observations to which he was required to have regard, the notice must also provide a summary of the observations and his response to them.

The landlord will not have to write to each tenant or the RTA upon entering an agreement where the person with whom the agreement is made is a nominated person, or the person with whom the agreement is made submitted the lowest estimate.

**The landlord will not be able to recover charges beyond the statutory amount (£100 per service charge payer) if he fails to carry out any of the consultation procedure, unless he has received dispensation from the LVT (see below).**



### Qualifying works carried out under a qualifying long-term agreement

Where the landlord has entered into a long term agreement he will still be required to consult on a more limited basis with all leaseholders where he intends to carry out works where the cost exceeds £250 for any individual leaseholder under that agreement. The landlord must still serve a notice of intention on the service charge payers which:

- must describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected
- states the landlord's reasons for considering it necessary to carry out the proposed works
- contains a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on, and in connection with, the proposed works
- invites observations in writing in relation to the proposed works, or the landlord's estimated expenditure and states the address and timescale (minimum 30 days).

There is no right to nominate an alternative contractor as the landlord is already contractually bound with the one that is already in place and the landlord only has to respond in writing within 21 days of receiving any observations to the person that made them.

### Consultation on qualifying works which are not the subject of a qualifying long-term agreement

Where a landlord proposes to carry out works of repair, maintenance or improvement which would cost any individual service charge payer more than £250 which are not the subject of a qualifying long terms agreement, he must, before proceeding, formally consult all those expected to contribute to the cost. This has the dual effect of giving notice to the leaseholders of his intentions and seeking their view on the proposed works.

The landlord must serve a notice on each leaseholder (and on the secretary of the RTA if there is one) which:

- must describe in general terms the proposed works or specifies where a description of the proposed works can be inspected and the hours when it can be inspected. The inspection facilities must be made available free of charge, at a specified time and place. If at that time and place there are no facilities for copying, then the landlord must, on request, provide a copy of the description
- must state the landlord's reason for considering it necessary to carry out the proposed works

- invites observations in writing, and state the address and timescale
- invites the leaseholder (and the RTA) to nominate a person from whom the landlord should try to obtain an estimate.

The leaseholder (and the RTA) must be given a period of 30 days in which to send observations to the landlord and, if they choose, to nominate an alternative contractor of their choice.

After this, the landlord must obtain at least two estimates for the work. At least one of the estimates must be from a contractor wholly unconnected with the landlord and, where a contractor has been nominated by the leaseholders or the Secretary of the RTA, the landlord must try to obtain an estimate from that contractor. Having obtained the estimates he must supply, free of charge for at least two of the estimates, a statement setting out both the amount specified in the estimates as the estimated costs of the proposed works, and a summary of the observations which he is to have regard and his response to them. Any estimate obtained from a person nominated by the leaseholders or the RTA must be included in the statement that is provided free of charge. He shall also make all of the estimates available for inspection by the leaseholders and the secretary of the RTA.

Again, the landlord must invite observations and he must have regard to any observations made.

If any observations are made or alternative contractor nominated, the landlord must, within 21 days of entering into the contract, serve a further notice on all previous recipients stating his reasons for awarding the contract or, instead of serving notice, he can specify the place and hours at which a statement of those reasons may be inspected. This requirement will not apply where the person with whom the contract has been made with was nominated by the leaseholder or submitted the lowest estimate.

### European Union implications to consultation on qualifying long-term agreements, and qualifying works which are not subject to a long-term agreement

There may well be some large long term agreements, and some contracts for works that may come within the rules for tendering within the European Union (the EU procurement rules), which require public advertisement in the Official Journal of the European Union.

In these cases, there are some important differences, as follows.

- There is no right of nomination of a contractor
- The landlord must include a statement in the notice of intention that nominations are not being invited because public notice is to be given for the agreement, or contract for works (whichever is applicable).

There is also extra provision for those landlords who are unable to provide an estimate of costs. Where a landlord can provide each leaseholder with an estimate of his/her contribution then he must provide that estimate. Where the landlord cannot provide such an estimate, he must provide an estimate of the cost of the works to the premises. Where the landlord cannot do this he must provide a statement of the hourly/daily rate applicable to the works if possible. Where the landlord cannot even provide this amount, he must provide a statement explaining why he is unable to do so and the date by which he expects to be able to provide it. The landlord must, in writing, inform the tenants of the amount within 21 days of receiving this information.

### LVT dispensation from consultation

If the landlord fails to carry out the consultation process in the correct form and has not sought a dispensation from the LVT, he will be unable to recover the cost of the works from the leaseholders beyond the statutory limit of £250 per leaseholder.

However, in cases where the works are considered urgent, for example, a leaking roof or a dangerous structure, or in other cases where the landlord wishes to proceed quickly, the landlord may apply to the LVT for an order to dispense with the consultation procedure. In such a case the LVT will notify service charge payers of the proposal.



## Administration charges

### Introduction

Schedule 11 of the Commonhold and Leasehold Reform Act 2002, which came into force on 30 September 2003, introduced new rights for tenants where the landlord requests payment of an administration charge under the lease.

An administration charge for these purposes means an amount payable as part of or in addition to the rent which is payable directly or indirectly:

- for approvals (or an application for such approval) required as a condition of the lease
- for (or in connection with) the provision of information or documents by or on behalf of the landlord or a person party to the lease otherwise than as landlord or tenant
- for penalty charges for late payment of rent and other charges, or charges in connection with a breach (or alleged breach) of a covenant or condition of the lease.

A variable administration charge is only payable to the extent that it is reasonable. Reasonableness will depend upon what the charge is for and the cost.

### What should I expect from the landlord when receiving a demand for administration charges?

A demand for the payment of an administration charge must be accompanied by a summary of your rights and obligations in relation to the charges and from the 1st October 2007 must contain the information prescribed in Regulations<sup>6</sup>.

### What are my rights in relation to administration charges payable under the lease?

You have the right to apply to a Leasehold Valuation Tribunal (LVT) to determine your liability to pay an administration charge, including by whom it is payable, to whom, how much, and the date and manner in which it is payable. You also have the right to apply to a LVT to vary the lease where:

- the administration charge is unreasonable
- any formula specified in the lease for calculating the administration charge is unreasonable.

### Can I withhold payment of the Administration charge?

You may withhold payment of an administration charge demanded by the landlord where a summary of rights and obligations in respect of administration charges has not been provided.

### When am I not allowed to apply to the LVT?

You do not have this right if:

- The matter has been agreed or admitted by you
- The matter has been or is to be referred to arbitration pursuant to a post-dispute arbitration agreement
- The matter has been the subject of a determination by a court, or by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

<sup>6</sup> The Administration Charges (Summary) of Rights and Obligations (England) Regulations 2007/1258.



### Buildings insurance

What rights do I have with regard to the buildings insurance on my property?

The following rights apply to you if you pay a variable service charge which includes an element of insurance (mainly flats), or where you are responsible for insuring the property with an insurer which is either nominated or approved by the landlord (mainly houses). In general terms, the cost of the insurance must be reasonable (reasonableness may be determined by a LVT). However, the fact that cheaper insurance can be obtained does not necessarily mean you will be able to challenge successfully the landlord's insurance arrangements at a LVT.

**In flats** the landlord is generally responsible for the insurance of the building itself. If this is the case, the landlord has the right to appoint the insurer. However, you have rights to information about the insurance in addition to being able to challenge its reasonableness.

**For houses**, the terms of the lease may require you to insure the property with an insurer nominated or approved by the landlord. If so, your right to use your own insurer or challenge the nominated or approved insurer is explained below.



Can I ask for a summary of the insurance cover?

Where a service charge is payable which consists of or includes an amount payable directly or indirectly for insurance, you (or the secretary of the RTA on your behalf if you belong to one) have the right to ask the landlord in writing, for a written summary of the current insurance cover. The landlord only has to supply this once in an insurance period. Your landlord has 21 days from receiving the notice in which to provide the summary. This should include:

- the sum or sums for which the property is insured;
- the name of the insurer;
- the risks covered in the policy.

Your landlord may, alternatively, provide you with a copy of every relevant policy.

Can I inspect the insurance policy?

Where a service charge is payable which includes an amount payable directly or indirectly for insurance, you may serve a notice in writing on the landlord to allow you reasonable facilities for inspecting any relevant policy or associated documents, and for taking extracts from them. Alternatively, your



notice can require the landlord to take copies or extracts from the relevant policy or documents, and either send them to you or allow you reasonable facilities for collecting them (as he specifies). If you are represented by a RTA and you consent, the secretary of the RTA may serve the notice instead.

Where the notice requires the landlord to allow you reasonable facilities for inspecting the policy or associated documents, he shall do so free of charge, although he may treat as part of his costs of management any costs incurred by him doing so. He may also make a reasonable charge for doing anything else in compliance with a requirement imposed by your notice.

Your landlord has 21 days from the date of receiving the notice to comply with the notice. If the landlord fails to comply with any of the duties required of them as described above without a reasonable excuse, they commit a criminal offence and are liable on conviction of a level 4 fine on the standard scale (up to £2,500).

If you pay a service charge which includes an amount payable directly or indirectly for insurance and the insurance policy itself has a time limit for claims, you may write to the insurance company within the specified period to notify them of damage for which a possible claim may be made.

### Nominated or approved insurer provisions for leasehold houses

Leaseholders of houses who are subject to a 'nominated' or 'approved' insurer clause, are able to insure the property with the insurer of their choice providing that certain conditions are met and a notice is served on the landlord in a particular form within certain time limits.

Briefly these conditions are:

- the leaseholder must insure the property with an insurer authorised to carry on business in the UK
- the policy must note the interests of both the landlord and the leaseholder
- the policy must cover the risks that are required to be covered in the lease and the amount of cover must not be less than that required by the lease
- the leaseholder must provide the landlord with evidence of cover or renewal within 14 days of the insurance being taken out or renewed, and must provide a new landlord with the notice within 14 days of any request that is made.

The details of the form and notice are prescribed in Regulations<sup>7</sup>. The notice itself must contain the following information:

To: *[insert name and address of landlord]*

- 1.** I am the tenant/We are the tenants of the house at *[insert address]*.
- 2.** The house is insured under an insurance policy issued by *[insert name of insurer and its registered office or, if the insurer has no registered office, its head office]* who is an authorised insurer within the meaning of section 164 of the Commonhold and Leasehold Reform Act 2002.
- 3.** The policy number is *[insert number]*.
- 4.** \*The risks covered by the policy are: *[list the risks covered]*.  
OR  
\*The risks covered by the policy are set out in the pages attached to this notice *[attach a copy of the relevant pages from your insurance documents]*.  
(\*Delete as appropriate.)
- 5.** The amount of the cover (the sum insured) is £ *[insert amount]* and it is provided for the period beginning on *[insert date on which cover begins]* and ending on *[insert date on which cover ends]*.
- 6.** Premiums are payable *[state how frequently premiums are payable eg annually, monthly]*.
- 7.** The amount of the excess under the policy is £ *[insert amount]*.  
[It is payable whenever the insurer makes a payment under the policy.]  
[It is payable in the following circumstances:]  
*(Delete this paragraph if no excess is payable. If an excess is payable every time that the insurer meets a claim under the policy, delete the third sentence. If an excess is payable only in certain circumstances, delete the second sentence and specify the circumstances here. If different amounts are payable in different circumstances, give details here.)*
- 8.** The policy has been renewed and was last renewed on *[insert date]*.  
OR  
The policy has not been renewed and took effect on *[insert date]*.  
*(Delete the statement that does not apply.)*
- 9.** I am/We are satisfied that the policy covers my/our interests.
- 10.** I/We have no reason to believe that the policy does not cover your interests.

Signature

Date

<sup>7</sup> The Leasehold Houses (Notice of insurance cover) (England) Regulations 2004. Statutory Instrument 2004/3097, and The Leasehold Houses (Notice of insurance cover) (Wales) Regulations 2004. Statutory Instrument 2005/1354

The notice must be served each year that you wish to use your own insurer, and failure to serve a notice in the proper form or within the required time limits may mean that you will have to wait for the next insurance renewal before the right can be exercised.

### Unsatisfactory insurance arrangements

If your lease does not provide adequately for insurance you may be able to apply to vary the lease (see *Can I vary my lease?* below).

Whether you contribute to the insurance of the property through variable service charges, or are responsible for taking out insurance with an insurer nominated by the landlord, you can challenge the insurance if you believe it to be unreasonable.

Where the landlord is responsible for the insurance and recovers the cost of the premium from the tenants through variable service charges, you can challenge the reasonableness of the insurance by making an application to a LVT as though it were part of a service charge.

However, where the individual leaseholder is responsible under the lease for insuring the property but the landlord has the right to nominate the insurer, there are special grounds for challenging the arrangement. These are:

- the insurance cover available from the nominated insurer is unsatisfactory in any respect; or
- the premiums payable are excessive.

Such a challenge may be made to the LVT, which may either require your landlord to appoint another insurer, or an insurer who meets requirements specified by the LVT.

See Chapter 7 'Applying to a Leasehold Valuation Tribunal' for further details.

### Management audit

You have the right to arrange for a management audit of all the management functions which your landlord or their agent undertakes on your property. **You will have to pay the cost of the audit.** The right applies to qualifying long leaseholders who pay variable service charges. Where there are only two dwellings, either or both leaseholders may exercise the right. If there are more than two dwellings, the right must be exercised by at least two-thirds of the qualifying leaseholders.

#### Why have an audit?

The purpose of the audit is to find out if the landlord is carrying out their management obligations efficiently and effectively. It can look at any aspect of the management and whether service charges are being spent in a cost-effective way. The auditor can look at papers and inspect common parts. The audit can be used to identify and obtain evidence of bad management.

The audit must be undertaken by a qualified surveyor or accountant, who is neither a tenant of any premises in the block or connected with the landlord. The choice of professionals allows you to look at both the accounts and at the structure of the building and the auditor may employ any other persons to assist as they see fit.

If, subsequently, you decide to challenge any aspect of the landlord's management practices before a court or LVT, the applicable standard of good management practice will be set out in the relevant code approved by the Secretary of State. The court or LVT shall take into account any provision of such a code it thinks is relevant to the case before it. (See '*Approved Codes of Practice*' in this chapter). Further information and a leaflet on the appointment of a surveyor for management audits can be obtained from LEASE, whose details can be found at the back of this booklet.



## Can I vary my lease?

### Applications by any party to a long lease

Leases can be varied at any time with the agreement of all the parties concerned. However, if agreement cannot be reached you may be able to apply to a LVT to vary your lease.

#### For flats

Any party to the lease (including the landlord) can apply to a LVT to vary it if the lease does not make proper provision for (among other things):

- the repair or maintenance of the flat, the building, or any land or building which is let to the tenant under the lease and any installations or services
- the insurance of the building containing the flat or any land or building let to you under the lease
- the recovery of expenditure under the lease; or
- the calculation of the service charges payable under the lease.

#### For houses

Any party (including the landlord) to a lease of a dwelling which is not a flat may apply to a LVT for variation of the lease if the lease fails to make satisfactory provision for the insurance of the property.

### Applications by large majority of leaseholders having the same landlord

Two or more leases of flats can be varied by a LVT if a large majority of the leaseholders agree to the change. The application must refer to long leases of flats held from the same landlord, but the flats do not have to be in the same building nor do the leases have to be drafted in identical terms. The application can be made by any party to the lease, subject to the following conditions.

Where the application refers to eight or fewer leases, all, or all but one of the parties to those leases, including the landlord, must consent to the application. Where the application refers to more than eight leases, at least 75 per cent of the parties concerned must consent to it, and it must not be opposed by more than 10 per cent of them.

### Can I appoint my own manager in place of the landlord's manager?

Where the whole or part of a building contains two or more flats, any tenant of the block has the right to ask the LVT to appoint a manager to run the block or to carry out certain management functions. This is a separate right to the Right to Manage (RTM) which is explained below and in Chapter 4 of this booklet.

The grounds for seeking the appointment of a manager from a LVT are:

- the landlord is in breach of their obligations to you as a tenant under the lease
- the landlord has demanded, or is likely to demand, unreasonable service charges (by which is meant that the amount is unreasonably high in relation to the work involved, that the work has been carried out to an unnecessarily high standard, or that the work is substandard with the result that additional charges are or may be incurred)
- the landlord has failed to comply with any relevant provision of an approved code of management practice; or
- where the LVT is satisfied that other circumstances exist which make it just and convenient for the order to be made.

It must, in all cases, be just and convenient to make the order. You can exercise this right on your own or with the other leaseholders (including renting tenants) in your block.

However, you will not have the right if:

- you live in a converted building (ie one which is not a purpose-built block of flats) and less than one half of the flats in the block are let on long leases (which are not business leases), and your landlord is resident
- your landlord is a public body such as a local authority, a new town development corporation, a housing action trust, the Development Board for Rural Wales, or a registered social landlord; or
- the premises are included within the functional land of any charity.

This right is explained in more detail in Chapter 7 of this booklet.



## What rights do the leaseholders have to manage the block?

You and the other leaseholders in the block can take over the management of the block from your landlord and either run it yourselves, or appoint an agent to manage it on your behalf. This is known as the Right to Manage (RTM) and is a collective right rather than an individual right.

Unlike asking a LVT to appoint a manager because your landlord has been at fault in some way, you do not have to prove fault or seek approval from a LVT when exercising this particular right. However, before you will be allowed to exercise this right, certain qualifying conditions will need to be satisfied. These include: the building having to contain two or more flats with at least two-thirds of the flats being held on long leases; using a specific right to manage company through which the right itself must be exercised; and the serving of certain preliminary prescribed notices.

*This right is explained in more detail in Chapter 4 of this booklet (Leasehold flats – Right to Manage).*

## Compulsory acquisition of the freehold – Leasehold Flats

While similar to the right to enfranchise explained in Chapter 2, the manner in which this right is exercised is different. It applies to leaseholders of two or more flats in the same building (or part of a building) having the same landlord. A majority of such leaseholders may apply to a county court to require the landlord to transfer his interest to the leaseholders on the following grounds, either:

- the landlord is in breach of any obligation under the applicants' leases in relation to the repair, maintenance, insurance or management of the premises and the breach is likely to continue; or
- an order for the appointment of a manager of the premises which has been made by a LVT has been in force since at least two years before the date of the application.

An acquisition order (which is made on terms agreed between the landlord and the leaseholder, or determined by the LVT) cannot be made unless the court considers it appropriate to do so in the circumstances.

Where an application is made to a LVT to determine the terms, they shall do so on the basis of what appears to them to be fair and reasonable. Where an application is made to a LVT to determine the amount payable, they shall do so by determining an amount equal to the amount which, in the opinion of the LVT, might be expected to be realised if sold on the open market by a willing seller, assuming that none of the tenants were buying or seeking to buy that interest.

This right does not apply if:

- you live in a converted building (ie one which is not a purpose-built block of flats) where your landlord is resident
- your landlord is a public body such as a local authority, a new town development corporation, a housing action trust, the Development Board for Rural Wales, or a registered social landlord
- the premises are included within the functional land of any charity
- more than 50 per cent of the internal floor area of the premises is used for non-residential purposes; or
- the total number of flats held by qualifying leaseholders is less than two-thirds of the total number of flats contained in the premises.

## Estate Management Schemes

### What are Estate Management Schemes (EMS)?

An EMS allows landlords to retain some management controls over properties, amenities and common areas, in most cases after selling the freehold to the leaseholder(s). In many cases the aim of a scheme will be to ensure that the appearance and quality of the area as a whole is kept to the same standard. But a scheme can also provide for the upkeep of communal gardens or other common areas.

### Can I challenge charges made under an EMS?

Yes you can. The following applications can be made to a LVT:

- an application to vary the scheme on the grounds that a charge in the scheme is unreasonable or the method for calculation of such charges is unreasonable
- an application for determination as to liability to pay the charge, the date of payment, and method of payment.



### Can I seek to vary or terminate an EMS?

All schemes are required to contain provisions which allow for their own termination or for the variation of their terms. Anyone who wishes to make an application for these purposes should first check what is said in the terms of the scheme.

In many cases, the scheme will provide for variation or termination by application to a LVT. Older schemes may instead require application to the High Court. If so, the application should also be made to a LVT, to whom jurisdiction was transferred by the 1993 Act.

### Can I purchase the freehold (enfranchise) if I am subject to an EMS?

If your house or flat is subject to an EMS you can still go ahead with enfranchisement. However you are likely to still be subject to the charges payable under the EMS after enfranchisement. You will need to be aware of certain factors where an EMS is not yet in place but is being applied for.

*Further information can be found in Chapter 2 (Leasehold Flats) or Chapter 5 (Leasehold Houses) as appropriate.*

# 2

## **Leasehold flats**

Your right to buy the freehold of your building or renew your lease

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## Introduction

This chapter tells you about collective enfranchisement (buying the freehold), and lease renewal rights for leaseholders of flats. These rights are in Part I of the Leasehold Reform, Housing and Urban Development Act 1993 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002.

We have tried to make this chapter easy to understand but we have not covered every part of the law. This guidance must not therefore be substituted for professional advice.

‘Enfranchisement’ is a **group** (or collective) right for leaseholders of flats to buy the freehold of the building they live in. Lease renewal is an **individual** right for a leaseholder to buy a new, longer lease to replace their existing lease. While this chapter is mainly for leaseholders, it may also be of interest to landlords and their agents. It explains the rights available, whether they apply to you, and tells you how to go ahead if you want to buy the freehold of your building or a new lease.

## The rights in general

In England and Wales, most people who live in flats either rent them on a short lease (a lease of 21 years or less), or have bought a long lease. A long lease is usually granted for a fixed number of years, and the value of the lease diminishes as the lease gets shorter, therefore when there are not many years left to run, the leaseholder often finds it difficult to sell. In addition, once the lease expires the flat will revert to the landlord. It is for this reason that long leaseholders may wish to either renew (extend) their lease, or alternatively, they may wish to purchase the freehold of their building. These rights are explained further in this chapter.

### Enfranchisement

Subject to certain conditions, leaseholders of flats have the right to enfranchise their building as a group if they and their building qualify. They have this right even if the freeholder or landlord does not wish to sell. This is known as the right to enfranchise, and must be exercised by a ‘nominee purchaser’, who will act for you throughout the process and will own the freehold for you after you enfranchise. The ‘nominee purchaser’ is explained in further detail later in this chapter. Once the freehold has been bought, the leaseholders can decide how they want to manage the building, for example, managing the building themselves or appointing a manager to do so on their behalf.

## Leasehold flats

Your right to buy the freehold of your building or renew your lease

### Buying a new lease

A leaseholder of a flat has an individual right to acquire a new lease on payment of a premium, providing he meets the qualifying criteria. The new lease will be at a peppercorn rent<sup>8</sup> for a term expiring 90 years after the end date of the existing lease.

## Enfranchisement

### Do I qualify to take part in the enfranchisement process?

To have these rights you must be a 'qualifying tenant'. This means you must be a long leaseholder of a flat. It does not matter if your lease has less than 21 years left to run, and you do not have to be the person who was first granted the lease. If you own the lease with someone else, you are together the 'qualifying tenant' of your flat.

If there is more than one long lease of a flat, the 'qualifying tenant' will be the tenant with a long lease who has not sub-let to another tenant on a long lease. So if, for example, you have a long lease from a landlord who also has a long lease and you have not sub-let, you will be the 'qualifying tenant', not the person who granted you the lease.

If you are a 'qualifying tenant' you can only buy the freehold with a group of other 'qualifying tenants' if your **building** satisfies certain criteria, as follows:

- there must be two or more flats in your building. If there are only two flats in the block both must participate in the exercise
- at least two-thirds of all the flats in your building must be held on long leases
- not more than 25 per cent of the internal floor area (apart from common parts such as stairs) of the building is in non-residential use or intended for non-residential use – for example, as a shop or an office
- the number of tenants participating must also equal at least half the flats in the block.

For example, in a block of 12 flats, at least 8 flats must be held on long leases, and **at least** 6 long leaseholders would need to participate in the enfranchisement process.

You and your neighbours can enfranchise the whole building or just the part containing your flat or flats. For example, your building may be divided into two or more parts or wings for which there are separate entrances and facilities such as lifts and stairs. If you only buy the part containing your flats, it must be independent from the rest of the building, or easily made independent.

<sup>8</sup> A peppercorn rent means that they will not have to pay any money.

'Flat' for these purposes includes a maisonette, and properties which do not satisfy certain rules in the Leasehold Reform Act 1967. You would be best advised to seek professional advice if you are unsure whether your property is deemed to be a house or flat for purposes of the legislation. For example, a house converted into flats but where a lease of the whole house is held.



### Exceptions from the right to enfranchise

There are some exceptions where, as an individual, you do not qualify to take part in the enfranchisement process, or as a group you cannot enfranchise because your building does not qualify, briefly these are as follows:

You cannot be a qualifying tenant for enfranchisement if:

- your landlord is a charitable housing trust and the flat is provided by the charity as part of its charitable work
- you own qualifying leases of more than two flats in the block (although you may still qualify for a lease renewal)
- you have a business lease; or
- you have a shared ownership lease where the total share owned is less than 100 per cent.

Your building does not qualify if:

- it is a converted property of four or fewer flats, the same person has owned the freehold since before the conversion **and** the freeholder (or an adult member of their family) has lived in one of the flats as their only or main home for the last 12 months
- it is a converted property of four or fewer flats and the freehold of the premises is held on trust, and that same person had an interest under the trust since before the conversion (whether or not also a trustee) and they or an adult member of their family has occupied one of the flats as their only or main home for the last 12 months
- it is a property that has been given a conditional exemption from Inheritance Tax by the Board of HM Revenue and Customs. (Your landlord will tell you where this applies)
- more than 25 per cent of the internal floor area is in non-residential use or intended for such use (apart from the common parts such as stairs)
- the freehold of the premises includes track of an operational railway
- it is within the precinct boundary of a cathedral
- it is built on certain land held by the National Trust; or
- it is owned by the Crown. (But you may find that the Crown authorities will agree to let you enfranchise.)

Ask your professional adviser if you are not sure whether any of the exceptions apply to you.

## Leasehold flats

Your right to buy the freehold of your building or renew your lease

### What do we buy when we enfranchise?

The right to enfranchise is the right to buy as a group, the freehold of the building and any leases superior to those of qualifying tenants, for example head leases.

You also have the right to enfranchise the freehold of any property and areas your leases allow you to use at the time you enfranchise. This includes facilities such as gardens, garages and parking spaces. You may also buy leasehold interests in this type of property, and in common parts of the building, if you need to do this to manage or maintain these areas properly.

### Who owns the freehold after enfranchisement (Nominee Purchaser)?

When you first give your notice to enfranchise, you have to name someone to act for you throughout the process. This person is your **nominee purchaser** and will own the freehold for you after enfranchisement. It would therefore be advisable to decide early on how you want your building to be owned and run in the future as your decision will help you to choose a nominee purchaser.

For example, in a small building, you might want to enfranchise the block in your own names. However, if this is the case you should note that no more than four people could be joint owners of one freehold. In a larger building it may be better to set up a company to own the freehold. You could, of course, choose a third party with no interest in the building.

If you are not sure what would be best for you and your building, talk to your professional adviser.

### What about parts of the building not let to qualifying tenants?

You cannot buy as part of the freehold a lease of a flat or other unit not let to a qualifying tenant. This includes shops, offices and flats let on short leases. The person from whom the freehold interest is acquired must take a leaseback<sup>9</sup> of certain flats and can choose to do so in other cases (see below). There are also certain terms which must be included in a leaseback, and you will need professional help to prepare the lease.

### When must a leaseback of certain flats be given?

If the person from whom you acquire the freehold is a public sector landlord, such as a local authority, they must take a leaseback of the flats they let directly to secure tenants. If they are a registered social landlord and has let a

<sup>9</sup> A leaseback is a lease of 999 years at a peppercorn rent to the former freeholder. A peppercorn rent means that they will not have to pay any money.



flat to someone other than a secure or qualifying tenant, they must take a leaseback of that flat.

Where the freeholder takes such a leaseback, the price you pay for the freehold will be reduced by the value of the leaseback.

### Can a leaseback be requested in other cases?

The person from whom you acquired the freehold interest may choose to take a leaseback of flats or units not let to qualifying tenants. If it is a public sector landlord, this is as well as their duty to take a leaseback of certain flats described above.

Except where it is their duty, they may decide that they do not want to take a leaseback. This means that you cannot rely on the price of the freehold being reduced by the value of the leaseback. Therefore, the nominee purchaser should also prepare to be the landlord of the shop or the rented flats after enfranchisement.



## The enfranchisement process

For those who have the right and want to enfranchise their building, here is an outline of the different stages involved. You should note that it is only meant as a guide and does not cover every part of the enfranchisement process.

### Before you start – requesting information from the landlord

If you want, you may give your landlord a notice requiring him to provide information before deciding to exercise your right to enfranchise (known as a Section 12 notice). This may help you find out if:

- your building satisfies the rules for enfranchisement; and
- whether there are other interests, as well as the freehold you need to buy.

This notice does not commit you to enfranchise, but your landlord must reply within 28 days. In your notice you may ask for:

- the name and address of the freeholder and all those who hold other interests in the building; and
- details of those interests and any other relevant information.

You can also give the notice on your own, so, at this stage, you do not need to get your neighbours to agree to enfranchise with you.

## Leasehold flats

Your right to buy the freehold of your building or renew your lease

### What do we do next if we decide to enfranchise?

Because enfranchisement is a group action, you and your neighbours must meet at an early stage to make sure that:

- your building satisfies the rules
- at least two-thirds of the flats in the property are held on long leases; and
- the number of tenants participating in the enfranchisement is at least half the total number of flats in the block.

You must prepare thoroughly before you commit yourselves, and you should consider obtaining professional advice on the value of the freehold and other interests you want to buy before you give your notice to enfranchise.

### How do we formally begin the enfranchisement process (The initial notice)?

The enfranchisement process starts when you, as a group, first give the notice to the reversioner\* and all other landlords. This is known as the initial notice. It commits you to pay the reversioners and, where appropriate, other landlords' reasonable costs (see 'Are there any other costs payable' below). There is no prescribed form for the initial notice but you must include certain information.

In the notice, you must:

- give details of the freehold property that you wish to buy. You may want the reversioner to give you certain rights over other property they own, for example, rights of way. If so, you must say what these rights are. You must also show the property affected on a plan, including the property you are buying
- state the grounds on which (on the date you give the notice) the building satisfies the rules for enfranchisement
- give details of any leasehold interests you want to buy, for example a head lease. If the freeholder is a public sector landlord or a housing association, give details of any flats which must be leased back
- give the price you propose to pay for the freehold of your building, for any extra property such as gardens, and for any leasehold interests (see section 'Problems and other issues' near the end of this chapter)
- give the full name and address of each of the qualifying tenants of flats in the premises, including any who are not participating. You must also give details of each qualifying tenant's lease. This means giving for example, the date the lease was entered into, when it originally began and the length of the lease

\* In most cases 'the reversioner' will be the freeholder. In some cases the court may choose another landlord in the building to be the reversioner instead of the freeholder; for example, if the freeholder cannot be found.

- give the full name and address of your nominee purchaser; and
- give a date, at least two months ahead, by which the reversioner must give their counter notice (see the next section). Once you have given your notice, the landlord or their agent may visit a flat, at any reasonable time, to value the landlord's interest or, if it is reasonable, for any other purpose in connection with a claim for enfranchisement. Your landlord must not give less than 10 days notice before doing this.



### The reversioners counter notice

The reversioner must give his counter notice to your nominee purchaser by the date given in your initial notice. In the counter notice the reversioner must:

- agree there is a right to enfranchise and either accept the terms or suggest different terms. If there are any flats or other units the freeholder has the right to leaseback and wants to do so, these must be mentioned; or
- give reasons for not agreeing that there is a right to enfranchise. (If this happens, the nominee purchaser must within two months from the date of the counter notice, ask the court to decide whether the right to enfranchise applied when the initial notice was given); or
- say that an application to the court will be made for an order that the tenants cannot enfranchise because they or one of the other landlords are going to redevelop all or most of the property. However, a landlord can only do this if at least two-thirds of all the residential long leases are due to run out within five years of the date the initial notice is given. The reversioner must also show that, once the leases run out, he will carry out substantial works to the building which means that he needs possession of the flats. He must apply to the court within two months of the date of the counter notice.

### Agreeing terms

The nominee purchaser and reversioner are allowed time to agree the terms of the transaction. However, the parties must enter into a binding contract within two months of the date when terms are agreed. If terms cannot be agreed, either party may refer the dispute to a LVT (see Chapter 7 for more details. Also see the section 'Problems and other issues').

### Can we, the leaseholders, withdraw our notice to enfranchise?

You can withdraw your notice to enfranchise at any time before a contract is made. But if you do, you have to pay the reversioner's costs up to that date. After withdrawing, you cannot give notice to enfranchise your building for another 12 months.

## Leasehold flats

Your right to buy the freehold of your building or renew your lease

### How much will I have to pay to enfranchise?

Your decision on whether to take up these rights may depend on how much it will cost. There is no formula for working out the price and we cannot tell you how much you will have to pay because each case will be different, but the following guide may be useful.

### What is the price based on?

The price payable to enfranchise includes three elements:

- the open market value of the building. This is the value of the interests held by all the landlords in the property, assuming the tenants are not in the market to buy (see section on definitions below)
- half of any marriage value that may be payable (see definitions below). However there will be no marriage value payable where a lease has more than 80 years to run; and
- any compensation that may be payable to your landlord for severance or other losses (see definitions below).

### Are there any other costs payable?

In addition to the above, the nominee purchaser must pay the reversioner's reasonable costs incurred during the enfranchisement process as well as their own. Where a notice to enfranchise is withdrawn by the participating tenants they, and every other person who is not at the time, but has at some time been a participating tenant, will have to pay the reversioner's costs.

Reasonable costs are those which a reversioner would expect to pay if he was paying his own costs. This includes professional fees and other expenses paid because of the transaction. It does not include costs which are paid because of an appearance before a LVT. If these costs are believed to be unreasonable a LVT can be asked to make a determination.

You may also have to pay compensation to the reversioner if you exercise the right to enfranchise within the last two years before expiry of your lease and the claim either does not succeed or you withdraw from the process. See Chapter 6 – 'Security of tenure for long leaseholders where the lease is running out', for further details).

**You would be best advised to get the advice of a qualified valuer to help you. The above are general guidelines and different considerations may apply to different properties and leases.**



## Definitions

**The value of the interest(s).** For enfranchisement this is, broadly speaking, what a third party would pay to the landlord in the open market if the long leaseholders continued to occupy the property. It reflects the value of the rents over the years left to run on the leases and the value of the freehold.

**Marriage value.** In collective enfranchisement, marriage value is the extra value brought about by the freehold and leasehold interests being under the same control. These interests are often worth more together than apart.

**Severance compensation** may be added if enfranchisement lowers the value of the landlord's other property.

## Lease renewal

### Can I buy a new lease?

All long leaseholders who have held their lease for at least two years may have the individual right to buy a new lease (but there are some exceptions – see section on 'Exceptions' below). You may apply for a new lease at any time while you have a long lease, but you should note that if you apply for a new lease during enfranchisement your application for a new lease will not go ahead until the enfranchisement process has ended. For personal representatives see section 'Do I qualify for a new lease' below.)

### Buying a new lease

When you buy a new lease, you give up your current lease and buy a new one, adding 90 years to the time left on your old lease. You can do this more than once if you want, and at any time while you are a long leaseholder.

The terms of your new lease will be largely the same, but you will no longer have to pay ground rent. (A 'peppercorn rent').

### Right to a new lease and the landlord's right to redevelop

It should be borne in mind that despite your right to a new lease, your landlord has a right to apply to the court for possession of your flat for redevelopment reasons. However, your landlord can only apply to the court:

- during the 12 months before your old lease is due to run out; or
- during the five years before the date your new lease runs out.

Your landlord cannot get possession of your flat before the date when your old lease would have run out, but may get possession before the date your new lease runs out. If this happens, your landlord must compensate you for the market value of the lease.

## Leasehold flats

Your right to buy the freehold of your building or renew your lease

### Do I qualify for a new lease?

Acquiring a new lease is an individual right. To qualify you must be a long leaseholder and have held your lease for two years or more at the date you give your notice.

For personal representatives, provided that the deceased leaseholder would have qualified for the right at the date of death, the personal representatives will be able to exercise the right to acquire a new lease. However, this right can only be exercised during a period of two years starting from the date of grant of probate or letters of administration. You are advised to seek independent professional advice if you are in any doubt whether or not this applies in your own case.



### Exceptions from the right to acquire a new lease

You will not be able to exercise the right to a new lease if:

- you have a business lease
- your landlord is a charitable housing trust and the flat is provided by the charity as part of its charitable work
- your building is within the precinct boundary of a cathedral
- your building is built on certain land held by the National Trust
- your building is owned by the Crown, except where the immediate landlord is not the Crown. (But you may, in any case, find that the Crown authorities will agree to let you acquire a new lease); or
- you have a shared ownership lease where the total share owned is less than 100 per cent (although it may be possible to negotiate an extended lease with the Registered Social Landlord).

### Before you start – requesting information from the landlord

If you want, you may give your landlord a notice requiring him to provide information before deciding to apply for a new lease. In the notice you can ask for information about the freeholder and any other intermediate landlords. This mirrors the steps for enfranchisement described earlier in this chapter.

An intermediate landlord is someone who has a lease between your lease and the freehold.

This notice does not commit you to buying a new lease. Your landlord must reply to this notice within 28 days.

## Giving notice to your landlord

When you apply for a new lease, you need to give notice to the landlord of your flat whose own lease is longer than yours by more than 90 years. If there is no such landlord, you must give your notice to the freeholder. You must also give a copy of the notice to any other person who owns an intermediate lease above your own lease but below that of the landlord to whom you have given your notice.

There is no prescribed form for your notice, but it must contain certain information. You must:

- give your full name and the address of your flat
- give details of the lease you want to renew
- show you satisfy the qualifying criteria (eg the two year ownership requirement)
- give the price you propose to pay (see 'How much will I have to pay to buy a new lease' below)
- say if you think the new lease should have different terms to your old lease. If so, you must give details of these terms
- give the name of any agent acting for you
- give a date, at least two months ahead, by which the landlord must give their counter notice.

Once you have given your notice, your landlord or his agent may visit your flat at any reasonable time to value the landlord's interest. Your landlord must give you three days' notice before doing this.

## Landlord's counter notice

Your landlord must give his counter notice by the date specified in your notice. In the counter notice your landlord must:

- agree that you have the right to a new lease and either accept your terms or suggest different ones
- give reasons for not agreeing that you have the right to a new lease. (Your landlord may, within two months of the date of his counter notice, ask the court to decide whether the right to a new lease applied when you gave your notice); or
- tell you if he will be applying to the court for an order that you may not have a new lease because he plans to redevelop all or most of the building. (As with enfranchisement, the landlord can only do this if your lease is due to run out within five years of the date you give your notice. He must also show that, once your lease runs out, he will carry out substantial works to the building which means that he needs possession of your flat. He must apply to the court within two months of the date of the counter notice.).

## Leasehold flats

Your right to buy the freehold of your building or renew your lease



### Agreeing terms

You have at least two months to negotiate with your landlord over the terms of the purchase. If you cannot agree, you may apply to a LVT for the terms to be settled (see 'Problems and other issues').

### Can I withdraw my notice to acquire a new lease?

You can withdraw your notice to acquire a new lease at any time before a contract is made. But if you do, you have to pay the landlord's costs up to that date.

### How much will I have to pay to buy a new lease?

Your decision on whether to take up these rights may depend on how much it will cost. There is no formula for working out the price and we cannot tell you how much you will have to pay because each case will be different, but the following guide may be useful.

### What is the price based on?

The price payable for a new lease includes three elements:

- the reduction in the value of the landlords' interests in your flat affected by giving you a new lease
- half of any marriage value that may be payable (see definitions). However, there will be no marriage value payable if your lease has more than 80 years to run
- compensation to your landlord for severance or other losses (see definitions).

### Will I have to pay a deposit?

The landlord has the right to require the payment of a deposit at any time after receipt of your notice to apply for a new lease. This may be 10 per cent of the premium proposed in your notice or £250, whichever is the greater.

### Are there any other costs payable?

In addition to the above, the long leaseholder renewing a lease must pay the landlord's reasonable costs as well as their own. If the leaseholder withdraws their notice or it is otherwise deemed to be withdrawn, they will have to pay the reversioner's costs up to that point in time. However, these costs are not payable if the tenant's notice is deemed to have been withdrawn because the landlord has successfully applied to a court for an order to redevelop the property, or if a notice has been given by a person authorised to acquire the whole or part of the flat by way of compulsory acquisition procedures.



Reasonable costs are those which a landlord would expect to pay if he was paying his own costs. This includes professional fees and other expenses paid because of the transaction. It does not include costs which are paid because of an appearance before a LVT. If these costs are believed to be unreasonable a LVT can be asked to make a determination.

You may also have to pay compensation to the landlord if you exercise the right to acquire a new lease within the last two years before expiry of your lease and the application either does not succeed or you withdraw from the process. (See Chapter 6 – ‘Security of tenure for long leaseholders where the lease is running out’, for further details.)

You are advised to get the advice of a qualified valuer. The above are general guidelines and different considerations may apply to different properties and leases.



#### Definitions

**The Value of the interest(s).** This is, broadly speaking, the loss of income from the ground rent for the remainder of the original term (as the whole term of the new lease will be at a peppercorn rent), plus the loss due to the additional 90 years wait for the reversion (the surrender of the flat at the expiry of the term).

**Marriage value.** For a lease renewal, the value of the leaseholder’s interest increases when they buy a new lease while the value of the landlord’s interest falls. However, there will often be an overall increase in the total value of the two interests. The difference between the total value of the interests before and after lease renewal is the marriage value.

**Severance compensation.** This may be added if your buying a new lease lowers the value of the landlord’s other property.



### Problems and other issues

#### What happens if people are unhelpful or cannot agree?

Sometimes, the parties will not be able to reach an agreement, or one of the parties may be unhelpful. Different circumstances are dealt with in different ways.

For both enfranchisement and lease renewal there are important time limits which both parties must keep to. Time limits are set to make sure that neither party delays the process once it has started. If you do not keep to the time limits, your application to enfranchise or renew your lease may run out of time. If the reversioner or your landlord does not keep to the time limits, or is unhelpful, you may take them to court.

The courts will deal with disputes about whether the rights apply to you. A LVT on the other hand will deal with disputes over the terms on which you buy the freehold or a new lease, including the price. (See Chapter 7, 'Leasehold flats and houses – Applying to a Leasehold Valuation Tribunal', for more information about the LVTs.)

#### What if I cannot find my landlord?

If the reversioner or any other landlord cannot be found the qualifying tenant(s) can ask the court:

- to make an order, subject to certain conditions, vesting the freehold and other interests in the qualifying tenants who made the enfranchisement application; or
- to make an order for the grant of a new lease in the case of an individual (qualifying) leaseholder wishing to acquire a new lease.

In each case, once the court has made an order, the LVT will decide the terms for enfranchisement or for acquiring a new lease, although any money must be paid into court.

## **Estate Management Schemes (EMS)**

Can we purchase the freehold if our building is subject to an EMS?

If your building is covered by an EMS, you can still go ahead with enfranchisement. But if an application for an EMS is being considered and you are claiming the right to enfranchise, your claim will be suspended until determination of the EMS application.

After enfranchisement your flat will come under the rules of the scheme and you may have to pay an annual charge towards the upkeep of the area. Further information about EMSs can be found in Chapter 1 of this booklet.

# 3

## **Leasehold flats**

Right of First Refusal for long leaseholders and other tenants in privately owned flats

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### The Right of First Refusal – Part I of the Landlord and Tenant Act 1987 (as amended by the Housing Act 1996)

We have tried to make this chapter easy to understand but we have not covered every part of the law. This guidance must not therefore be substituted for professional advice.

#### General background

In most circumstances, a landlord who wishes to dispose of property containing flats in England or Wales must give the qualifying tenants (mainly long leaseholders and regulated tenants) the opportunity to buy it before selling it to anybody else, and must tell them the price and other principal terms on which he is prepared to do so. (Most residential lettings by non-resident private landlords which began before 15 January 1989 will be regulated tenancies under the Rent Act 1977. However, you may need to seek your own independent legal advice to determine if you are a regulated tenant).

If there is a dispute about the price, the tenants do not have the right to ask a third party to determine the issue. If the tenants do not accept the offer, the landlord can (in most cases) sell to anyone within a 12-month period provided that he offers the same interest on the same terms and **at no lower price** than the offer rejected by the qualifying tenants. If the landlord wishes to sell at a **lower** price or on **different** terms, he must first offer the property again to the tenants. There is also a procedure for the landlord to sell his interest at public auction, whereby the qualifying tenants take the place of the successful bidder.

**All the steps in the first refusal procedure have time limits attached: you may lose your rights if you fail to keep to them**

#### What if the landlord fails to comply?

If the landlord fails to comply with the first refusal procedure and sells to someone else without giving the qualifying tenants the opportunity to buy, or he sells on better or different terms after the qualifying tenants have rejected the offer, the landlord commits a **criminal offence** punishable by a level 5 fine (maximum £5,000). In this context 'better or different terms' means better from the qualifying tenants' point of view: the price must not be lower and the other terms must correspond. This is to prevent landlords offering an unrealistically high price which the qualifying tenants would reject, in order to sell at the 'right' price to a favoured purchaser.

In most cases where the landlord has sold his interest without following the procedures in the 1987 Act, the qualifying tenants have a statutory right to buy the property from the purchaser at the same price as was paid and on the same terms. The purchaser must inform the qualifying tenants of their rights when they notify them of the transaction. Failure to do so is a **criminal offence** punishable by a level 4 fine (maximum £2,500). **The time limits for the tenants to exercise their rights do not start until they have been notified.**

### Do I qualify for the right of first refusal?

You will be a qualifying tenant if you are a long leaseholder or a regulated tenant, if you hold your tenancy directly from the person wishing to sell (there are special rules if your immediate landlord has only a leasehold interest of less than seven years, or if the superior landlord can exercise an option to end the lease within that period). There will be other categories of tenant who also qualify.

### Which tenants do not qualify?

The following categories of tenant do not have the right of first refusal: protected shorthold tenants; tenancies terminable on the cessation of employment; assured tenants; tenants under agricultural occupancies; tenants of three or more flats in the premises being sold; sub-tenants of qualifying tenants; and most business tenants.



### Does my property qualify?

The right of first refusal applies to the disposal of **any property** (not just a purpose-built block) **containing two or more flats held by qualifying tenants**, provided that **more** than 50 per cent of the flats in the property being sold are held by qualifying tenants. Where a property being sold contains a mixture of flats and non-residential accommodation, such as shops or offices, the qualifying tenants (but not the others, such as business tenants) have the right of first refusal if **no more** than 50 per cent of the internal floor area (not counting common parts – staircases, landings etc) is in non-residential use. Properties held by resident or exempt landlords are not subject to the right.

### Which landlords must comply?

Most landlords must comply with the first refusal procedure where they wish to make a 'relevant disposal' and they are the immediate landlord of qualifying tenants in a property to which the right applies.

However, the exceptions are:

- resident landlords in non-purpose-built blocks of flats (such as a house converted into flats) who occupy a flat in the premises as their only or principal residence and has done so for a period of at least 12 months ending at the date of disposal; and
- landlords who are specifically exempted, such as local authorities, New Town Development Corporations, registered housing associations, housing action trusts etc.

There are special rules where there is a chain of landlords and the immediate landlord of the tenants of the flats has a leasehold interest for a term of less than seven years, or there is an option enabling the superior landlord to terminate the lease within the first seven years. Independent advice should be taken in this case.

### What is a 'relevant disposal'?

A relevant disposal is the disposal of an interest (including the surrender of a lease) in premises to which the right applies. The premises may be all or part of a building. The grant of an individual tenancy is not a relevant disposal.

A relevant disposal takes place when the contract is entered into. If a transaction reaches this point before the first refusal procedure is started, then the landlord commits a **criminal offence**. Where there is no prior contract, the relevant disposal will usually be the conveyance or transfer.

### Are there instances where the right of first refusal may not be triggered?

There are circumstances where a property containing flats may change hands without triggering the first refusal procedure. Transfers within a family or trust are exempt; as are transfers in some other special circumstances, such as the exercise of certain options, compulsory purchase orders, bankruptcy, divorce etc, or a disposal to an associated company, provided that the company has been associated with the landlord for **at least** two years. The creation of a mortgage is not a relevant disposal but a disposal by the mortgagee in exercise of their powers is one.



## How does the right work in practice?

There are two ways the landlord may sell their interest in the property, by offering the right to the qualifying tenants, or by disposing of it by auction.

The most common way of selling property is where the conveyance is preceded by a contract.



### Step 1 – What must the landlord do if he wishes to sell the freehold?

Where the landlord wishes to sell in this way, the procedure is as follows:

The landlord must serve a notice (called a Section 5 notice) on at least 90 per cent of the qualifying tenants (or on all but one if fewer than ten), stating:

- the interest to be disposed
- the price and other principal terms
- that the notice is an offer to contract on those terms
- an **initial** period of **at least two months** from the service of the notice for **more than 50 per cent** ('a requisite majority') of the qualifying tenants to accept; and
- a **further** period of at least two months from the end of the initial period for the tenants to nominate a purchaser.

Where the notices are served on different tenants on different dates and the period for acceptance of the offer specified in the notices are different, then the notice shall have effect in relation to all the qualifying tenants on whom it is served as if it provided that the period for reply was the latest of those dates.

### Step 2 – What must we do if we wish to buy the freehold?

If a requisite majority of qualifying tenants wish to buy the premises (counting one vote for each flat in the premises being sold which is let to a qualifying tenant), they must serve a notice accepting the landlord's offer within the **initial period** of at least two months which is stated in the landlord's notice. A longer initial period than that specified in the offer notice may be agreed between the requisite majority of qualifying tenants and the landlord.

### Step 3 – What happens once we have accepted the landlord's offer?

Where the qualifying tenants accept an offer, they will have a further period of at least two months from the end of the initial period to organise themselves financially and notify the landlord of a **'nominated person'** to purchase the property. The nominated person might be a company, one or more (up to four) individuals, an association, or some third party to act as your representative in their dealings with the landlord. The nominated person will, in effect, become the new landlord once the transaction is completed. If

the tenants taking part are already organised, they can inform the landlord of the nominated person **before** the **initial period** expires, either at the same time or after accepting the offer.

### Step 4 –

Once the qualifying tenants have notified the landlord of the ‘nominated person’, he must send the nominated person a form of contract **within one month** of the service of the nomination notice.

### Step 5 –

The nominated person then has **two months** from the date the contract was sent in which to sign the contract and pay the deposit, which must not be more than 10 per cent of the agreed price. The landlord and the nominated person may agree a longer period for the nominated person to respond.

### Step 6 –

The landlord then has **seven days** from the receipt of the signed contract to exchange contracts or to withdraw. Completion will then follow as set out in the contract.

### Can we or the landlord withdraw from the process?

Either party can withdraw from the process at any time before the actual contract for the purchase has been entered into by both parties, by serving a notice on the other party. In addition, if you simply fail to proceed it is deemed as a withdrawal.

### Are we liable for any costs if we withdraw from the process?

The withdrawing party is liable for the costs incurred for the period starting **four weeks** after the end of the ‘**initial period**’ until withdrawal. The landlord’s costs can be recovered from either the nominated person or the qualifying tenants.

**You** are deemed to have withdrawn if steps 2 or 3 above do not happen in time (acceptance of offer or nomination of purchaser). The nominated person is also deemed to have withdrawn if they do not complete step 5 (signing the contract and paying the deposit). In addition, the nominated person **must** withdraw by notice if there is no longer a requisite majority of qualifying tenants wishing to purchase.

The **landlord** is deemed to have withdrawn if steps 4 or 6 do not happen (sending out contract or exchanging contract).

What happens to the landlord's interest in the property if we or the landlord decide to withdraw?

If you withdraw from the sale, the landlord has a period of 12 months when they are free to sell on the open market on the same terms offered to you and at no lower price. If the landlord **does** sell to a third party on better (ie cheaper) terms than were offered to you, he commits a criminal offence.

If the landlord withdraws, he cannot sell his interest unless he starts the first refusal procedure afresh.



## Disposal by auction

This is a procedure to allow landlords to obtain the market price for their property. It works by enabling the nominated person to take the place of the successful bidder at the auction.

### The Steps

The steps are:

#### Step 1 –

The landlord must serve a notice on at least 90 per cent of the qualifying tenants (or on all but one if fewer than ten) between **four and six months before the auction**, stating:

- the interest to be disposed
- the principal terms
- that the disposal is to be made at public auction
- an **initial** period of at least two months from the service of the notice for more than 50 per cent ('a requisite majority') of the qualifying tenants to accept; and
- a **further** period of at least 28 days from the end of the initial period for the requisite majority of qualifying tenants to nominate a purchaser.

The **initial period** must end at least **two months before** the auction, and the **further period** must end at least **28 days before** the auction. The time and place of the auction must be notified to the requisite majority of qualifying tenants at least **28 days before** the auction unless this information was contained in the initial notice.

### Step 2 –

If a requisite majority of qualifying tenants wish to buy the freehold (counting one vote for each flat in the premises being sold which is let to a qualifying tenant) they must serve a notice accepting the landlord's offer within the **initial period** of at least two months. A longer initial period than that specified in the offer may be agreed between the requisite majority of qualifying tenants and the landlord.

### Step 3 –

Where an offer is accepted, the requisite majority of qualifying tenants will have a **further period** of at least 28 days from the end of the initial period to organise themselves financially and notify the landlord of a '**nominated person**' to purchase the property (as above). The nominated person then serves a notice at least **28 days before** the auction electing that the remaining steps in this procedure should apply.

### Step 4 –

If the property is sold at the auction, and a conditional contract is concluded with the successful bidder, the landlord must send a copy of the contract to the nominated person **within seven days** of the auction.

### Step 5 –

The nominated person then has **28 days** in which to accept the terms of the contract and fulfil any conditions, such as to pay a deposit. The contract then has effect as if the nominated person, and not the successful bidder, had entered into it.

**Any time limits in the contract start from the date the nominated person accepts the terms under step 5 above. Completion cannot be less than 28 days after acceptance under step 5.**

### Can we or the landlord withdraw from an auction?

Either party can withdraw from the process at any time before the contract is entered into by serving a notice on the other party. In addition, failure to proceed is a deemed withdrawal.

**You** are deemed to have withdrawn if steps 2 or 3 above do not happen in time (acceptance of offer or nomination of purchaser). The nominated person is also deemed to have withdrawn if they do not complete step 5 (acceptance of terms and conditions). In addition, the nominated person **must** withdraw by notice if there is no longer a requisite majority of qualifying tenants wishing to purchase.

The **landlord** is deemed to have withdrawn if he withdraws his interest from the auction (step 4). If the landlord fails to send out the contract, the nominated person may apply to the court for an order to make them do so. (See section on 'Enforcement of obligations'.)

Are we liable for any costs if we withdraw from the auction process?

The withdrawing party is liable for the costs incurred for the period starting **four weeks** after the end of the '**initial period**' until withdrawal. The landlord's costs can be recovered from either the nominated person or the qualifying tenants.

What happens to the landlord's interest if either we or the landlord decide to withdraw?

If the qualifying tenants or the nominated person withdraw the landlord is free to sell **at auction** for a period of 12 months, without reference back to the tenants. If the landlord sells **privately** they commit a **criminal offence**.

If the landlord withdraws, he cannot sell his interest unless he starts the first refusal procedure afresh.



## Special Cases

Special rules apply where:

- the disposal is the grant of an option or right of pre-emption
- the conveyance is **not** preceded by a contract; and
- the landlord wants something other than money from the qualifying tenants, such as land, which they cannot provide. The tenants may apply to a LVT who will decide the monetary value of any non-monetary consideration demanded. (For addresses see Chapter 11).

## What happens if the property is sold without the tenants having first refusal?

Most relevant disposals will result in the landlord's interest being sold to someone else. In this case, you will usually discover that the property has been sold when the purchaser informs you of their name and address: failure to do this is a **criminal offence**, punishable by a level 4 fine (maximum £2,500). The purchaser must also serve a notice (called a Section 3A notice) on you which says that the right of first refusal applies, that you may have the right to obtain the property and the time limits for exercising that right. The time limits do not start **until the notice has been served** on the requisite majority of qualifying tenants. Failure to serve this notice is also a **criminal offence**, punishable by a level 4 fine (maximum £2,500). If a

purchaser is convicted for not serving a Section 3A notice, and still does not serve one after conviction, you can still exercise your rights to obtain information or purchase the property: the notice just gives you a final date for action.

There is a slightly different procedure where the relevant disposal does not transfer the property immediately, for example the grant of an option or right of pre-emption. Once you have received this Section 3A notice, a requisite majority of qualifying tenants:

- may ask the purchaser for information about the terms of the disposal. You will have **four months** from the service of the Section 3A notice or other notification to serve notice requesting the information to do this. The purchaser has **one month** to reply;
- may serve a purchase notice on the purchaser within six months of the purchasers reply, or, if the qualifying tenants have not served a notice requesting information above, within six months of the service of the section 3A notice or other notification.

The effect of serving a purchase notice is that the qualifying tenants take the benefit of the contract. This means that they must pay any deposit and comply with any other conditions of the contract. Any time limits start again from the service of the purchase notice, but the qualifying tenants must always be allowed at least 28 days to complete the purchase. They have similar rights in respect of any subsequent disposals.

The purchaser can terminate your right to buy in these circumstances if:

- Part I of the 1987 Act no longer applies to the premises; or,
- in most cases, the qualifying tenants fail to enter into a binding contract within **three months** of the service of the purchase notice, or within **two months** of a determination by the Court or the LVT.

Disputes about the terms and valuation in these circumstances can be referred to the LVT. Each party to a hearing must bear their own costs. You should be aware however, that a LVT can, in certain circumstances, determine that a party to proceedings shall pay the costs incurred by another party to the proceedings of up to £500. For example, where an application is dismissed because it is frivolous, vexatious or otherwise an abuse of process or if a party acts frivolously, vexatiously, abusively, disruptively or otherwise unreasonably.

The nominated person will be liable for the landlord's other costs if they withdraw after serving a purchase notice but before a binding contract is entered into.

## What if I receive a notice from a prospective purchaser of the landlord's interest?

You may receive a notice from a prospective purchaser (called a Section 18 notice) telling you of the terms of the proposed sale and asking whether the landlord has offered first refusal, and, if the landlord has not, whether you regard yourself as entitled to receive such an offer and whether you would want to exercise the right. The notice must be served on at least 80 per cent of the tenants of the flats (whether held by qualifying tenants or not). Unless at least **50 per cent** of the tenants who received notices reply within **two months**, or, if more than 50 per cent reply but do not regard themselves as entitled to an offer or entitled but not wishing to exercise the right, the prospective purchaser may treat the premises as those to which the right of first refusal under Part I of the Landlord and Tenant Act 1987 does not apply.

Expressing an interest in exercising your rights in response to a Section 18 notice **does not commit you** in any way. The next step would be for the landlord to serve offer notices on the qualifying tenants under the standard first refusal procedure.

## Enforcement of obligations

If any party does not comply with a duty imposed by the Act, a notice can be served requiring him to comply. If 14 days pass without compliance then the aggrieved party can apply to the court for an injunction.

# 4

## **Leasehold flats**

Right to Manage (RTM)



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## Introduction

This chapter tells you about the right to manage (RTM). This right is provided by Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act).

We have tried to make this as easy to understand as possible, but we have not covered every part of the law. This guidance must therefore not be used as a substitute for professional advice.

RTM is a group right for leaseholders of flats to manage the building they live in without proving that their manager is at fault or paying any premium. The right must be exercised through a special company set up by leaseholders for that purpose. This company is called a RTM Company.

The formal procedure for exercising RTM is started by a RTM Company serving a Claim Notice on the landlord; it then follows a prescribed route. The RTM is not exercisable unless the building qualifies, and that there are sufficient qualifying leaseholders who are willing to participate in RTM.

## Does your Building qualify?

The building will qualify if:

- at least two thirds of the total number of flats contained in the premises are let to qualifying tenants
- the premises contain two or more flats held by qualifying tenants
- the premises consists of a structurally detached building; or
- the premises consists of a self contained part of a building, which can include other property enjoyed by qualifying tenants under the lease, such as gardens and garages.

A self-contained part of a building may also qualify if:

- it constitutes a vertical division of the building
- the structure of the building is such that it could be redeveloped independently from the rest of the building
- the services are provided independently from the occupiers of the rest of the building or they could be provided independently without carrying out works which would result in a significant interruption to the services provided to the occupiers of the rest of the building.

(Services are those that are provided by means of pipes, cables and other fixed installations).

The building will not qualify if:

- more than 25 per cent of the internal floor area is in non-residential use
- it contains separate self-contained parts where the freehold of those parts is owned by different landlords
- it is a converted property of four or fewer flats where either the landlord or an adult member of the landlord's family lives in one of the flats as their only or principal residence
- the local authority is the immediate landlord of any qualifying tenants; or
- RTM has already been acquired and continues to be exercised.

Where a RTM Company ceases to be responsible for the management of the premises, it will not be possible to re-exercise RTM for that building for four years. However, a LVT can determine that the right can be exercised again within that four year period. (This bar does not apply, however, if RTM has ceased as a result of a RTM Company being used to acquire the freehold).



### **Are you a qualifying tenant?**

A qualifying tenant is any leaseholder whose lease was originally granted for a period exceeding 21 years. It does not matter if a lease has less than 21 years left to run.

Leaseholders whose leases have expired, but who remain as tenants under the provisions of Part 1 of the Landlord and Tenant Act 1954 or Schedule 10 to the Local Government and Housing Act 1989 are also regarded as qualifying tenants.

Where a lease is owned with someone else both would be the qualifying tenant of their flat.

Trustees who are the qualifying tenant of a flat will also be entitled to become members of the RTM Company, unless the instrument regulating the trust specifically provides otherwise.

If there is more than one long lease of a flat, the qualifying tenant will be the tenant with a long lease who has not sub let to another tenant on a long lease. So if, for example you have a long lease from a landlord who also has a long lease and you have not sub-let, you will be the qualifying tenant, and not the person who granted you the lease.

A leaseholder with a shared ownership lease will only be a qualifying tenant for the purposes of RTM if he owns 100 per cent share of the lease. (A shared ownership lease is a special type of arrangement, which is not the same as a leasehold flat that is owned jointly with someone else).

A long leaseholder who owns a business lease will not be a qualifying tenant for the purposes of RTM.

## **What is a RTM Company responsible for?**

Where a RTM Company has acquired RTM, it will be responsible for the management functions under all of the leases held by qualifying tenants in the building. You will need to look at all the leases of the qualifying tenants to establish what it provides for in relation to management. But in most cases a RTM company would become responsible to all leaseholders for:

- services
- repairs
- maintenance
- insurance
- management of the whole or part of the premises.

## **Will a RTM Company have to manage flats let to renting tenants?**

A RTM Company will not be responsible for the management of any flat that is not held by a qualifying tenant. This will include flats that are rented and used for commercial purposes, although a RTM Company **will** be responsible to all parties for the management of the common parts and the fabric of the building.

## **Will a RTM Company be able to grant lease renewals?**

No, a RTM Company will not have the power to grant a lease renewal. If long leaseholders want to extend the number of years remaining on their lease, they must do so through the landlord. (See Chapter 2 – ‘Leasehold flats – your right to buy the freehold of your building or renew your lease’).

## **Will a RTM Company be able to grant approvals?**

Some leases provide that a leaseholder must obtain the landlord’s, or a third party’s consent before carrying out certain activities. Where a qualifying tenant’s lease specifies that the landlord’s, or a third party’s consent must be obtained for approval this will then transfer to the RTM company. The RTM Company will only have the right to grant approval or give consent in relation to residential long leases.

However, a RTM Company cannot grant an approval to any qualifying tenant’s request without having given 30 days notice to the landlord in respect of approvals for the following:

- assignments
- underletting
- charging
- parting with possession
- the making of structural alterations
- improvements
- alterations of use.

In all other cases, the RTM Company cannot grant approvals without having given the landlord 14 days notice.



### What happens if a landlord objects?

A landlord cannot object to the granting of an approval unless he would have been able to do so were he the person responsible for granting the approval. At all times a landlord cannot unreasonably withhold such approval.

Where the landlord does object to the granting of approval within the period allowed, the RTM Company cannot grant approval unless the landlord has given his agreement or a determination has been granted following an application to a LVT. An application to a LVT can be made by the landlord, the RTM Company, or the qualifying tenant who applied for the approval.

### Obligations under leases

The RTM Company has the legal right to take action to enforce any obligation entered into by any tenant of the building under a lease. The RTM Company may exercise any power granted under a lease to enter the premises to check compliance with the term of that lease, but **cannot** exercise any powers of re-entry or forfeiture.

The RTM Company must monitor tenants' compliance with the terms of their leases, and report to the landlord any breaches which are not put right within three months of the breach coming to the attention of the RTM Company. The RTM Company will not have to report to the landlord any breaches of covenants if:

- the failure has been remedied;
- reasonable compensation has been paid in respect of the failure; or
- the landlord has notified the RTM Company that it need not report to him the type of failure concerned.

### Membership of a RTM Company

All qualifying tenants are legally entitled to become members of a RTM Company. To exercise RTM, membership of the RTM Company must equal at

least **50 per cent** of the number of flats in the block. This is a legal requirement and if it is not met, you will not qualify to exercise RTM for your building.

Where there are only two qualifying tenants in the block, **both** must be members of the RTM Company.

## **Will the freeholder/head lessee be entitled to membership of the RTM Company?**

Yes, but only **after** the RTM Company has taken over the management of the premises.

## **Setting up a RTM company**

RTM is exercised by a RTM Company, and not the individual leaseholders, and so cannot be done without the formation of the RTM Company. It is the RTM Company which obtains the right and which takes responsibility for the management of the property.

A RTM Company must be a private company limited by guarantee and registered with the Registrar of Companies House. The RTM Company must be run according to its Memorandum and Articles of Association. These have been prescribed by the Government.<sup>10</sup> Copies can be obtained from the Stationery office, whose address can be found at the back of this booklet.

A minimum of two qualifying tenants may set up the RTM Company; it does not require the full number of participants at this initial stage.

**Important:** When registering the RTM Company at Companies House it is important to ensure that all the necessary documentation is provided, and that it is completed correctly to avoid any unnecessary delays. This includes the signing, dating and witnessing of the list of names and addresses of the members of the RTM Company that is required. If you are in any doubt about what is required you should seek independent advice.

## **Exercising your right to manage**

Once you have met all the qualifying conditions and set up a RTM Company there are a series of notices which must be served on all connected parties before the right to manage can be acquired. These will be explained in the following paragraphs.

<sup>10</sup> Statutory Instrument 2003 No. 2120. Landlord and Tenant, England. The RTM Companies (Memorandum and Articles of Association) (England) Regulations 2003. Separate Regulations will apply in Wales, for details contact the Welsh Assembly Government.

### The Notice of Invitation to Participate

A RTM Company is legally required to serve a notice on all qualifying tenants (except the landlord) who are not members of the RTM Company. This is known as the Notice of Invitation to Participate. This notice informs all qualifying tenants that a RTM Company has been set up for the purpose of acquiring RTM for their building; and that they are entitled to join in the proceedings themselves should they wish to do so.

### What should be included in the Notice of Invitation to Participate?

There is a prescribed form that must be used. This form is set out in Regulations<sup>11</sup> that are available from the Stationery Office, whose address can be found at the back of this booklet, or legal stationers.



### Claim Notice

A claim notice for the right to manage cannot be served on the landlord before all qualifying tenants have received the Notice of Invitation to Participate.

RTM is formally exercised by a RTM Company serving a Claim Notice on anyone (other than a tenant), who is party to a lease of any part of the property and who can be traced at the time the Claim Notice is to be given. This would include any landlord and any third party under a lease. A Claim Notice must also be served upon anyone appointed as manager of the premises under Part 2 of the Landlord and Tenant Act 1987.

Where a manager has been appointed under Part 2 of the Landlord and Tenant Act 1987 a Claim Notice must also be given to the court or LVT which made the appointment.

A RTM Company will not be able to serve a Claim Notice until 14 days after the Notice of Invitation to Participate was given to all qualifying tenants in the building.

A copy of the Claim Notice must also be sent to each person who is a qualifying tenant on the date the Claim Notice is given.

<sup>11</sup> Statutory Instrument 2003 No. 1988. Landlord and Tenant, England, The Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003. Separate Regulations will apply in Wales for details contact the Welsh Assembly Government.



## What happens if no one who is party to the lease can be found?

Where no party can be found to serve a Claim Notice on, a RTM Company must make an application to a LVT if they want to exercise RTM. However, a RTM Company must first notify all qualifying tenants of its intention to do so.

In this situation, a LVT may order the RTM Company to take further steps to find any of the missing parties, or make an order providing that the Company is entitled to acquire RTM. If any of the absent parties are found before a LVT makes an order then the LVT will determine how the claim should be dealt with.

## What should be included in the Claim Notice?

There is a prescribed form of notice that must be used. The form is set out in Regulations<sup>12</sup> which can be obtained from the Stationery Office (HMSO), or through legal stationers.

## Right of access

A RTM Company and any recipient of a Claim Notice, or anyone acting on their behalf, has a general right of access to any part of the building if needed in connection with the claim to acquire RTM. For example, access might be required to measure the floor area of non-residential parts to ensure that the property is eligible. The right of access can be exercised at any reasonable time, if at least 10 days notice has been given.

## Right to obtain information

A RTM Company has the right to require any person to provide it with information reasonably required for the purposes of ascertaining the information to be included in the Claim Notice. This information must be provided within 28 days of it being requested.

## Counter Notice

Anyone who receives a Claim Notice may give a notice to the RTM Company by the date specified in the Claim Notice. This is known as a Counter Notice.

A Counter Notice is a notice containing a statement either admitting that the RTM Company is entitled to acquire RTM or stating that the Company is not entitled to do so. **There are only two grounds on which a claim notice can be disputed. These are that the building does not qualify, or there are insufficient participating qualifying leaseholders.**

<sup>12</sup> Statutory Instrument 2003 No. 1988. Landlord and Tenant, England, The Right to Manage (prescribed particulars and Forms) (England) Regulations 2003.

### What happens if a Claim Notice is challenged?

Where a RTM Company receives one or more Counter Notices disputing its entitlement to acquire RTM, the RTM Company may make an application to a LVT for a determination. An application to a LVT must be made within 2 months of the date of the Counter Notice.

A RTM Company cannot take over the management of the building unless, on application to a LVT, it is finally determined that it is eligible to acquire the right, or the parties who disputed the entitlement subsequently agree in writing that the company is entitled.

### Deemed withdrawal

A claim to exercise RTM will be deemed to be withdrawn where a RTM Company either fails to apply to a LVT within two months of receiving one or more notices which disputes its entitlement to RTM or an application to a LVT is withdrawn. It would also occur where the RTM Company is wound up, enters into receivership, becomes insolvent or is struck off.



### Costs

There are a number of cost implications that you will need to consider before exercising RTM. These are set out briefly below.

There will be a cost for forming and registering a RTM Company at Companies House. Further details about the cost can be obtained from Companies House, their address can be found at the back of this booklet.

Where a RTM Company exercises the right, any recipient of the Claim Notice (eg the landlord and any head lessee) is entitled to recover from the RTM Company the reasonable costs incurred in dealing with that claim. These will not include any costs incurred in proceedings before a LVT unless the LVT finds that the RTM Company is not eligible to acquire RTM. An application can be made to a LVT for a ruling on the amount that can be recovered.

A RTM Company will also be liable to meet the costs for Claim Notices that cease to have effect. That could occur, for example, where the notice is withdrawn, deemed to be withdrawn, or where a LVT determines that a company is not entitled to acquire RTM. In such circumstances, both the RTM Company and all persons who are or have been members of the Company (other than people who have assigned their lease to someone who has then become a member of the Company), are liable for the costs incurred up to that point by all parties who received the Claim Notice.

A RTM Company must also ensure that it has sufficient funds to be able to pay for any costs that arise, which are not recoverable under the terms of their leases.

A RTM Company must also be able to fund works where their leases require that service charge payments are to be paid in arrears.

## **Date on which the right is acquired**

Where no recipient of a Claim Notice serves a Counter Notice, a RTM Company will be entitled to take over the management of their building on the date specified for that purpose in the Claim Notice. This date must be at least three months after the date on which the Counter Notice must be served.

Where a RTM Company has been given permission by a LVT to acquire RTM for their building, they would be able to take over the management of their block 3 months after the determination made by the LVT became final.

A determination becomes final:

- if not appealed against, at the end of the period for bringing an appeal; or
- if appealed against, at the time when the appeal (or any further appeal) is disposed of.

Where any party disputes a RTM Company's right to manage their building and subsequently agrees in writing that the RTM company was entitled then the RTM Company would take over the management for their building 3 months after the last of those parties gave their written agreement.

## **Notices relating to management contracts**

The landlord/manager of a building is under a legal obligation to serve notices in respect of the management contracts that he has entered into before the date on which a RTM Company is to take over the management of the building. This will allow all parties employed in the management of the premises to make the necessary arrangements to prepare for the RTM Company taking over the management of the premises.

The RTM Company will need to consider whether it wants existing management contractors to continue to provide services. If they wish to do so, negotiations with the contractors will need to be undertaken.



### Contractor Notice

The first notice that must be served by the landlord/manager is a notice to each of the contractors employed to carry out repairs, maintenance, services and management for the building. This is known as a Contractor Notice.

There is no prescribed form for the notice, but it must:

- give details sufficient to identify the contract in relation to which it is given
- state that the right to manage the premises is to be acquired by a RTM company
- state the name and registered office of the RTM company
- specify the acquisition date.



### Contract Notice

The landlord must also serve a notice on the RTM Company informing them of all the contractors already employed by the existing manager to carry out maintenance, services and management for the building. This is known as a Contract Notice.

Where a contractor receives a Contractor Notice, he is in turn required to serve a copy of that notice on any sub-contractor employed by him to carry out maintenance, services and management for the building. The contractor must also serve a contract notice on the RTM Company notifying them of any sub-contractors currently employed for the building.

### Duty to pay accrued uncommitted service charges

Any landlord, third party to a lease or a manager appointed under the Landlord and Tenant Act 1987, must hand over to a RTM Company any sums held on behalf of the leaseholders in respect of the building concerned on the date that they take over the management for the building. They are not, however, required to hand over money that is to be used for costs incurred before the right has been acquired.

The RTM Company or the party required to hand over the monies may, if necessary, apply to a LVT for a determination of the sum to be paid over.

## **Landlords contributions to service charges**

Landlords are under a legal obligation to meet any shortfall in the cost recovered by the RTM Company which is caused by the proportions payable by tenants under their leases failing to add up to 100 per cent of the total. An example is where the landlord owns one or more of the flats in a block which are rented out on a short lease and is required to meet his share of the costs.

## **The cessation of RTM**

While RTM is not subject to any time limit there are circumstances in which the RTM Company ceases to be entitled to exercise RTM. This will occur:

- where the RTM Company wishes to cease exercising the right and all landlords agree
- where the RTM Company is wound up, enters into receivership, becomes insolvent or is struck off
- where the manager appointed to replace the RTM Company begins to act or where an order is made under Part 2 of the Landlord and Tenant Act 1987 which withdraws the right to manage from the RTM Company
- where the RTM Company ceases to be a RTM Company (which may happen, for example, because the company is used to purchase the freehold of the property).

# 5

## **Leasehold Houses**

Your right to buy the freehold of your house or extend your lease

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### Introduction

This chapter tells you about certain rights that apply to long leaseholders of houses. The rights are contained in the Leasehold Reform Act 1967, which has been amended by the Leasehold Reform, Housing and Urban Development Act 1993, the Housing Act 1996 and by the Commonhold and Leasehold Reform Act 2002.

The two rights are:

- the right to buy the freehold of your house (enfranchise); and
- the right to extend your lease by 50 years.

This chapter is mainly for leaseholders, but it may also be of interest to landlords and their agents. It explains the rights and whether they apply to you. It tells you how to proceed if you want to buy the freehold of your house or extend your lease. However, it does not give a full interpretation of the law. You should always seek professional advice if in any doubt.

### The rights

In England and Wales you can rent a house on a short lease, buy a long lease or own the freehold.

Most leaseholders of houses have the right to buy the freehold of their house. This is known as the right to 'enfranchise'. If you exercise this right you will own a freehold house outright.

Some leaseholders of houses also have the right to extend their lease for 50 years.

These rights are set out in the Leasehold Reform Act 1967, and leaseholders have them even if the freeholder or landlord does not wish to sell the freehold or grant a lease extension.

The 1993, 1996 and 2002 Acts made important changes to the 1967 Act by extending the right to enfranchise. Now most leaseholders of houses will be able to enfranchise. The 2002 Act also extended the right to stay on in the property on the expiry of a lease which had already been extended under the 1967 Act (See Chapter 6 'Security of tenure for long leaseholders where the lease is running out'.)

### Do I and my house qualify for enfranchisement?

To qualify, you and your house must meet certain requirements. This section will help you determine whether you are a qualifying tenant, and also if your house qualifies for enfranchisement.



You will need to know under which section of the Leasehold Reform Act 1967 you qualify, as this affects which rights you have and the price you will have to pay for the freehold. (See 'Under which section of the Act do I qualify?' below.)

**To establish whether you have any rights under the 1967 Act you are strongly advised to seek your own legal advice at an early stage.**

### Do I qualify under the Act?

To be a 'qualifying tenant' you must:

- have a long lease; and
- have held the lease for at least two years at the time you give the notice to enfranchise. (For business tenancies – see 'What if I have a business tenancy?' below).
- You must also have a lease of the whole house.



### What if I have a business tenancy?

Business tenancies subject to Part 2 of the Landlord and Tenant Act 1954 do not generally qualify for any of the rights under the 1967 Act. However, a business tenancy may qualify in the following circumstances.

In all cases the business tenant must have occupied the house as their only or main residence for the last two years or periods amounting to two years in the last ten; and the tenancy must be either:

- granted for a term exceeding 35 years; or
- for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, unless it derives from a tenancy which does not qualify under the 1967 Act; or
- a tenancy taking effect under section 149(6) of the Law of Property Act 1925 (leases terminable after a death or marriage); or
- granted for a term of less than 35 years but with a covenant or obligation for renewal without payment of a premium, which has been so renewed to make the term total more than 35 years.

### What if I have a lease bought under the 'Right to Buy'?

If you have a long lease of a house that you bought under the **Right to Buy**, you will normally be able to enfranchise *except* where the freehold is owned by a charity and your immediate landlord is a housing association, or you have a shared ownership lease. Special rules apply to long leases bought under the Right to Buy and you should seek legal advice if you have this type of lease.

### What if I inherited the house or am a trustee or a personal representative?

Where a deceased leaseholder had the right to enfranchise or extend their lease prior to their death, the trustees, personal representatives or family members inheriting the leasehold house may have the right to enfranchise or extend the lease in certain circumstances. Briefly these are:

- if the tenancy of the house is vested in trustees and a person beneficially interested under the trusts is allowed to occupy the house
- if you are a personal representative you may have the right to enfranchise or claim a new lease. If so, this right can be exercised up to two years after the date of grant of probate or letters of administration
- if you are a family member inheriting a house you will need to have been resident in the house at the time of death and become tenant of it under the same tenancy.

**If you believe these circumstances apply in your own case you should seek legal advice to establish your rights, which may be subject to time limits.**

### What about the low rent test?

While the low rent test has been abolished as a qualifying criteria for the rights under the 1967 Act, it is still relevant in determining the price payable should you wish to enfranchise (see 'Valuation – how much will I have to pay' below.) Only those passing the **original low rent test** will be able to qualify for the rights under section 1 of the 1967 Act, which allows payment of a price which excludes 'marriage value'. The **original low rent test** is set out below. You must check the amount of rent payable throughout the qualifying period of residence and at the time you give the notice to your landlord claiming your right to enfranchise or have extended lease.

To find out if you have a low rent use one of the following tests:

- If your lease was granted before 1 April 1990, the rent must be less than two-thirds of the rateable value of your house on whichever is the latest of these dates: 23 March 1965; the first day your house appeared in the valuation list; or the first day your lease started. (Your local authority should have lists of rateable values.) **But;**
- If your lease was granted between the end of August 1939 and the beginning of April 1963 and it is not a building lease, the rent must also have been not more than two-thirds of the letting value of the house at the time the lease was granted. It is up to your landlord to show if this test applies to you. (A qualified surveyor or valuer will be able to help you find out the letting value of your house)

- If your lease was granted after 1 April 1990 as a result of a contract entered into before that date, and the house had a rateable value, your lease will be treated as granted before 1 April 1990
- If your lease was granted on or after 1 April 1990 the rent on the date you give your notice must not be more than £1,000 in Greater London or £250 elsewhere
- If your house had a nil rateable value on the first day it appeared in the valuation list or on the first day your lease started, then the test should be applied using the first positive rateable value it was given on any subsequent day.

If you wish to find out more about the different valuation methods that apply under the 1967 Act you should obtain your own professional advice. LEASE can give some initial guidance in the first instance, and their contact details can be found at the back of this booklet.

## Does my house qualify?

To qualify you must live in a building which would normally be considered a house. It does not matter if it has been divided into flats provided that you have the long lease of the whole house.

You may also be entitled to buy a garage, garden or outhouse if they are let and used with the house.



### Exceptions under the 1967 Act

There are some instances where the rights under the 1967 Act will not apply, as follows:

#### **You cannot enfranchise (but can extend your long lease) if:**

- the freehold is held inalienably by the National Trust.

#### **You cannot enfranchise or extend your long lease if your house is:**

- let under two or more long tenancies and you hold a lease that is 'superior' to another long lease that has rights under the Act
- in an area designated as a rural area by the Secretary of State or National Assembly for Wales, and the freehold of the house is owned together with adjoining land which is not occupied for residential purposes and has been owned together with such land since 1 April 1997, and the tenancy was either granted on or before 1 April 1997, or was granted after 1 April 1997 but on or before 26 July 2002 in England and 1 January 2003 in Wales, for a term not exceeding 35 years

## Leasehold Houses

Your right to buy the freehold of your house or extend your lease

- owned by the Crown. (You may find in many cases that the Crown authorities will agree to let you buy the freehold or extend your lease.) You will still have the right to extend your lease if you have an intermediate leaseholder between you and the Crown and that leaseholder has sufficient years remaining on their lease to grant you an extension
- owned by a charitable housing trust and the house is provided by the charity as part of its charitable work. (This applies to all leases granted after 1 November 1993. It also applies to leases granted before 1 November 1993 which exceed the original rateable value limits, or are dependent on the alternative low rent test, or, if your lease was granted before 18 April 1980, and is terminable on death or marriage)
- a property that has been given conditional exemption from Inheritance Tax by the Board of HM Revenue and Customs. Your landlord will be able to tell you if this applies to your home. (This applies to all leases granted after 1 November 1993. It also applies to leases granted before 1 November 1993 which exceed the original rateable value limits, or are dependent on the alternative low rent test, or, if your lease was granted before 18 April 1980, and is terminable on death or marriage)
- in some cases, on a shared ownership lease. You should seek legal advice if you have this type of lease.

In addition:

- public bodies may be able to prevent enfranchisement if they need the house for development; or
- in very limited circumstances, if your landlord wants to live in the house, they can prevent enfranchisement.

**You cannot further extend your long lease but can enfranchise if you have already** exercised the right to an extended lease under the 1967 Act. This includes sub-tenants who would otherwise qualify to do so.



### **Can I continue to live in my house if I have extended my long lease under the 1967 Act and it runs out?**

Long leaseholders who have extended their lease under the 1967 Act and who do not enfranchise may have rights to security of tenure when their extended lease comes to an end. See Chapter 6, for further information.

### **Under which section of the Act do I qualify?**

It is important to know under which section of the 1967 Act you qualify. This will decide:

- if you have the right to extend your long lease as well as enfranchise; and
- how your house will be valued.

There are four sections of the 1967 Act under which long leaseholders of houses may qualify. These are numbered **1, 1A, 1AA** and **1B**. In summary,

**SECTION 1** of the Act gives qualifying leaseholders the right to enfranchise or to apply for a lease extension. To qualify under this section your lease must pass the original low rent test and your house must fall below the rateable value limits specified in section 1 of the 1967 Act. If your lease is terminable on death or marriage your rights may be affected and you should seek legal advice if this is the case.

If you qualify under this section, you will have to pay a price dependent on either the **original valuation basis** or the **special valuation basis** (see section on 'Valuation' below). This will depend on whether your house is below the rateable value limits described in section 9 of the 1967 Act.

**SECTION 1A** of the Act gives the right to enfranchise, but not the right to extend a lease, to qualifying leaseholders whose houses exceed the rateable value limits in section 1 of the 1967 Act. If you qualify under section 1A, you will have to pay a price dependent on the special valuation basis.

**SECTION 1AA** of the Act gives the same rights as under Section 1A to leaseholders who fail the original low rent test, which are not excluded rural tenancies or shared ownership leases granted by housing associations.

If you qualify under section 1AA, you will have to pay a price dependent on the special valuation basis.

**SECTION 1B** gives the right to enfranchise, but not the right to extend the lease, to qualifying leaseholders with leases terminable on death or marriage that were granted before 18 April 1980.

If you qualify under section 1B, you will have to pay a price dependent on the special valuation basis.

**If you are in any doubt about the rights you may have under the 1967 Act, including the rateable value limits and different valuation methods, you should obtain your own legal advice.**

Further, initial information on these issues can be obtained from LEASE, whose contact details are at the back of this booklet.

## **The Enfranchisement Process**

You enfranchise by buying the freehold and all intermediate leasehold interests in the house so that you will own your house outright as a freeholder. You should note that if you are subject to an EMS, the terms of the scheme will still apply to you after enfranchisement. (See section on 'Estate Management Schemes' below for more information).

### How do I start the process?

Enfranchisement starts when you first give notice in the prescribed form to buy the freehold to your landlord or freeholder (Notice of tenant's claim). You must use the form prescribed for this purpose<sup>13</sup> (see Chapter 10 'Prescribed forms'). If there are any other superior landlords, you must copy the notice to them.

### Can I withdraw from the process?

Yes. If you wish to withdraw from the enfranchisement, you may do this within one month of a price being agreed or settled by a LVT. However, you will be liable to pay your landlord's costs and you cannot serve another notice to enfranchise within 1 year.

### What does the landlord have to do?

Your landlord must reply to the notice of claim with a prescribed notice in reply within two months. The landlord's notice may:

- accept your right to enfranchise
- give reasons for not agreeing that there is a right to enfranchise
- dispute the extent of the premises claimed
- say that they are applying to the court for possession to use the property as their only or main home. (They may only do this in very limited circumstances, and if the claim is upheld by the court, you will receive compensation).

If your landlord accepts your right to enfranchise (or if it has been upheld by the courts), the next step is to settle the purchase price and the terms of the conveyance.



## Valuation

### How much will I have to pay?

Your house will be valued as at the day you give your notice to buy the freehold to your landlord. Your decision on whether to exercise your right to enfranchise may depend on how much it will cost. There are two different valuation bases for calculating the purchase price, and the price you will have to pay for the freehold of your house depends on the section of the Act under which it is enfranchisable (see section 'Under which section of the Act do I qualify?' above). In addition, the original low rent test must still be applied to determine whether the 'original' or 'special' valuation basis is to be used.

<sup>13</sup> Statutory Instrument 2002 No. 1715. The Leasehold Reform (Notices) (Amendment) (England) Regulations 2002 or, Welsh Statutory Instrument 2002 No. 3187. The Leasehold Reform (Notices) (Amendment) (Wales) Regulation 2002.

## What is taken into account when working out the price for the freehold?

There is no formula for calculating the price of your freehold and we cannot tell you how much you will have to pay. You will have to ask a professional valuer about this. The Royal Institution of Chartered Surveyors publish lists of members in their year books which can be found in public libraries.

Briefly, the elements involved in calculating the purchase price for enfranchisement are as follows:

If you qualify under **section 1** of the 1967 Act there are two different bases for calculating the purchase price of your house.

If your house falls below the rateable value limits in section 9 of the 1967 Act the price payable will be based on the open market value of the land alone, not the house. This takes into account various assumptions, but marriage value will not be included as part of the price<sup>14</sup>. (This is known as the original valuation basis).

All other houses that qualify under section 1 will pay a price based on the special valuation basis. This is the open market value of the landlords interest in the land and the house including 50 per cent of any marriage value, if any is payable.

If you qualify under sections **1A, 1AA** or **1B** you will have to pay a price which is determined under the special valuation basis (the open market value of the landlords interest in the land and the house, including 50 per cent of any marriage value, if any is payable. However, in these cases there are two further elements to be taken into account. These are:

- The landlord may be entitled to compensation for any severance or other losses if selling the freehold lowers the value of the landlord's other property
- There will be no assumption that a leaseholder has security of tenure at the end of their lease. But where a leaseholder does have security of tenure this can be taken into account.

## What valuation basis is used if I have already extended my long lease?

Houses that are being enfranchised following a lease extension, where the leaseholder's notice is given to the landlord during the term of the extension (ie after the original term date of the tenancy) will be valued under the special valuation basis as for Sections 1A, 1AA or 1B above.

<sup>14</sup> Marriage Value – In enfranchisement, marriage value is the extra value brought about by the freehold and leasehold interests being under the same control. These interests are often worth more together than apart. If the lease has 80 years or less to run marriage value will be split between you and the landlord on a 50/50 basis. There will be no marriage value payable where a lease still has more than 80 years to run.

### Other costs

In addition to the purchase price, you will have to pay your own costs and the reasonable costs incurred by your landlord, irrespective of the section of the Act under which you qualify.

Reasonable costs are those which a landlord would expect to pay if he were paying his own costs. This includes professional fees and other expenses paid because of the transaction. It does not include costs which are paid because of an appearance before a LVT. If you think the costs your landlord is claiming are unreasonable, you may apply to a LVT for a determination.

You may also have to pay compensation to the landlord if you exercise the right to buy the freehold within the last two years before expiry of your lease and the claim either does not succeed or you withdraw from the process. (See Chapter 6 for further details).



### Extending your lease

#### Do I qualify to extend the lease?

Only qualifying tenants who are eligible under Section 1 of the 1967 Act have the right to extend their lease. (See 'Under which section of the Act do I qualify' above).

If you do not qualify to extend your lease because your house exceeds the rateable value limits, you may be able to get a notional reduction in the rateable value. You, or a previous tenant, must have substantially improved the house at your or their own expense and the improvements must have taken the house over the rateable value limits.

You must ask your professional adviser how to get a reduction in rateable value. You should note though, that most improvements do not have an effect on rateable values.

#### What do I get if I extend the lease?

You will get a new lease which runs for 50 years from the date of expiry of your current lease. In general, the terms will be the same as that of your current lease.

You should note, however, that once you have extended your lease:

- you will have to pay a modern ground rent during the 50 year extension. This will be assessed in the year before the original lease was due to run out and may be reviewed again after 25 years. It will probably be considerably more than the existing ground rent



- you will not be able to extend the lease further, although you may be able to enfranchise
- you may be able to stay on in the house as an assured tenant in accordance with Schedule 10 of the Local Government and Housing Act 1989 when the extended lease expires.

### How to extend your long lease

If you wish to extend your lease, you start by giving notice to your landlord or freeholder. You must give notice in the prescribed form (see Chapter 10, 'Prescribed forms'). If there are any other superior landlords, you must copy the notice to them.

Your landlord must give a notice in reply (in the prescribed form) within two months.

The landlord's notice may:

- admit your right to a lease extension
- give reasons for not agreeing that there is a right to a lease extension
- say that they are applying to the court for possession to use the property as their only or main home (They may only do this in very limited circumstances, and if the claim is upheld by the court you will receive compensation)
- say that they are applying to the court for possession to redevelop the property. (Your landlord may only do this in limited circumstances and the lease must not have more than 12 months left to run. If the claim is upheld by the court you will receive compensation. You may be able to counter such a claim by enfranchising. You should seek legal advice if your landlord uses these grounds).

### The cost of an extended long lease

You will not have to pay a premium to extend your lease. However, you will have to pay any outstanding costs due under the lease or any collateral agreement to the lease and meet your own costs and all reasonable costs incurred by your landlord. Reasonable costs are those which a landlord would expect to pay if he were paying his own costs. This includes professional fees and other expenses paid because of the transaction. It does not include costs which are paid because of an appearance before a LVT. If you think the costs your landlord is claiming are unreasonable, you may apply to a LVT for a determination.

You may also have to pay compensation to the landlord if you exercise the right to a new lease within the last two years before expiry of your lease and the claim either does not succeed or you withdraw from the process. (See *Chapter 6 – for further details*).



### Problems and other issues

What happens if people are unhelpful, do not reply, or cannot agree?

Sometimes the parties will not be able to reach an agreement or one of the parties may be unhelpful. Different circumstances are dealt with in different ways.

If your landlord disputes your right to enfranchise or extend your lease, you can apply to the county court to decide the dispute. Also, if your landlord does not respond to your claim within two months you can apply to the county court to determine your right to enfranchise or extend your lease.

If you do not agree with the price that your landlord has suggested, you can apply to a LVT to determine a price.

What if I cannot find my landlord?

#### **Enfranchisement:**

If you cannot find your landlord or the identity of your landlord cannot be ascertained and you wish to enfranchise, you can apply to the county courts for an order that will vest the property in you. If the court agrees, the matter is then referred to a LVT, who will determine the price payable. You must pay the purchase price into court.

#### **Lease extension:**

The court **cannot**, however, grant a lease extension if the landlord is missing.

### Estate Management Schemes (EMS)

Can I purchase the freehold if I am covered by an EMS?

If your house is covered by an EMS, you can still go ahead with enfranchisement. But if an application for an EMS is being considered and you are claiming the right to enfranchise under Sections 1A, 1AA or 1B of the Act, your claim will be suspended until the determination of the EMS application. After enfranchisement your house will come under the rules of the scheme and you may have to pay an annual charge towards the upkeep of the area.



## **Leasehold flats & houses**

Security of tenure for long leaseholders where the lease is running out

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## Introduction

This chapter is mainly for long leaseholders or subtenants under a long lease where the long lease is coming to an end, but it may also be of interest to landlords.

**The procedures described in this chapter are governed by time limits. If these time limits are not kept to, then you (or the landlord) may lose the right to dispute any of the proposals made by either person at the end of the long lease or long residential tenancy. You may also lose your right to enfranchise or acquire a new or extended lease.**

This chapter outlines the main provisions of Schedule 10 to the Local Government and Housing Act 1989 (referred to elsewhere in this chapter as 'the Schedule'), as they affect the landlord and the tenant (or subtenant) occupying a dwelling under a long residential tenancy, where they stay on after the long tenancy ends. The Schedule replaces the provisions which applied to long leases at low rents under Part I of the Landlord and Tenant Act 1954.

The Schedule applies to long residential tenancies granted on or after 1 April 1990. It also applies to long leases granted before then if they were in existence on 15 January 1999 and immediately before that date were long leases at a low rent for the purposes of Part I of the 1954 Act (or were deemed to be such leases). However, the 1954 Act (and not the Schedule) will continue to apply to pre-1 April 1990 leases if the landlord served a notice under the 1954 Act specifying a termination date for the lease earlier than 15 January 1999. The Schedule applies only in England and Wales.

We have tried to make this chapter easy to understand but we have not covered every part of the law. This guidance must not therefore be substituted for professional advice.

Various form numbers are referred to in this chapter. Further information on these can be found in Chapter 10, 'Prescribed forms'.

## Definitions

In this chapter:

'Property' – This will normally be a house or a flat.

'**Landlord**' – The landlord referred to in this chapter is not necessarily the landlord to whom you pay the rent. It is the person who is your landlord for the purposes of the Schedule. That, broadly, will be your immediate landlord if they have a lease which is at least five years longer than your tenancy or, if not, the first superior landlord who has such a lease. If there is no landlord

with such a lease, it will be the freeholder. They may also be referred to as the 'competent landlord'.

**'Tenant'/'Tenancy'** – These have different meanings depending on the context. Definitions are given in the chapter where needed.

### General Information

#### What is the Schedule and whom does it affect?

The Schedule, as amended, enables the tenant occupying a property under a long lease to remain in occupation when the lease comes to an end – subject to certain exceptions which are outlined in this chapter. It provides that a tenant of residential property under a long residential tenancy has a right, at the end of the tenancy, to continue as tenant on the same terms as before, unless the tenant or the landlord ends the tenancy in accordance with the provisions of the 1989 Act. The Schedule also affects a subtenant to whom a tenant under a ground lease has sublet the property or part of it (see section 'Miscellaneous points' below).

#### Who is protected by the Schedule?

Tenants with a long residential tenancy who must be living in the property as their only or principal home at the term date are protected. The term date is the date of expiry of the long residential tenancy. To qualify for protection where the landlord wishes to resume possession of the property, the tenant must be in occupation at the date of any court hearing for possession (see section 'Landlord's notice to resume possession of the property' below).

Generally, the Schedule applies to tenancies where the circumstances are such that, if the tenancy were not at a low rent, it would be an assured tenancy, even though it was granted before assured tenancies came into existence (15 January 1989).

#### What is a long residential tenancy?

A long residential tenancy for the purposes of the Schedule is generally a tenancy or lease granted for more than 21 years at a low rent.

To qualify for protection under the Schedule, you do not have to be the person who was first granted the lease. In some cases where you have been granted a new lease at a low rent and previously held a long lease on the same property, the second lease may count as a long lease. To be a qualifying tenant you must have had a long lease throughout the period of residency or a lease that counts as a long lease during residency.

A tenancy is at a low rent if:

- no rent is payable
- the tenancy was entered into before 1 April 1990 and the maximum rent payable at any time is less than two-thirds of the rateable value of the property on 31 March 1990. If the tenancy was entered into on or after 1 April 1990 in pursuance of a contract made before that date and the property had a rateable value on 31 March 1990, this low rent test applies; or
- where the tenancy was entered into on or after 1 April 1990 if the maximum rent payable at any time is less than £1,000 a year in Greater London or less than £250 a year if the property is elsewhere.



## Exclusions

The Schedule does not apply to certain types of property. In particular, you are not covered if your landlord is the Crown (except where the property is managed by the Crown Estate Commissioners, or is in right of the Duchy of Lancaster or the Duchy of Cornwall), a local authority, or certain housing associations and charitable housing trusts. Also excluded are tenancies of properties used partly for business and partly for residential purposes: these are covered by Part II of the Landlord and Tenant Act 1954 which relates to business premises.

The Schedule will also not apply to the lease of a flat which has been renewed under the Leasehold Reform, Housing and Urban Development Act 1993. However, the Schedule will apply to a lease of a house which has been extended under the Leasehold Reform Act 1967, even if the lease no longer meets the relevant low rent test.

The Schedule may not apply in certain cases where the property will be excluded because of its high value. You are advised to seek professional advice if you think your property may fall into this category.

## What happens at the end of the long residential tenancy and how does the landlord terminate it?

Unless you surrender the tenancy or the landlord terminates the tenancy by serving a notice on you using prescribed Forms 1 or 2, the long residential tenancy continues on exactly the same terms after it comes to an end. **You therefore need do nothing until you receive a notice from your landlord.** Form 1 offers you an assured periodic tenancy, and Form 2 is used where a landlord wishes to seek possession of the property from you on specific grounds. You cannot be made to leave the property at the end of the long tenancy except by a court order for possession (see section 'Landlord's notice to resume possession of the property'). Details of all of the prescribed forms can be found in Chapter 10.

It is, of course, possible for you to agree on a new tenancy with the landlord to take the place of the long tenancy, without notices, at any time.

Where the landlord terminates the tenancy by offering you an assured periodic tenancy using Form 1, new terms have to be settled between you and the landlord (see section 'The landlord's notice proposing an assured periodic tenancy'). Once the terms are agreed, you then become an 'assured periodic tenant', and will have the same protection against eviction as other tenants under the Housing Act 1988.

**However, you should note that there are strict time limits that apply where the terms cannot be agreed between you and the landlord.**

If you cannot agree on the terms with the landlord, the landlord may apply to a Rent Assessment Committee, which will decide which terms are in dispute and what those terms should be.

If the landlord wants you to leave the property, he must serve Form 2 (or one substantially similar) on you; this is a landlord's notice to resume possession (see section below). A notice in any other form is invalid. The landlord is entitled to possession at the end of the long tenancy only on certain limited grounds. If you are not willing to leave, the landlord can apply to the county court for a possession order on one or more of the grounds shown later in this chapter, but you cannot be turned out of the property unless a possession order is granted by the court.

### How do you terminate the long tenancy?

You can terminate the long tenancy by giving at least one month's notice to your immediate landlord. This would expire either on the date when the tenancy was originally due to end, or at a later date if the tenancy has continued because the landlord has not served either of Forms 1 or 2 on you to terminate the tenancy himself. You may also surrender the long tenancy whether or not the landlord has served a notice on you to terminate the tenancy, or you have already elected to stay in the property. The notice surrendering your tenancy must be in writing, but no special form is needed for this.

However, if you do terminate the long tenancy, you will lose your right under the Schedule to stay on in the property. You must leave the property by the date when your notice expires, and only the landlord can take the initiative in giving a notice to propose new terms. You also lose any rights you may have to enfranchise, or to acquire a new lease (see section 'Enfranchisement rights').





## The Landlord's notice proposing an assured periodic tenancy

How does the landlord propose an assured periodic tenancy?

The landlord can end the tenancy by serving a notice on you using Form 1. This, as a general rule, must be served not more than 12 months and not less than 6 months before the date of termination specified in the notice. The date of termination that the landlord puts in the notice (ie the date that the long tenancy is to come to an end) must not normally be before the date on which the long residential tenancy was due to end originally.

Subject to the above time limits, the notice of termination may be served either before or after the date on which the long tenancy was originally due to end, and must also warn you that any rights you have under the Leasehold Reform Act 1967 (for leasehold houses), or the Leasehold Reform, Housing and Urban Development Act 1993 (for leasehold flats), will be lost if not exercised within the appropriate time limits (see section 'Enfranchisement rights').

The landlord can also serve a notice on you using Form 3, proposing that you pay an interim monthly rent from a specified date, which cannot be before the date of termination of the tenancy specified in Form 1. This notice can be served on you either at the same time as Form 1 or at a later date (see below).

In serving this notice the landlord must propose an assured tenancy and the notice will set out the new terms which are proposed, including rent. The rent proposed by the landlord using Form 1 must be high enough for the proposed tenancy to qualify as an assured tenancy. It must be at least £1,000 a year if the property is in Greater London, or £250 a year if the property is elsewhere.



What should you do on receiving the notice(s) from your landlord?

You should first let your landlord know, in writing, whether you wish to remain in possession. There is no prescribed notice for this, but it should be done within two months starting on the date of service of the landlord's notice on you.

If you wish to stay on at the end of the long tenancy, and you agree with the terms the landlord has proposed in the notice(s) served on you, you do not need to do anything else. The terms proposed by the landlord will then take effect from the day following the date that the long tenancy comes to an end (as specified in the landlord's notice) and they will be the terms of the assured periodic tenancy.

If you wish to stay on after the end of the long tenancy, but disagree with the terms proposed by the landlord, you should serve a notice on the landlord using Form 4. This should be done **within two months** starting on the date of service of the landlord's notice on you. In Form 4 you will be proposing different rent and/or other terms from those proposed by the landlord.

**If you fail to serve a Form 4 in response to the landlord's notice within the two months specified, then the rent and terms proposed in the landlord's notice shall be the rent and terms of the tenancy.**

**If you fail to notify the landlord and you are not in occupation of the property two months after the landlord's notice was served, any protection under the Schedule may be lost.**

You can, of course, negotiate on the proposed terms of the tenancy with your landlord and come to an agreement in writing at any time.

A landlord may be prepared to grant an assured tenancy even if the deadlines have not been met, but you should be aware that the landlord does not have to. In this situation you must bear in mind that you no longer have a right to an assured tenancy. It is important therefore, that the deadlines are kept to.

If you cannot agree on the terms of the tenancy, **the landlord** may apply to a Rent Assessment Committee to determine any of the matters on which agreement has not been reached. This is done by using Form 5. The landlord must do this **within two months** of the date on which you served Form 4 on him, otherwise the rent and terms that you proposed in Form 4 shall be the terms of the tenancy, and will take effect from the day after the long tenancy comes to an end.

You should note that any right you have to remain in occupation of the property is limited to the parts of the property which you occupied at the end of the long tenancy. You should also note that, once the assured tenancy is in place, where the landlord serves a notice on you under Section 13 of the Housing Act 1988 to increase the rent, you have the right to refer the increase to a Rent Assessment Committee if you believe that the rent proposed is higher than rents for similar properties let on assured tenancies in the area. However, a notice served under Section 13 of the 1988 Act will not be relevant if the assured periodic tenancy agreed to or determined by a Rent Assessment Committee under the Schedule contains different provisions for increasing the rent.

**You should be aware that you may have the right to enfranchise the property in which you live, extend your current lease if it is a leasehold house, or acquire a new lease if it is a leasehold flat. You should note that there are time limits that apply if you wish to do this. (See section 'Enfranchisement rights' for further information).**

## What happens if the landlord proposes an interim monthly rent?

As previously mentioned, in addition to offering you an assured periodic tenancy, the landlord may propose an interim monthly rent for your long residential tenancy (while it continues) by serving Form 3 on you. If you **agree** with the interim rent proposed by the landlord, you do not have to do anything. If you **disagree** with the interim rent, you may, **within two months** of the landlord serving the notice on you, apply to a Rent Assessment Committee (the Committee) for a determination of the interim rent. You do this by referring the landlord's Form 3 to the Committee. There is no special form that you have to complete for this, but you should set out your reasons for disagreeing with the proposed interim rent. It would help the Committee if you described the property (whether a house or flat; the number and type of rooms; and whether there are other facilities, such as a garden or garage). You should also send the Committee a copy of your lease and the landlord's Form 3. However, you cannot refer the notice to the Committee if you have agreed an interim rent with the landlord.

The date that the interim rent is to take effect must be at least two months after the date that the landlord serves Form 3, and must not be earlier than the date specified in the landlord's notice for terminating the long residential tenancy.

The rent set by the Committee will be the rent which they consider to be a reasonable rent on the open market under a monthly periodic tenancy. It can be higher, lower or the same as the interim rent proposed by the landlord. In considering the rent, the Committee will take various matters into consideration, which can be found in note 5 on Form 3. Because there may be a delay before the Committee are able to determine the interim rent it is possible that you may have to pay an amount of arrears once it has been determined.



## How is the rent under the assured tenancy and other disputed terms settled by the Rent Assessment Committee?

When the Committee receives a Form 5 from the landlord, it will first decide whether the terms proposed (apart from the amount of rent) in your notice or the landlord's notice are appropriate, or whether some other terms are more appropriate. When the Committee have decided these terms, it will then decide the amount of the rent.

The rent set by the Committee will be the rent which it considers would be a reasonable rent on the open market at the point that the assured periodic tenancy is due to begin. It will base this on particular assumptions relating to security of tenure, and disregarding the fact that you are a sitting tenant, among other things. The things that the Committee will take into consideration are set out in full in notes 2 and 3 on Form 5.

**You should remember that when a notice is referred to the Rent Assessment Committee, a rent may be set that is higher, lower or the same as the rent proposed by you or the landlord.**

Even though you or the landlord may have applied to the Committee to determine the disputed matters, this does not prevent you from reaching an agreement in the meantime with the landlord on any of the terms in dispute. If you and the landlord do agree any of the terms for the new tenancy **after** an application has been made to the Committee for a determination, provided that you and the landlord have sent the Committee written notification of the terms agreed upon, the Committee cannot change those particular terms. These will then be taken into account by the Committee in determining the disputed terms, and whether there is any dispute about the amount of rent.

**When a matter is referred to the Rent Assessment Committee, the Committee may, by serving a notice using Form 6, require either you or the landlord to give to the Committee the information they require. You will be given at least 14 days to reply. If you or the landlord fail without reasonable excuse to comply with a notice served on you by the Committee, you or the landlord will be committing a summary offence and will be liable to a fine.**

[When does the assured periodic tenancy begin?](#)

The assured periodic tenancy normally begins on the day following the date of termination specified in the landlord's notice. If, however, an application is made by the landlord to the Committee using Form 5, the assured periodic tenancy will begin on the date in the landlord's notice, or three months after the application is finally disposed of, whichever is the later.

However, the commencement of the assured periodic tenancy will not be delayed by an application by you to a Rent Assessment Committee for the determination of the interim rent.

[To what premises does the assured periodic tenancy relate?](#)

The assured periodic tenancy will relate to the property which you were occupying just before the end of the long tenancy. If there is a dispute about the premises to which the assured periodic tenancy is to relate, the landlord can apply to the county court for a determination at least two months before the term date.

## What if I cannot afford the rent?

If you have difficulty in paying the rent for the assured periodic tenancy, you may be able to get housing benefit from your local authority to cover part or all of the rent, depending on your circumstances. Your local authority's housing benefit department will be able to advise you, and you may wish to consider seeking advice from the Citizens' Advice Bureau. The Department's booklet Assured and assured shorthold tenancies – a guide for tenants provides further information about the rights and responsibilities of both you and your landlord, and also gives some guidance on housing benefit. Details of how to obtain the Department's booklets can be found at the end of this booklet.



## Landlord's notice to resume possession of the property

### How does the landlord go about seeking possession of the property?

The landlord can end the tenancy by serving a notice on you using Form 2. This, as a general rule, must be served not more than 12 months and not less than six months before the date of termination specified in the notice. The date that the landlord puts in Form 2 as the date that the tenancy is to come to an end must not normally be before the date on which the long residential tenancy expires.

The notice served by the landlord sets out the grounds on which they consider themselves entitled to possession. If you do not agree that the landlord is entitled to possession, the landlord can apply to the county court for a possession order.

### What should you do on receipt of the landlord's notice seeking possession?

If you wish to remain in the dwelling after the end of the long tenancy, you should write to the landlord and tell them so **within two months** of the date that the landlord's notice was served on you. No special form is needed to do this. Unless you give such notice, you may, in certain circumstances, lose your rights under the Schedule.

**You may have the right to enfranchise your property, or extend your current lease (for leasehold houses) or acquire a new lease (leasehold flats). You should note that there are time limits that apply if you wish to do this (see section 'Enfranchisement rights' for further information).**

If you do not exercise your right to enfranchise or seek an extended lease (leasehold houses) or a new lease (leasehold flats), the landlord can apply to the court for possession.

### When can the landlord apply to the court for possession of the property?

The landlord can apply to the court for possession of the property **within two months** of your reply saying that you wish to stay in the property. If you do not reply in the time allowed, the landlord can apply to the court **within four months** of the date the notice was served on you.

If the landlord does not apply to the court within the time limits allowed after having served Form 2 on you, their notice to seek possession of the property lapses, although the landlord can begin the process again by serving another notice.



### On what grounds can the landlord apply for possession?

The landlord may apply for a possession order at the end of the long tenancy on the following grounds, specified in Schedule 2 to the Housing Act 1988 (please note that the full text as set out in the legislation is **not** shown):

**Ground 6:** That the landlord seeking possession (or, if that landlord is a registered housing association or charitable trust, a superior landlord) intends to demolish or reconstruct the whole or a substantial part of the dwelling, or to carry out substantial works to any part of it, and that the intended work cannot reasonably be carried out without the tenant giving up possession.

**Ground 9:** That suitable alternative accommodation is available for the tenant or will be available when the order for possession takes effect. The rules in Part III of Schedule 2 to the Housing Act 1988 apply if this ground is specified.

**Ground 10:** That rent lawfully due from the tenant is unpaid on the date on which the proceedings for possession are begun, and was in arrears at the date of the service of the landlord's notice to resume possession.

**Ground 11:** Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

**Ground 12:** Where any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

**Ground 13:** That the condition of the dwelling or any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the

tenant or any other person residing in the dwelling, and where caused by the person lodging with the tenant or a subtenant, the tenant has not taken such steps as they ought reasonably to have taken for the removal of the lodger or subtenant.

**Ground 14:** That the tenant or any other person residing in or visiting the dwelling has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or has been convicted of using the dwelling (or allowing the dwelling to be used) for immoral or illegal purposes, or has committed an arrestable offence in, or in the locality of, the dwelling.

**Ground 14A:** The dwelling was occupied by a married couple or a couple living together as husband and wife and one or both are a tenant of the dwelling, the landlord is a registered social landlord or a charitable housing trust, one partner has left because of violence or threats of violence by the other towards that partner or a member of the family of that partner who was residing with that partner immediately before the partner left, and the court is satisfied that the partner who has left is unlikely to return.

**Ground 15:** That the condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to the ill-treatment by the tenant or any other person residing in the dwelling, and in the case of a person lodging with the tenant or subtenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or subtenant.

The following are additional grounds for possession contained in Schedule 10 to the Local Government and Housing Act 1989:

**Paragraph 5(1)(b):** The landlord is a public body and, for the purposes of redevelopment after the termination of the tenancy, proposes to demolish or reconstruct the whole of or a substantial part of the property relevant to the landlord's function; and

**Paragraph 5(1)(c):** That the premises, or part of them, are reasonably required by the landlord for occupation as a residence for themselves or any son or daughter over 18 years of age, or their own or their spouse's father or mother and, if the landlord is not the immediate landlord, that they will be at the specified date of termination.

**The court is precluded from making an order for possession on the last ground where the landlord's interest was purchased or created after 18 February 1966, or where the court is satisfied that, having regard to all the circumstances of the case, including the question of whether other accommodation is available for the landlord or the**



**tenant, greater hardship would be caused by making the order than by refusing to make it. The landlord must establish the facts in all cases. They must also satisfy the court that it is reasonable to grant possession, except for ground 6 and paragraph 5(1)(b) above.**

What happens if the landlord is refused a possession order by the court?

If the landlord is refused a possession order by the court, their notice lapses and your long tenancy continues as before. However, the landlord can at any time serve a new notice on you using Forms 1 or 2.

If the landlord serves a new notice on you using Form 1 proposing an assured periodic tenancy, and it is served **within one month** after the court has finally disposed of the landlord's application for possession (including any appeals), the landlord can specify a date only four months ahead as the 'date of termination' of the long tenancy, beginning the day after you are served with Form 1.

The landlord can withdraw a notice to gain possession at any time. However, if within the period of one month beginning on the date of the landlord's withdrawal they serve on you a notice proposing an assured tenancy, they can specify a date of termination of the long tenancy, which is the day following the last day of the period of four months beginning on the date you are served the notice, or the day following the last day of the period of six months beginning on the date of service of the withdrawn notice, whichever is the later.



### Enfranchisement rights

What are my rights?

If you are the tenant of a house, you may have the right to enfranchise your house or seek an extended lease under Part I of the Leasehold Reform Act 1967 (see Chapter 5).

If you are the tenant of a flat, you may have the right to acquire a new lease of your flat under Part I of the Leasehold Reform, Housing and Urban Development Act 1993, and you may also have the right to enfranchise the block in which you live with the other long leaseholders in the block. (See Chapter 2).

**You should note that there are strict time limits that apply. You must serve the appropriate notices within these time limits, details of which can be found in paragraph 7 on Forms 1 and 2 (see Chapter 10). If you do serve a notice on the landlord within the time limits, the notice they previously served on you by using Forms 1 or 2 will not operate.**



## In what circumstances is compensation payable to the landlord?

If you exercise your right to enfranchise your house or seek an extended lease under the Leasehold Reform Act 1967, or exercise your right to collective enfranchisement or right to a new lease of your flat under the Leasehold Reform, Housing and Urban Development Act 1993, you may have to pay compensation to your landlord if your claim does not succeed or you fail to complete the purchase. You will be liable to pay compensation if the claim is made during the last two years of the tenancy; and either:

- your landlord served a Form 1 or 2 on you and your claim caused it to fail within four months of the termination date specified in the notice; or
- the making of your claim prevented the service by your landlord of a Form 1 or 2 and the date your claim ceased to have effect was within six months of the term date of the tenancy; or
- under the provisions of the leasehold reform legislation, your tenancy continues beyond the term date<sup>15</sup>.

The amount of compensation payable by the tenant shall be equal to the difference between:

- a) the rent for the appropriate period under the existing tenancy, and
- b) an open market rent for that period, for the same property let for the same period by a willing landlord, assuming that:
  - no premium is payable
  - that the letting confers no security of tenure; and
  - the letting is on the same terms as the existing tenancy.

To determine the appropriate period referred to in (a) above, reference should be made to the following provisions:

**For houses** section 27A(6) of the Leasehold Reform Act 1967 (unsuccessful claim to buy the freehold of your house or extend the lease) sets out the appropriate period.

**For flats** section 37A(6) of the Leasehold Reform, Housing and Urban Development Act 1993 (unsuccessful claim to buy, as a member of a group with other qualifying tenants, the freehold of your building, or section 61A(5) of the Leasehold Reform Housing and Urban Development Act 1993 for an unsuccessful claim to renew the individual lease of your flat) sets out the appropriate period.

These sections were inserted into the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993 by Schedule 11 to the Housing Act 1996.

<sup>15</sup> The term date is the date of expiry of the term of a tenancy granted for a term of years certain.

### What else happens if the enfranchisement claim is not effective?

If your enfranchisement claim is not effective, your landlord can serve a fresh notice terminating your tenancy. If it is served within one month of the expiry of the currency of your claim, the date of termination specified in the notice will be either the date specified in the original notice, or four months beginning with the date on which the fresh notice was served on you, whichever is the later.

## Miscellaneous points

### Is it possible to 'contract out' of the Schedule?

No. An agreement by you not to use your rights under the Schedule is invalid and cannot be enforced in the courts.

### How does the Schedule apply to the landlord who is also a tenant?

The landlord in this position should take legal advice before giving notice under the Schedule because in certain circumstances they are not entitled to give notice.

### How does the Schedule affect sub-tenants?

This can be best explained by an example:

A is the landlord; B is the tenant under a long tenancy paying a ground rent; C is the subtenant of the dwelling, or part of it. C's rent is more than a ground rent, that is to say, more than two-thirds of the rateable value of the property.

The effect of the Schedule is that, subject to the serving of the correct notices, when B's tenancy comes to an end, C can in almost all cases remain in occupation, on the same terms as before, as the tenant of A.

### Your duty to give information to landlords or superior landlords

Your immediate landlord, or any superior landlord, may require information from you or a subtenant of any property covered by the Schedule about sub-lettings. They will do this by serving on you Form 7. The information is required so that the landlord can find out who will be in occupation when the current tenancy comes to an end. The landlord has a right to seek this information, but no earlier than two years before the tenancy is due to end. If you have sublet to more than one subtenant, the information must be given in respect of each sub-tenancy (including any statutory tenancy under the Rent Act 1977).

**You must provide the information within one month of the notice having been given. Failure to do so, or to give incorrect information, could involve the landlord in loss for which you might, in certain circumstances, be held liable.**

#### Termination of long residential tenancy where there are superior or intermediate landlords

Where there is a superior or intermediate landlord who has an interest in the property other than the immediate landlord, the landlord should first seek consent to either terminate the long residential tenancy or seek an agreement with the tenant for a tenancy under the Schedule, from the superior or intermediate landlord, by serving on them either Form 8 or Form 9, as appropriate.



# **Leasehold flats & houses**

Applying to a Leasehold Valuation Tribunal (LVT)

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## **What are Leasehold Valuation Tribunals (LVTs)?**

LVTs are organised by Rent Assessment Panels under the auspices of the Residential Property Tribunal Service (RPTS) in England and the Welsh Assembly in Wales. They are independent and impartial bodies. They normally consist of three members: a lawyer, a valuer and a lay person. LVTs may determine applications without a hearing, but where hearings are held they are less formal than court hearings, in particular evidence is not given on oath. The LVTs were set up to provide a quicker and simpler option to court proceedings.

There are five regionally-based LVTs: London, Northern, Midland, Eastern and Southern and one in Wales based in Cardiff. (Contact details can be found at the end of this booklet).

Applicants to a LVT do not have to be represented by a solicitor or barrister at an oral hearing, although professional assistance is recommended in some types of cases, such as enfranchisement. A LVT, whether constituted for an oral hearing or for a determination without an oral hearing, will examine both sides of the argument before determining the issue. The determination may be given orally, and in all cases is issued in writing as soon as possible after the hearing.

Applicants who choose not to be legally represented will need to be aware that they will be responsible for presenting their case to the LVT, including any supporting arguments and evidence. This is because LVT members are independent and cannot provide assistance to applicants in presenting their case. In these cases it is therefore important to remember that the evidence should be presented clearly and concisely, and should be confined to the matters in the dispute.

## **What is the Lands Tribunal?**

The Lands Tribunal is the body to whom an appeal can be made against a decision of a LVT. Permission to appeal must be sought from the LVT in the first instance, but if the LVT refuses, a fresh application can be made to the Lands Tribunal. Reasonable grounds are required for any appeal. For example, that the LVT wrongly interpreted or applied the relevant law. You would therefore be strongly advised to seek independent advice if an appeal is being considered. You should also be aware that there are strict time limits within which an appeal may be made.

## **What can I do if I'm in dispute with my landlord?**

This depends on the nature of your dispute. You can seek the determination of a LVT with regard to the following issues:

- The purchase price and terms of enfranchisement (buying the freehold), and lease renewals (flats) and extensions (houses). (See Chapters 2 and 5). Landlords can also make an application to a LVT
- The liability and reasonableness of variable service charges (including insurance paid as part of a service charge or management costs), administration charges and charges under estate management schemes, including costs which have already been incurred, and amounts payable before costs are incurred. Landlords in receipt of these charges can also apply to a LVT for such a determination
- Whether the insurance cover provided is unsatisfactory in any respect or the premiums are reasonable for tenants whose lease requires them to insure the property with an insurer nominated or approved by their landlord
- For landlords who are required to consult leaseholders about particular works, determination of whether that consultation requirement can be waived
- Issues relating to the acquisition of the RTM by an RTM company (see Chapter 4)
- For tenants who have problems with the management of their building (eg landlord in breach of an obligation under the lease), decisions about the removal of the manager and the appointment of a new manager
- Variation of leases for a number of issues including repair or maintenance, and insurance. (Any party to a lease may make such an application)
- For tenants whose leases make provision for recovering the landlord's costs, determination of whether those costs may be included in the service charge.

This chapter provides information on the procedures and the costs of application. However, it is not meant to give a full interpretation of the law nor does it cover every case. You should always seek professional advice before proceeding.



### **What issues can I take to a LVT?**

Enfranchisement and lease renewals (flats) or lease extensions (houses) – purchase price and terms

Disputes about the right to enfranchise or to have a lease renewal (flats) or to have a lease extended (houses) are matters for a county court to decide. For further information about this please see Chapter 2 (for flats) and 5 (for houses).



Once the right to enfranchise or acquire a lease extension has been determined by the courts, there may still be disputes about the price payable and/or the terms of agreement for that enfranchisement, lease extension or lease renewal<sup>16</sup>. For such matters an application may be made to a LVT.

In addition, a LVT can be asked to determine the reasonableness of the landlord's costs which are payable by the leaseholder. These include professional fees and other expenses paid because of the transaction.

### How to proceed

Either a landlord or a tenant of a leasehold property can apply to a LVT for the determination of the terms or price payable.

An application must provide:

- the names and addresses of the applicant, the respondent, the freeholder and any intermediate landlord, and any landlord or tenant of the premises not already mentioned to which the application relates
- the name and address of any person having a mortgage or other charge over an interest in the premises the subject of the application held by the freeholder or other landlord
- the address of the premises to which the application relates
- a copy of the lease where appropriate
- a copy of any notice served in relation to the enfranchisement
- where relevant the name and address of the sub-tenant, and a copy of any agreement for the sub-tenancy
- the date on which the landlord acquired the property and the terms of acquisition including the sums paid where the right of first refusal was not offered to the tenants, and the tenants wish to take the benefit of a contract or compel the new landlord to sell the freehold; and
- a statement that the applicant believes that the facts stated in the application are true.

Please note that the following applications to a LVT are subject to application and hearing fees to a maximum of £500. See section 'How much does it cost to take a case to an LVT?' for further information.



### Service charges

Service charges are a common area of dispute between landlords and tenants, and either party may apply to an LVT for determination of, among other things, the liability to pay the service charge, to whom it is payable and when<sup>17</sup>.

<sup>16</sup> Applications to an LVT regarding enfranchisement and extended leases may be made under: section 21 of the Leasehold Reform Act 1967; sections 13 and 31 of the Landlord and Tenant Act 1987; sections 24, 25, 27, 48, 51, 88, 91, 94 and paragraph 2 of schedule 14 to the Leasehold Reform housing and Urban Development Act 1993.

<sup>17</sup> Under section 27A of the Landlord and Tenant Act 1985.

An application may also be made to an LVT for a determination as to whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any description, a service charge would be payable, and if so, who should pay it, how much, and to whom.

The determination applies whether or not any payment has already been made. This means that if the LVT determines that a service charge should be lower, the landlord may be required to reimburse the tenant.

### How to proceed

An application may be made by any individual tenant or a group of tenants paying a variable service charge (but not by a tenants' association applying on behalf of a group of tenants) or by the landlord.

The application must provide:

- the names and addresses of the applicant, the respondent, any landlord or tenant (not already mentioned) of the premises to which the application relates and the secretary of any Recognised Tenants' Association (RTA)
- the address of the premises to which the application relates if not already mentioned
- a copy of the lease
- the amount of the service charge presently payable; and
- a statement that the applicant believes that the facts stated in the application are true.

### Administration charges

Administration charges, relating for example to the granting of approvals under a lease or the provision of information or document, may also be the subject of dispute. An application may be made to an LVT by any party to a lease to determine the reasonableness or liability to pay an administration charge<sup>18</sup>. The LVT may vary the lease on the grounds that any administration specified in the lease is unreasonable, or any formula specified in the lease used to calculate any administration charge is unreasonable.

### How to proceed

An application may be made by any individual tenant or group of individual tenants or by the landlord.

<sup>18</sup> Under paragraph 3 or paragraph 5 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002.

The application must provide:

- the names and addresses of the applicant, the respondent and any landlord or tenant (not already mentioned) of the premises to which the application relates
- the address of the premises to which the application relates if not already mentioned
- a copy of the lease; and
- a statement that the applicant believes that the facts stated in the application are true.

### Estate Management Scheme (EMS) charges

An EMS allows landlords to retain some management controls over properties, amenities and common areas, in most cases after selling the freehold to the leaseholders. In many cases the aim of a scheme will be to ensure that the appearance and quality of the area as a whole is kept to the same standard. It may also provide for the upkeep of communal gardens or other common areas.

Variable Estate Management Scheme charges are only payable to the extent that they are reasonable. Leaseholders can apply to a LVT to vary the scheme on the grounds that a charge in the scheme is unreasonable or the method for calculation of such charges is unreasonable, or for a determination as to liability to pay the charge, the date of payment, and method of payment<sup>19</sup>.

All schemes are required to contain provisions which allow for their own termination or for the variation of their terms. Anyone who wishes to make an application for these purposes should first check what is said in the terms of the scheme.

### How to proceed

An application may be made by any individual tenant or group of individual tenants or by the landlord.

The application must provide:

- the names and addresses of applicant, the respondent and any landlord or tenant (not already mentioned) of the premises to which the application relates
- the address of the premises to which the application relates if not already mentioned

<sup>19</sup> Under section 159 of the Commonhold and Leasehold Reform Act 2002.

- a copy of the estate management scheme
- a statement that the applicant is either a natural person, or a representative body or relevant authority in accordance with sections 71(3) or 71(5) of the Leasehold Reform Housing and Urban Development Act 1993; and
- a statement that the applicant believes that the facts stated in the application are true.

### Insurance through the landlord's nominated or approved insurer

In leasehold properties the landlord may be responsible for insuring the building and may recoup the costs of insurance as part of the service charge. Alternatively, the leaseholder may be required to take out insurance with an insurer nominated or approved by the landlord.

If there is a dispute about insurance cover and insurance is covered by the service charge, an application should be made to a LVT using the procedure described in 'Service Charges' above.

If however, the dispute relates to insurance where the leaseholder is required by their tenancy agreement to insure their dwelling with an insurer nominated or approved by their landlord, an application can be made to the LVT for a determination on the grounds that the insurance cover provided is unsatisfactory in any respect or whether the premiums payable are excessive<sup>20</sup>. The LVT may make an order requiring the landlord to nominate a different insurer as specified in the order, or an insurer satisfying the requirements of an order in terms of cover provided or the premiums payable.

### How to proceed

An application may be made by any individual tenant or by the landlord.

The application must provide:

- the name and address of the applicant, the respondent, and any landlord or tenant (not already mentioned) of the premises to which the application relates
- the address of the premises to which the application relates if not already mentioned
- a copy of the lease
- the amount of the premium presently payable; and
- a statement that the applicant believes that the facts stated in the application are true.

<sup>20</sup> Under Paragraph 8 of the Schedule to the Landlord & Tenant Act 1985.



## Dispensation with consultation requirements under section 20 of the Landlord and Tenant Act 1985

Section 20 of the Landlord and Tenant Act 1985 requires that leaseholders must be consulted before the landlord carries out works exceeding a certain amount or enters into a long term agreement for the provision of services. Anyone may apply to a LVT for the dispensation of any or all of the consultation requirements where it is reasonable to do so<sup>21</sup>. (See Chapter 1 for more details).

### How to proceed

The application must provide:

- the names and addresses of the applicant, the respondent and any landlord or tenant of the premises to which the application relates
- a copy of the lease
- the address of the premises to which the application relates if not already mentioned; and
- a statement that the applicant believes that the facts stated in the application are true.

### Right to Manage (RTM)

Long leaseholders of flats have the right to manage the building they live in without proving that their manager is at fault or paying any premium. The right must be exercised through a specific company – a RTM company – set up by leaseholders for that purpose.

There are prescribed procedures for exercising RTM which are laid out in Chapter 4. However there are certain circumstances within the procedures under which an RTM company, or a leaseholder, sub-tenant or landlord as applicable, may make an application to a LVT. These are as follows:

- Under section 84 of the Commonhold & Leasehold Reform Act 2002. Where the RTM company has served a Claim Notice of the right to manage, and been served a counter-notice that it does not have that right, the company may apply to a LVT for a determination that it was entitled to acquire the right to manage. **An application must be made within two months of the date that the counter-notice was given**
- Under section 85 of the 2002 Act, where the landlord cannot be traced, the RTM Company may apply to a LVT for an order that the company is to acquire the right to manage the premises

<sup>21</sup> Under section 20ZA of the Landlord and Tenant Act 1985.

- Under section 88 of the 2002 Act, any recipient of a claim notice for RTM may apply to a LVT to determine the reasonableness of costs incurred in dealing with the notice
- Under section 94 of the 2002 Act. Any landlord, third party to a lease or manager appointed under the Landlord and Tenant Act 1987, may apply to a LVT to determine the amount of accrued uncommitted service charges to be paid to the RTM Company
- Under section 99 of the 2002 Act, the RTM Company, any leaseholder or landlord may apply to an LVT to determine whether approvals (eg to undertake works or to underlet) may be granted by an RTM company, or withheld by another party
- Under paragraph 5 of schedule 6 of the 2002 Act, only one RTM Company may operate at a time and an RTM company must normally be inactive for at least four years before it can be replaced by a different company. However, where an earlier RTM company has ceased to operate, an RTM company may apply for a determination that it would be unreasonable to uphold the four-year rule in the circumstances of the case.

### How to proceed

The application must provide:

- The name and addresses of the applicant, respondent and any landlord or tenant of the premises to which the application relates
- The address of the premises to which the application relates
- The name and address for service of the RTM company
- The name and address of the freeholder, any intermediate landlord and any manager
- A copy of the memorandum and articles of association of the RTM company
- Where an application is made under section 84 of the 2002 Act, a copy of the claim notice and a copy of the counter notice received
- Where an application is made under section 85 of the 2002 Act:
  - a statement that the requirements of sections 78 and 79 of the 2002 Act are fulfilled
  - a copy of the notice given under section 85 of the 2002 Act together with a statement that such notice has been served on all qualifying tenants
  - a statement describing the circumstances in which the landlord cannot be identified or traced

- Where an application is made under section 94 of the 2002 Act an estimate of the amount of the accrued uncommitted service charges
- Where an application is made under section 99 of the 2002 Act, a description of the approval sought and a copy of the relevant lease
- Where an application is made under paragraph 5 of Schedule 6 to the 2002 Act, the date and circumstances in which the right to exercise the right to manage has ceased within the past four years
- A statement that the applicant believes that the facts stated in the application are true.

### Appointment of a manager (Including approved codes of practice)

If a landlord's management of the building is unsatisfactory a leaseholder may in some circumstances apply to the LVT for the appointment of a new manager<sup>22</sup>. This includes instances where the lease provides for management functions to be carried out by a third party manager rather than the landlord.

A landlord may also apply for the appointment of a manager where they believe that a RTM Company's management of the building is unsatisfactory.

The grounds for application, providing that an order would be just and convenient, are:

- that the landlord is in breach of an obligation owed to the tenant under the tenancy in relation to the management of the premises
- that the landlord has demanded, or is likely to demand, unreasonable service charges
- that the landlord has failed to comply with any relevant provision of a Government approved Code of Practice; or
- where the LVT is satisfied that other circumstances exist which make it just and convenient for the order to be made.



**However this procedure is not applicable where the landlord is:**

- **a local authority or other public sector body**
- **a registered social landlord or other housing association; or**
- **a landlord resident in non-purpose-built property (such as a house converted into flats) where less than one-half of the flats contained in the premises are held on long residential leases.**

<sup>22</sup> Under section 24 of the Landlord and Tenant Act 1987.

### How to proceed

Any one eligible tenant, a group of tenants acting together, (but not tenants' associations applying on behalf of a group of tenants), or a landlord where RTM has been exercised, may apply for the appointment of a manager.

The tenant or tenants must first serve a preliminary notice<sup>23</sup> on the landlord:

- (i) advising the landlord that they intend to seek an order, but may not do so if the landlord complies with requirements set out in the notice
- (ii) specifying the grounds on which the order will be sought, and the matters which will be relied on in establishing those grounds; and
- (iii) where the matters are capable of being remedied by the landlord, requiring the landlord to remedy them within a reasonable time specified in the notice.

After the expiry of the specified period, if the landlord has not taken action to remedy the matters, the leaseholders may make an application to an LVT for an order to appoint a new manager.

The application must provide:

- the names and addresses of the applicant, the respondent, and any other landlord or tenant of the premises to which the application relates
- the address of the premises to which the application relates (if not already provided)
- details of any mortgagee of the freeholder
- a copy of the lease
- a copy of the original notice served on the landlord and a statement of the grounds on which the LVT will be asked to make an order
- a copy of the management order where application is made to vary or discharge the order; and
- a statement that the applicant believes that the facts stated in the application are true.

In certain cases, the LVT may dispense with the requirement for the prior notice to be served on the landlord, if it is satisfied that it would not be reasonably practicable to serve the notice, and may give directions as to other steps to be taken.

Where a LVT makes an order for the appointment of a new manager or, on the application of any interested party, varies or discharges the order, the LVT has wide discretion on the matters to be included and conditions to be imposed as part of the appointment, including time limits.

<sup>23</sup> Under section 22 of the Landlord and Tenant Act 1987.





## Approved Codes of Practice

Three Codes of Practice relating to the management of leasehold properties have been approved by the Secretary of State. The Association of Retirement Housing Managers Code relates to purpose-built retirement housing. The Royal Institution of Chartered Surveyors have two Codes – one which applies to all residential property paying service charges, and one to properties paying rent only. Copies of the Codes are obtainable direct from the relevant body. See Chapter 11 for contact details.

## Variation of leases

Leases can be varied at any time with the agreement of all the parties concerned. However, if agreement cannot be reached you may be able to apply to a LVT to vary your lease<sup>24</sup>. The grounds on which an application can be made by any party to the lease (including the landlord) are:

For flats

That the lease does not make proper provision for (among other things):

- the repair or maintenance of the flat, the building, or any land or building which is let to the tenant under the lease and any installations or services
- the insurance of the building containing the flat or any land or building let to you under the lease
- the recovery of expenditure under the lease; and
- the calculation of the service charges payable under the lease.

For houses

- that the lease fails to make satisfactory provision for the insurance of the property.

## How to proceed

It is the legal responsibility of the applicant and respondent to inform, by serving a notice on any person they know or has reason to believe is likely to be affected by any variations to the lease that the application has been undertaken.

The application must provide:

- the names and addresses of the applicant, the respondent, and any landlord or tenant of the premises to which the application relates
- the address of the property to which the application relates

<sup>24</sup> Under Part 4 of the Landlord and Tenant Act 1987.

- the names and addresses of any person not already mentioned served with a notice of the application because of their interest in the lease
- a copy of the lease
- a draft of the variation sought; and
- a statement that the applicant believes that the facts stated in the application are true.

### Application by respondent for variation of other leases

Where an application for a variation of a lease is made, any other party to the lease may ask a LVT to make an order for the variation in the original application to be effected in one or more other specified leases.

These must be long leases of flats held by the same landlord as the lease in the original application but do not have to be in the same building or drafted in identical terms.

### Applications by majority of leaseholders having the same landlord

Alternatively, an application may cover the variation of two or more long leases of flats on the basis that that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect. Again the application must refer to long leases of flats held by the same landlord, but the flats do not have to be in the same building nor do the leases have to be drafted in identical terms.

Such an application can be made by the landlord or any of the tenants under the leases but only if a large majority consent to the change. Where the application refers to less than nine leases, all or all but one of the parties to those leases, including the landlord, must consent to the application. Where the application refers to more than eight leases, at least 75 per cent of the parties concerned must consent to it, and it must not be opposed by more than 10 per cent of them.



### The landlord's costs at the LVT

Some leases make provision for the landlord's professional costs to be recovered by being included in the service charges. Any leaseholder in this position making an application to a LVT (or court or other tribunal) should consider whether their lease makes this provision, and whether the landlord is likely to incur any professional costs as a result of the application.

If so, they may make an application<sup>25</sup> for an order that all or any of those costs will not be taken into account in determining the amount of any service charge payable, by the leaseholder or anyone else specified in the application.

Although the LVT's decision cannot be prejudged, it may save time and money to make this application at the same as any other application, rather than waiting until the other has been determined.

### How to proceed

The application should provide:

- the names and addresses of the applicant, the respondent and any landlord or tenant of the premises to which the application relates
- a copy of the lease
- the address of the premises to which the application relates if not already mentioned
- a statement covering the grounds of other applications to the LVT which arise in costs; and
- a statement that the applicant believes that the facts stated in the application are true.

## Application forms for applying to a LVT

Model application forms are available from the LVT offices. Copies may also be available from the Leasehold Advisory Service (LEASE). See Chapter 11 for contact details.



### Which cases are not eligible for determination by an LVT?

No application may be made to a LVT if the matter:

- has been agreed or admitted by the tenant (eg service charges, administration charges or EMS charges). The tenant will not however be taken as having agreed or admitted any matter solely because they have made a payment
- has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party
- has been the subject of determination by a court; or
- has been determined by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

<sup>25</sup> Under section 20C of the Landlord and Tenant Act 1985.

If you are in any doubt about your own position you should consider seeking independent legal advice.

Also, some public sector tenants paying service charges also may not apply to a LVT. You should consider seeking legal advice if this applies to you.



### **What happens if the dispute is already before a Court?**

Where proceedings have already been started in Court, all or part of the case may be transferred to a LVT at the discretion of the Court.

Where proceedings relate to a matter which attracts a fee the applicant will be eligible to pay the relevant application fee to the LVT (see 'How much does it cost to take a case to a LVT' below), less any costs they have already paid to the Court.

### **Can I make a joint application to a LVT?**

In cases where several tenants make separate applications on the same grounds, the LVT may propose that the applications should be dealt with together at a single hearing, or that just one be heard as a 'representative' application.

Similarly, where the LVT has already determined a matter, and subsequently receives another application about the same matter from a leaseholder who was not aware of the earlier representative application, the LVT may invite the applicant and the respondent to be bound by the previous decision. If however, either party objects, the LVT would hear the matter.

### **What can I do if I disagree with the LVTs decision?**

While the LVT determination is final and enforceable, you may request the LVTs permission to appeal to the Lands Tribunal. If permission to appeal is refused by the LVT, you may apply for permission to appeal directly to the Lands Tribunal. A party to proceedings before a LVT may also appeal to the Lands Tribunal even if they did not attend the LVT hearing.

You should note that the Lands Tribunal has the power to order a party to the appeal to pay costs, up to a maximum of £500, if they have acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the appeal.

## How much does it cost to take a case to a LVT?

The fees payable to a LVT will vary. The amount payable will depend on the type of application, how many dwellings are involved, and how much is in dispute. However, the maximum amount payable to a LVT for an application and hearing will not exceed £500.

The following disputes do not require a payment to the LVT:

- determinations relating to the terms or the price to be paid for
- enfranchisement
- lease extension or lease renewal
- Right to Manage issues
- Estate Management Scheme charges; and
- determination that a breach of a covenant or condition in the lease has occurred.

Leaseholders will however have to meet their own costs (eg any professional fees incurred) and all reasonable costs incurred by the landlord.

For the following disputes a fee – up to a maximum of £500 – is payable in two stages:

- Service charges
- insurance
- variation of lease
- appointment of manager
- dispensation of consultation requirements.

### Stage 1 – Application fee

This is payable on application to a LVT, or when a case is transferred to the LVT from a court. There are two sets of fees calculated on a sliding scale depending on the amount of money that is disputed, or the number of dwellings to which the application relates.

#### **(a) Fees calculated on the amount of money at dispute**

If the application relates to:

- your insurance premiums
- your liability to pay a service charge or administration charge; or
- you want to vary your lease because of an administration charge, you will be liable to a fee as follows:
- where the service charge, insurance premium or administration charge which is the subject of the application is not more than £500, the fee to the LVT is £50

- where the charge which is the subject of the application is more than £500 but not more than £1000, the fee to the LVT is £70
- where the charge which is the subject of the application is more than £1000 but not more than £5000, the fee to the LVT is £100
- where the charge which is the subject of the application is more than £5000 but not more than £15000, the fee to the LVT is £200; and
- where the charge which is the subject of the application is more than £15000, the fee to the LVT is £350.

### **(b) Fees calculated on the number of dwellings to which the application relates**

If the application relates to:

- the suitability of the insurance from a nominated insurer
- the appointment of a new manager
- the variation of your lease; or
- a landlord's request to dispense with consultation requirements.

you will be liable to a fee as follows:

- where the application relates to 5 or fewer dwellings, the fee to the LVT is £150
- where the application relates to between 6 and 10 dwellings, the fee to the LVT is £250; and
- where the application relates to more than 10 dwellings, the fee to the LVT is £350.

### What happens if I want a determination on more than one matter?

If you want a determination on more than one of the issues above you will be liable to just one fee, being the highest of the fees you would have paid if you had made two or more applications.

### When do I pay the application fee?

The fee should be included with your application, in the form of a cheque or postal order made payable to the Department for Communities and Local Government in England, and the National Assembly for Wales, in Wales. Your application will not be considered until the fee has been received.

### Stage 2 – Hearing fee

All applications which are subject to an application fee are also subject to a hearing fee at a flat rate of £150 per hearing. However, where it has been agreed that an application can be determined without a full oral hearing, no hearing fee is payable.

When the LVT sends notice of your hearing they will issue an invoice for this amount which must be paid within **14 days** of the written request for payment or your case will not be heard.

As well as the application and hearing fees, applicants will also be responsible for their own costs arising from an application (eg solicitor or surveyor fees).



## What is a pre-trial review?

In some instances, the LVT may hold a pre-trial review of the case. This may take place on the request of either party, or if the LVT itself thinks that it is necessary.

This is a relatively informal and short hearing which all parties are invited to attend. It is used to identify the issues in the case and to see if any part of the dispute can be resolved by agreement at that stage. However, it is not a hearing of the issues and no final decisions on the case will be made at this hearing. No fee is payable for a pre-trial review.

Whether or not a pre-trial review is held, the LVT may issue directions to the parties relating to the submission of evidence to ensure that all the necessary information about an application is provided. Directions are orders made by the LVT and some of the most common ones would be to:

- say what information will be required by the LVT for the full hearing
- provide written statements of the case (ie a document setting out what is in disputes and the arguments)
- provide the other parties with copies of relevant documents
- include expert evidence in a report

Directions will also set out a timetable for the full hearing and often fixes a time for the LVT to inspect the property.

**Failure to comply with the LVTs directions may result in prejudice to a party's case. In the case of the applicant it could result in the dismissal of the application.**

## Can a case be heard by the LVT without a full oral hearing?

Some cases may be determined without a full oral hearing. This would only happen where a LVT agrees and if the respondent states in writing that they do not oppose the application, or the respondent withdraws their opposition to the application or the applicant and respondent agree in writing.

In these cases a full tribunal will not be required and no hearing fee is payable. The application fee remains the same.

### What is the hearing fee when more than one application is heard together?

Where it has been agreed that a number of applications are to be heard together there will be only one hearing fee payable. This will be divided equally between the applicants whose cases are being heard.



### Who is eligible for a waiver of fees?

There is no fee payable in cases where the applicant or the applicant's partner is in receipt of:

- income support
- housing benefit
- income based job seekers allowance
- a working tax credit with a disability element or the applicant or partner is also in receipt of child tax credit, and the gross annual income taken into account for the calculation of the working tax credit is £14,213 or less
- a guarantee credit under the State Pensions Credit Act 2002; or
- a certificate issued under the Funding Code which has not been revoked or discharged and which is in respect of the proceedings before the LVT the whole or part of which has been transferred from the county court for determination by a LVT.

If more than one person has made an application which attracts a fee, and one or more of those applicants is eligible for waiver of the fee, that fee will be reduced rateably according to the number of persons who would have been liable. For example if three people make a joint application which attracts a £150 fee and one of the applicants is not eligible to pay, the fee will be reduced by one third, so the other two applicants will have to pay only £100 between them. Hearing fees will be reduced similarly.

### Can I recover any of the fees I have paid to the LVT?

In certain cases, a LVT may make an order requiring the respondent to reimburse some or all of the fees to the applicant.

### Can the LVT award costs?

The LVT has the power to award costs of up to £500 where an application is dismissed on the grounds that it is frivolous or vexatious or otherwise an abuse of process, or where a party has, in the opinion of the LVT, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.



## **Can the Lands Tribunal award costs?**

Yes. The Lands Tribunal can award up to £500 in costs in the same way a LVT can, where a party has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

## **Can the landlord recover any costs from the tenants (section 20C orders)?**

Yes, depending on the terms of the lease. However, in cases where a tenant's lease does include provision for the landlord's to recover his legal costs by including them in the service charges, the LVT has discretion to prevent this. The tenant may apply to the LVT for an order under Section 20C of the Landlord and Tenant Act 1985, asking for the landlord's costs arising from the LVT proceedings not to be recharged to the tenants through the service charge. See 'Landlord's costs at the LVT' above. It should be borne in mind that the LVT will reach a decision on the case presented to them and there can be no guarantee as to the outcome of any application.

## **Further information**

Further information can be obtained from LVTs the contact details for which can be found in Chapter 11.

# 8

## **Commonhold and Leasehold Reform Act 2002**

Provisions not yet commenced

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## Introduction

The leasehold provisions of the Commonhold and Leasehold Reform Act 2002 are being phased in over a period of time. As a result of this certain leasehold provisions are still to be brought into force, briefly these are:

- accounting for leaseholders' monies
- the Right to Enfranchise Company provisions for flats (including the Notice of Invitation to Participate).

Further information about these provisions can be found below.



## Accounting for leaseholders' monies

This provision is currently being re-developed, but as it stands it would require landlords to provide regular (yearly) accounting statements to service charge payers. These statements would provide information about monies paid into a service charge fund and standing to the credit of the service charge fund, as well as costs incurred by the landlord. The statements will need to be accompanied by an accountant's report where necessary and the Act will give leaseholders the right to inspect documentation relevant to their accounting statements within 21 days of their request. Leaseholders will also be able to take copies of that information, or have copies provided to them on payment of a reasonable fee.

Service charge payers will also be able to withhold service charges if the above requirements have not been complied with.

Provisions in the 2002 Act requiring changes to the way service charge money is held are still being developed, but if implemented they will:

- require landlords to hold service charge funds in one or more (designated) accounts where the account will be subject to certain prescribed requirements. Leaseholders will have the right to ask for proof that this requirement has been met
- give leaseholders the right to inspect documents and other evidence to ensure the landlord has complied.

Service charge payers will be able to withhold service charges where they have reasonable grounds for believing that the landlord is not holding their service charges in a separate account.



## **Right to Enfranchise Company provisions (for flats)**

The 2002 Act sets out provisions that would require that when an initial notice is served on a landlord to exercise the right to collectively enfranchise (buy the freehold) a block of flats (see Chapter 2), it must be given by a Right to Enfranchise Company (RTE Company).

These provisions are still in the process of being developed and certain issues have come to light that require resolving before they come into effect. However, as they currently stand they would require the following:

- The RTE Company must have a membership which includes the required number of tenants in the block who both qualify to participate in the enfranchisement and who have elected to participate (ie the participating members must hold long leases on at least half the flats in the building). Where there are only two flats, both tenants must qualify and participate
- The Company must be a private company limited by guarantee with certain requirements included in its memorandum and articles of association, to be prescribed by the Secretary of State or the National Assembly for Wales, in Wales, and must serve a notice on all qualifying tenants inviting them to take part in the enfranchisement before serving an initial notice on the landlord.

### **Notice of Invitation to Participate in collective enfranchisement**

The 2002 Act would require the RTE Company, before making a claim to exercise the right to enfranchise, to serve a Notice of Invitation to Participate on any qualifying tenants in the block who have not yet agreed to become participating members. The notice must be accompanied by a copy of the Memorandum and Articles of Association for the RTE Company, or include a statement of where these documents can be inspected and from where copies can be obtained. The RTE Company cannot serve an initial notice to enfranchise until fourteen days after service of the participation notice.

# 9

## **Main Acts of Parliament and their effect**

### Landlord and Tenant Act 1954

#### Local Government and Housing Act 1989 (schedule 10)

- Gives most long leaseholders the right to remain as a renting tenant at the end of their lease.

### Leasehold Reform Act 1967

- Gives most long leaseholders of houses the right to purchase the freehold or extend their lease.
- Gives landlord's of leasehold houses the right to apply for the retention of management powers for the general benefit of the neighbourhood (estate management schemes).

### Landlord and Tenant Act 1985

- Gives tenants rights in relation to service charges.
- Gives tenants rights in relation to consultation about major works (qualifying works & long term agreements).
- Gives tenants rights to information about and to challenge service charges.
- Gives tenants rights relating to the insurance of their property.
- Gives tenants the right to have a recognised tenants' association.
- Gives tenants rights to consultation about managing agents.

### Landlord and Tenant Act 1987

- Gives qualifying tenants of flats the Right of First Refusal to buy the freehold.
- Gave tenants the right to seek the appointment of a new manager by a court.
- Gives tenants rights to compulsory purchase of a landlord's interest in certain circumstances.
- Requires service charges to be held in a separate account and in trust.
- Gives tenants the right to seek variation of their leases.

### Leasehold Reform, Housing and Urban Development Act 1993

- Gives most long leaseholders of flats the collective right to buy their freehold and the individual right to renew their leases.
- Gives leaseholders the right to a management audit.
- Gives the Secretary of State or National Assembly for Wales the power to approve management codes of practice.
- Gives landlord's of leasehold flats the right to apply for an estate management scheme.
- Transfers responsibility for estate management scheme variations to LVTs.

### Housing Act 1996

- Makes it easier for leaseholders to challenge unreasonable service charges and restricts the landlord's right to forfeit where an item or items of service charges are disputed.
- Strengthens the Right of First Refusal by making it a summary offence.
- Extends the rights of leaseholders to buy the freehold of their building.
- Gives jurisdiction for LVTs to determine service charge disputes and applications for the appointment of a manager.

### Commonhold and Leasehold Reform Act 2002

(First phase of provisions commenced on 26 July 2002 in England and 1 January 2003 in Wales).

- Relaxes the qualifying rules for buying the freehold of a leasehold property or extending the lease (flats and houses).
- Provides that marriage value is disregarded where leases have more than 80 years to run, and that it is split 50/50 in all cases where it does apply.
- Raises the 'commercial limit' for blocks of flats from 10 per cent to 25 per cent.
- Gives new rights to personal representatives of deceased leaseholders of flats and houses.
- Allows leaseholders of houses who have already extended their lease under the 1967 Act the right to buy the freehold, or remain in the property as a renting tenant when the lease expires.
- Widens the right to seek the appointment of a new manager for blocks of flats.
- Widens the grounds under which a lease can be varied.

Second phase of provisions commenced on 30 September 2003 in England and 30 March 2004 in Wales.

- Gives leaseholders of blocks of flats a 'no-fault' right to take over the management of their block.
- Includes 'improvements' in the definition of service charges.
- Widens the jurisdiction of the LVTs, for example to determine the liability to pay service charges, the reasonableness of administration charges payable under a lease, variations of leases, and charges payable under Estate Management Schemes.

Second phase of provisions commenced on 31 October 2003 in England and 30 March 2004 in Wales.

- Improves the rights for leaseholders paying variable service charges to be consulted about long term agreements and qualifying works.



Third phase of provisions commenced on 28 February 2005 in England and 31 May 2005 in Wales.

- Requires landlords to demand ground rents in a specific manner before they are able to take any action or impose any penalties for late payment.
- Requires landlords to first satisfy a leasehold valuation tribunal, court or arbitral tribunal that a disputed breach of a covenant or condition of the lease has occurred before they are able to take any forfeiture action.
- Prevents landlords from forfeiting leases as a result of trivial debts that consist of ground rent, service charges, administration charges (or a combination of them) where the debt does not exceed £350, unless all or any part of the sum has been outstanding for more than 3 years.
- Prevents landlords from insisting that leaseholders of houses use a particular insurance company nominated or approved by them to insure their house.
- Fixes the valuation date for collective enfranchisement of flats at the date that the initial notice is served.

Fourth phase of provisions commenced on 1 October 2007 in England and 30 November 2007 in Wales.

- Requires landlords to send a summary of the tenant's rights and obligations with a demand for service charges, using particular wording set out in regulations.
- Requires landlords to send a summary of the tenant's rights and obligations with a demand for administration charges, using particular wording set out in regulations.

10

**Prescribed Forms**

Throughout this booklet references are made to the use of prescribed forms. Below is a list of the Statutory Instruments that set out those prescribed forms.

The Statutory Instrument will indicate whether the forms apply to properties in England or Wales. Where no reference is made to either England or Wales the forms will apply to both.

You should note that any enquiries about the use of any prescribed forms in Wales should be referred to the Welsh Assembly Government, whose details can be found in Chapter 11 – ‘Contact names and addresses’.

## **Leasehold Flats – Right To Manage (Chapter 4)**

The RTM forms are prescribed by Statutory Instrument 2003 No.1988 – The Right to Manage (Prescribed Particulars and Forms)(England) Regulations 2003.

- **Schedule 1** – Form of RTM Notice of Invitation to Participate to tenants
- **Schedule 2** – Form of RTM Claim Notice
- **Schedule 3** – Form of Landlord’s Counter-Notice

In addition to the above forms and information required therein, it is important to note that additional information is required in each case. This can be found in paragraph 3 of the above Statutory Instrument.

**Note:** For Wales, any prescribed forms for RTM are expected to be available when the second phase of provisions is commenced in Wales. They may also prescribe additional forms. You would be best advised to establish the position by contacting the Welsh Assembly Government whose address can be found in Chapter 11.

## **Leasehold Houses – enfranchisement and lease extensions (Chapter 5)**

- **Form 1** – The leaseholders notice (Notice of tenant’s claim) to buy the freehold or extend the lease.
  - Statutory Instrument 2002 No. 1715 – The Leasehold Reform (Notices) (Amendment)(England) Regulations 2002,
  - Welsh Statutory Instrument 2002 No. 3187 – The Leasehold Reform (Notices) (Amendment)(Wales) Regulations 2002.

- **Form 2** – The leaseholders notice of tenants claim under section 28(1)(b)(ii).
  - Statutory Instrument 2002 No. 1715 – The Leasehold Reform (Notices) (Amendment)(England) Regulations 2002.
  - Welsh Statutory Instrument 2002 No. 3187 – The Leasehold Reform (Notices) (Amendment)(Wales) Regulations 2002.
- **Form 3** – The landlords notice in reply.
  - Statutory Instrument 2002 No 3209 – The Leasehold Reform (Notices) (Amendment)(No.2)(England) Regulations 2002.
  - Welsh Statutory Instrument 2003 No. 991 – The Leasehold Reform (Notices)(Amendment)(Wales) Regulations 2003.

## **Leasehold flats and houses – Security of tenure for long leaseholders where the lease is running out (Chapter 6)**

Forms 1 to 6 are prescribed by The Long Residential Tenancies (Principal Forms) Regulations 1997 (Statutory Instrument 1997 No. 3008), as amended by the Statutory Instrument 2002 No.2227 – Long Residential Tenancies (principal forms)(Amendment)(England) Regulations 2002, and for Wales the Welsh Statutory Instrument 2003 No.233 – The Long Residential Tenancies (Principal Forms)(Amendment)(Wales) Regulations 2003.

Forms 7 to 9 are prescribed by The Long Residential Tenancies (Supplemental Forms) Regulations 1997 (Statutory Instrument 1997 No. 3005).

**Form No. 1** – Landlords notice terminating a long residential tenancy and proposing an assured monthly periodic tenancy.

**Form No. 2** – Landlords notice terminating a long residential tenancy and proposing to apply to court for possession.

**Form No. 3** – Landlords notice proposing an interim monthly rent.

**Form No. 4** – Tenant’s notice proposing different rent or terms for an assured periodic tenancy.

**Form No. 5** – Landlords application referring a tenant’s notice proposing different rent or terms for an assured periodic tenancy, to a Rent Assessment Committee.

**Form No. 6** – Notice by a Rent Assessment Committee requiring a landlord or tenant to give further Information.

**Form No. 7** – Landlords notice requiring information about sub-tenancies.

**Form No. 8** – Landlords notice requiring consent of other (superior or intermediate) landlord(s) to the giving of a notice terminating a long residential tenancy.

**Form No. 9** – Landlords notice requiring consent of other (superior or intermediate) landlord(s) to the making of an agreement with the tenant under Schedule 10 to the 1989 Act.

The aforementioned Statutory Instruments are available from The Stationery Office (TSO), tel.: 0870 600 5522 (Lo-Call 0845 7 023474), or on their website at [www.tso.co.uk](http://www.tso.co.uk). They may also be available through booksellers or law stationers. The prescribed forms are available from law stationers.

Your professional adviser, local law centre or Citizens Advice Bureau (CAB) should be able to help you obtain a copy of these forms, and may also be able to help you fill them in.

# 11

## Contact names and addresses



## Getting help and advice

We would advise you to seek independent advice from professionals such as solicitors, surveyors or property managers before exercising any of your statutory rights.

**This booklet itself does not give a full interpretation of the law, but gives a brief explanation of the long leasehold system and the rights available to long leaseholders and service charge payers.**

We cannot give advice or get involved in individual cases. However you can obtain advice from the Leasehold Advisory Service (LEASE).

LEASE is an Executive Non-Departmental Public Body funded by Government to provide free initial advice and information on a wide range of residential leasehold issues and is staffed by officers with legal training.

LEASE can be contacted at:

- LEASE  
2nd Floor  
31 Worship Street  
London  
EC2A 2DX  
  
Telephone: 020 7374 5380 (Lo-call: 0845 345 1993)  
Fax: 020 7374 5373  
Email: [info@lease-advice.org](mailto:info@lease-advice.org)  
Website: [www.lease-advice.org](http://www.lease-advice.org)

For general enquiries about the content of this booklet please contact:

Communities and Local Government  
Leasehold and Park Homes Team  
Zone 1/C3  
Eland House  
Bressenden Place  
London SW1E 5DU  
Telephone: 020 7944 4287

E-mail: [leasehold.reform@communities.gov.uk](mailto:leasehold.reform@communities.gov.uk)

Free copies of this booklet can be obtained from:

Communities and Local Government Publications  
PO Box No 236  
Wetherby LS23 7NB

Tel: 030 0123 1124 Fax: 030 0123 1124  
E-mail: [communities@capita.co.uk](mailto:communities@capita.co.uk)

The booklet is also available on the Department's website at:  
[www.communities.gov.uk/housing](http://www.communities.gov.uk/housing)

Alternative formats and translations into other languages can be requested from: [alternativeformats@communities.gsi.gov.uk](mailto:alternativeformats@communities.gsi.gov.uk)

If your property is in Wales information can be obtained from:

Welsh Assembly Government  
Housing Directorate  
Private Rented & Rent Officer Service Branch  
Merthyr Tydfil Office  
Rhydycar  
Merthyr Tydfil CF48 1UZ  
Tel: 01685 729 183

### Application forms

Model application forms for applications to LVTs in respect of service charge, insurance & appointment of a manager disputes can be obtained from the LVTs (see addresses below) or from their website at [www.rpts.gov.uk](http://www.rpts.gov.uk).

### Useful addresses

#### Leasehold Valuation Tribunals in England (Part of the Residential Property Tribunal Service)

##### London

10 Alfred Place  
London  
WC1E 7LR  
Tel: 020 7446 7700  
Fax: 020 7637 1250

##### Eastern

**Note:** Eastern LVT moves to Unit 4C, Quern House from September 2009.

##### Until September 2009

Great Eastern House  
Tenison Road  
Cambridge  
CB1 2TR  
Tel: 0845 100 2616  
Fax: 01223 505116

##### From September 2009

Unit 4C, Quern House  
Mill Court, Great Shelford  
Cambridgeshire  
CB22 5LD  
Tel: 0845 100 2616  
Fax: 01223 505116



### **Northern**

First Floor  
5 New York Street  
Manchester  
M1 4JB  
Tel: 0845 100 2614  
Fax: 0161 237 3656

### **Southern**

1st Floor  
Midland House  
1 Market Avenue  
Chichester  
PO19 1PJ  
Tel: 0845 100 2617  
Fax: 01243 779389

### **Midlands**

2nd Floor  
Louisa House, Quay Place  
92-93 Edward Street  
Birmingham  
B1 2RA  
Tel: 0845 100 2615  
Fax: 0121 236 9337

## **Residential Property Tribunal Service (RPTS) National Helpline: 0845 600 3178**

Leasehold Valuation Tribunal for Wales  
(sponsored by the Welsh Assembly Government)

### **Wales**

1st Floor, West Wing  
Southgate House  
Wood Street  
Cardiff  
CF1 1EW  
Tel: 029 209 22 777  
Fax: 029 202 36 146

Other useful addresses:

**The Royal Institution of Chartered Surveyors**

12 Great George Street  
Parliament Square  
London  
SW1P 3AD  
Tel: 020 7222 7000

**The Association of Retirement Housing Managers**

Southbank House  
Black Prince Road  
London  
SE1 7SJ  
Tel: 020 7463 0660

**The Lands Tribunal**

Procession House  
55 Ludgate Hill  
London  
EC4M 7JW  
Tel: 020 7029 9780

**Advice Information and Mediation Service for Retirement Housing (AIMS)**

AIMS  
Age Concern England  
Astral House  
1268 London Road  
Norbury  
London  
SW16 4ER  
Tel: 0845 600 2001  
Fax: 0208 765 7218

**Office of Public Sector Information (OPSI)**

Information Policy Team  
Kew  
Richmond  
Surrey  
TW9 4DU  
Website: [www.opsi.gov.uk](http://www.opsi.gov.uk)

**Companies House**

Crown Way  
Cardiff  
CF14 3UZ  
Tel: 0870 3333636



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Welsh Assembly Government

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