

## **Collective Enfranchisement (Acquisition of Freehold)**

This advice sheet is to provide you with some advice on the Collective Enfranchisement procedure for obtaining the freehold of your property alongside the other participating tenants. You should be aware however that every case is different and as such this sheet is not designed to replace specific advice on your individual matter.

N.b. references to ‘you’, ‘your’ etc. in this sheet refer collectively to all participating tenants unless otherwise stated.

### **Participation Agreements**

As collective enfranchisement involves numerous participating tenants, prior to commencing the substantive work, all participating tenants must enter into a formal participation agreement to govern joint actions prior to and during the collective enfranchisement procedures. All participating tenants should sign the agreement to clarify matters such as rights of voting, the negotiation and agreement of terms and, most importantly, the individual tenant’s financial contributions.

If you do not have a participation agreement in place we can advise you and draft the agreement accordingly.

### **Outline of Procedure**

The formal procedure for collective enfranchisement is started by the service of the Initial Notice on the landlord; it then follows a prescribed route. The Initial Notice must be served by a Nominee Purchaser on behalf of the participating tenants.

The Nominee Purchaser can be a person, one of the tenants, or a corporate person, a trust or, more probably, a company formed by the tenants for the purpose. The tenants are free to choose whoever or whatever agency they wish. However, the most common format is a company wholly owned by the tenants and we advise that this is usually the best option; if this is the vehicle chosen by the participating tenants, the company must be established prior to being put forward in the Initial Notice.

We can of course assist you with the set up of such a company should you so require.

Although this is the beginning of the statutory procedure, the service of the notice should follow a period of preparation to ensure that all participating tenants are fully equipped and advised to complete their action.

There is a substantial amount of work to be completed if the application is to be successful; the basic outline of the process is as follows:

- Checking eligibility (of the building, the tenants etc)
- Organising for enfranchisement (securing the participation of a sufficient number of qualifying tenant’s, compiling information, documents etc.)
- Choosing the Nominee Purchaser (e.g. setting up a company for this purpose)
- Assessing the purchase price (e.g. Instructing a qualified valuer/surveyor to prepare a report/valuation)
- Serving the Initial Notice

- Preparing for the subsequent procedures

Once the Initial Notice has been served the nominee purchaser is likely to be subject to demands for information and to strict deadlines. The moment you serve the Initial Notice the participating tenants are liable for the freeholder's and any other relevant landlord's reasonable professional fees for landlord valuation, landlord fees for investigating title and your right to enfranchisement and also conveyancing costs, whether you complete or not.

We will discuss issues of eligibility with you based upon factors such as number of flats in your building, length of original leases, number of tenants wishing to participate, length of time they have been tenants, etc.

Once eligibility has been determined, all the necessary information and documentation has been compiled and a sufficient number of qualifying tenants have decided upon participation, we will prepare the initial notice to serve on your Landlord.

### **Initial Notice**

It is very important that the Initial Notice contains all the information required by law and that it is in the correct format, if not, the Notice can be invalid.

The Notice must include the following:

- 1) Details of the property to be acquired, including a plan. (Without a plan the notice can be declared invalid). This must include details of any additional land the tenants wish and have a right to acquire, e.g. garages, and any proposed rights of way over land not acquired;
- 2) A statement of the grounds on which it is claimed that the specified premises qualify for the right of collective enfranchisement on the relevant date (date of the Initial Notice);
- 3) Details of any leasehold interests to be acquired, eg an intervening headlease, and any flats subject to mandatory leaseback to the freeholder;
- 4) The price proposed, including a price for any intermediate interests;
- 5) The full names and addresses of all the qualifying tenants in the property and sufficient details of their leases to show that they are long tenants. This will require details of the date the lease was entered into, the date of commencement and the term;
- 6) The name and address of the Nominee Purchaser;
- 7) The date by which the freeholder is to provide the Counter-Notice (at least two months after service of the Initial Notice is given).

We will prepare the Initial Notice from the information the participating tenants provide and will serve the notice on your Landlord. Once the Initial Notice is served, the formal process has started and your matter can progress in a number of ways.

### **Landlord Information Request and Inspection Rights**

Once the Initial Notice has been served, your Landlord is entitled to require evidence of the participating tenants' title to their flats. The landlord has a period of 21 days from the

giving of the Initial Notice in which to request the information. The Landlord will not always request this information but where this information is required it must be provided within 21 days. All participating tenants should therefore ensure that we are fully equipped with all necessary information and documents to enable response within the time limits. In the event that the required information is not provided, the Initial Notice will be deemed withdrawn and the participating tenants will be responsible to pay for your Landlord's costs. Furthermore, where an Initial Notice is withdrawn, or deemed to be withdrawn, a new Notice cannot be served again for another 12 months, beginning with the date of the withdrawal. It is therefore very important that all participating tenants are in a position to respond quickly to any information request from your Landlord.

You should also be aware that the landlord has the right to inspect the property, including the participating tenants' flats, subject to providing the tenant with 10 days notice of his intention to inspect. A Landlord does not always wish to inspect but you should be aware of his right to do so.

### **Landlord's Counter Notice**

If the Landlord does not make a request for further information, or he receives a satisfactory response in relation to any request, the Landlord must serve his Counter-Notice by the date specified on the Initial Notice (2 months from the date the notice is given).

The Landlord's counter notice must, amongst other things, either:

- a) agree the right to the freehold and accept the terms (or propose alternative terms); or
- b) not agree the right and give reasons why not (which will then need to be determined by the county court)

Dependent upon the above responses you will have a number of options on how to proceed, we will advise on each in turn.

### **Landlord agrees right, terms and premium**

If the Landlord agrees with the right to enfranchisement and to the terms and premium proposed then the matter can proceed to the document stage and steps can be taken to transfer the freehold to the nominee purchaser.

### **Landlord agrees right but disputes terms and/or premium**

It should be noted that it is very rare for a freeholder to agree the right as well as all terms and premium; more often, even if the Landlord agrees the right, they will usually dispute certain terms such as the premium to be paid for the freehold.

In this event, the Landlord must propose alternative terms and/or premium on his counter notice.

At this stage we advise that, if you have not done so already for the purposes of the original valuation, you should instruct a surveyor to negotiate with the Landlord or his instructed surveyor in an attempt to agree on the final terms and especially premium for the freehold.

If you and the freeholder, or your appointed surveyors, cannot agree on the price or some other aspects of the conveyance, then after the initial two months, following service of

the Counter-Notice, either party can apply to the First Tier Tribunal (Property Chamber), (FTT for short) for an independent determination on the issue.

The application must be made to the FTT within a six month time limit from the date the Counter-Notice is received. In the event that the application is not made within the time limit, the Initial Notice will be deemed withdrawn. The same sanctions apply in relation to a notice which is deemed withdrawn as detailed above. It is therefore very important that you instruct us to make the application within the above time limit.

Whilst you can wait up to 6 months to apply to the FTT, if the surveyors are not making progress with negotiations we would advise you to apply sooner to the FTT who will impose a timetable of steps to be taken.

A straightforward application to the FTT may not require a hearing and can be determined more quickly. For more complex matters the FTT may require a pre trial review and will provide the parties with directions (a timetable) for the parties to follow, dictating when and by whom certain procedural steps (such as the exchange of information or the preparation of bundles) must be taken. Dependent upon the complexity of the matter and the workload, the FTT process is likely to take between 12 weeks and 12 months.

The FTT has the Power to determine the premium to be paid for the Freehold. The FTT determination becomes final 21 days after it is sent out by the FTT. Appeals must be made within this period to the Lands Tribunal with leave of the FTT.

The Landlord must provide a draft contract within 21 days of the FTT's determination becoming final (taking into account rights of appeal). The parties are expected to enter into the contract within a period of two months after the FTT's decision becomes final.

If the two month period elapses without exchanging contracts, then the participating tenants must apply to court within a further two months for a Vesting Order (see below).

### **Important Note on Valuation**

We cannot provide advice in relation to the valuation of the freehold premium and advise that you instruct a qualified valuer/surveyor for the purposes of valuation and negotiation. If you do not have a preferred valuer we can provide you with the details of an accredited RICS valuer for valuation purposes.

### **If the Landlord Fails to Respond**

In cases where the landlord fails to serve a Counter-Notice by the date specified in the Initial Notice, you may apply to the County Court for a Vesting Order allowing you to acquire the freehold on the terms of the Initial Notice (including the premium proposed, providing the Court is satisfied that the premium is realistic). The court, if satisfied of the right to enfranchise, will grant the Order.

The application must be made to the court within a six month time limit from the date on which the Counter-Notice should have been received. Again, In the event that the application is not made within the time limit, the Initial Notice will be deemed withdrawn. The same sanctions apply in relation to a notice which is deemed withdrawn as detailed above. It is therefore very important that you instruct us to make the application within the above time limit. We advise that to ensure you are within the time

limit and to minimise any delay in obtaining the freehold, the application should be made with the court as soon as possible following the expiration of the counter notice deadline.

### **If the Landlord Does Not Agree the Right**

If the Landlord disputes the right of the participating tenants to obtain the freehold he must provide detailed reasons for his dispute in his counter notice. As long as the building and tenants meet the qualifying criteria, the Landlord's objections will usually involve the validity of the initial notice. In the event of such a dispute the participating tenants can make an application to the County Court for a determination as to the validity of the Initial Notice. Should the County Court confirm the Initial Notice's validity then negotiations to agree the terms and premium will commence as detailed above.

Once an application has been made we would expect that a County Court hearing would be scheduled within 3 – 6 months.

The County Court has the Power to determine the validity of a notice challenged by the Landlord and/or to grant a Vesting Order in favour of the participating tenants in the absence of a response from the Landlord.

### **Absent Landlord**

if the landlord cannot be found then the Initial Notice cannot be served. In this case, the tenants may make application to the county court for a Vesting Order.

Prior to applying for the Vesting Order the tenants must make efforts to find the freeholder first. If correspondence has failed then the court would want to see evidence that other attempts to find the Landlord have been undertaken. These could include methods such as using a tracing agent and getting a statement from them that they were unable to locate the Landlord or placing an advertisement in the local paper requesting the Landlord make contact and waiting a reasonable time (say 28 days). Whatever methods are employed to try to find the Landlord, evidence of the methods and statements confirming their failure must be included with your application.

If the court is satisfied with the efforts made then it will, in effect, sell the freehold to the tenants in the landlord's absence. The Court will not be able to determine the price of the freehold however as this is the jurisdiction of the FTT. As such an additional application to the FTT is required for the tribunal to confirm the premium payable for the freehold. Such an application to the FTT will need to be supported by expert valuation evidence and so a valuation report from a RICS qualified valuer should be obtained and included with the application.

### **Costs for Services**

You will be responsible for the Freeholder's reasonable costs for investigating your title, rights to enfranchise, valuation and granting transfer of Freehold.

The majority of our basic non contentious services relating lease extensions can be undertaken on the basis of the below estimates. Should significant disputes arise, or if your matter is unduly prolonged or complex, then we may charge on an hourly rate basis and your fees will be determined dependent upon the length of time spent on your matter.

Below is a list of charges and costs estimates for the services we provide:

If no tribunal application is required (most common)

Freehold Management Company set up - £400 + VAT plus £100 + VAT per Qualifying Flat plus company set up agent fee

Participation Agreement (Advice and Drafting) - £500 + VAT plus £100 + VAT per Qualifying Flat

Investigation of title and eligibility, Preparation of Initial Notice, plan and related work - £900 - 1100 + VAT plus £300 + VAT per Qualifying Flat plus valuer's costs

Consideration of Counter Notice, Correspondence and Negotiations on terms of dispute, Transfer and registration of Freehold - £900 - 1100 + VAT plus £300 + VAT per Qualifying Flat plus valuer's costs

If Tribunal or Court action is required (Rare):

Preparation of basic application to FTT or County Court - £900 + VAT per application (Not including responses, dealing with documents or representation at hearings)

Further work relating to applications, hearings and directions etc. would be chargeable on an hourly rate basis with the following Costs Estimates:

Representation at an application hearing & related work - £7000 - £10000 + VAT per application plus Counsel and valuer's costs

Note that there may also be additional disbursements which you will be required to cover, such as Court Fees, Counsel (Barrister) fees, Expert Witness fees, Land Registry fees etc. You should not allow the above costs to cause concern as applications to the Tribunal or Court are very unusual and matters can ordinarily be resolved through negotiation between valuers and legal representatives.