

Lease Extension

This advice sheet is to provide you with some advice on the procedure for obtaining an extension to the lease of your property. 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.

The right to obtain an extension to your lease is provided by the 1993 Leasehold Reform Act (as amended) (The 1993 Act). The right is for the grant of a new lease for a term of 90 years, plus the present unexpired term, all at a peppercorn rent (effectively rent free).

Outline of Procedure

The formal procedure for extending your lease is started by the service of the Tenants Notice (the Notice) on the landlord; it then follows a prescribed route.

Although this is the beginning of the statutory procedure, the service of the Notice should follow a period of preparation to ensure that you are fully equipped and advised to complete your 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 (and identifying the competent landlord)
- Assessing the premium (e.g. Instructing a qualified valuer/surveyor to prepare a report/valuation)
- Serving the Tenants Notice
- Preparing for the subsequent procedures

The Competent Landlord

In most cases the immediate landlord will be the freeholder, and therefore the obvious person on whom to serve the Notice. However, there will be cases where the immediate landlord possesses an intermediate lease which is too short to grant 90-year extension.

This will not prevent you from obtaining a new lease. You will need to identify the competent landlord who has sufficient interest to grant the lease (the freeholder or intermediate leaseholder with a lease at least as long as your current lease plus 90 years.)

If you do not know who the competent landlord is we can assist you to obtain the required information.

We will discuss issues of eligibility with you based upon factors such as the length of your original lease and the length of time you have been a tenant at the Property.

Once eligibility has been determined and all the necessary information and documentation has been compiled we will prepare the Notice to serve on your landlord.

The Tenants Notice

Once the Notice has been served you are likely to be subject to demands for information and to strict deadlines as detailed hereafter. The moment you serve the Notice you are

liable for the competent landlord's reasonable professional fees for landlord valuation, landlord fees for investigating title and also conveyancing costs, whether you complete or not.

It is very important that the Notice contains all the information required by law and that it is in the correct format, if not, the Notice can be rejected as invalid or may require costly applications to the court for amendments.

If the immediate landlord is not the competent landlord, the original Notice will be served on the competent landlord and copies will be served on the other landlords. The Notice to the competent landlord should specify on whom the copies have been served.

The Notice must include the following:

- 1) The full name of the leaseholder and the address of the flat;
- 2) Sufficient information about the flat to identify the property to which the application relates;
- 3) Details of the lease including its date of commencement and its terms;
- 4) The premium proposed for the new lease and any other amounts payable for intermediate leases if applicable;
- 5) The terms that the leaseholder proposes for the new lease (if different from the present lease);
- 6) The name and address of the leaseholder's representative if applicable;
- 7) The date by which the landlord must give his Counter-Notice, (not less than two months from the date the Tenant's Notice is served).

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

Landlord Information Request, Deposit Request and Inspection Rights

Once the Notice has been served, your landlord is entitled to require evidence of your title to your flat and your period of ownership. The landlord has a period of 21 days from the service of the 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. You 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 Notice will be deemed withdrawn and you will be responsible to pay for your landlord's costs. Furthermore, where a 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 you are in a position to respond quickly to any information request from your landlord.

At any time while the Notice is in effect the landlord can request a deposit of £250 or 10% of the premium proposed in the Notice, whichever is greater. You are required to make payment of this deposit within 14 days of the request and so must make sure that sufficient funds are available for this purpose. Please note that the landlord does not have

to have agreed the premium to request 10% nor does their request indicate acceptance of the premium.

You should also be aware that the landlord has the right to inspect your flat for the purposes of valuation, subject to providing you with 3 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 Tenants Notice.

The landlord's counter notice must either:

- a) Agree your right to the new lease and accept your 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); or
- c) Claim right of redevelopment; (the landlord can refuse to grant the new lease if he can prove to a court that he intends to demolish and redevelop the building. This only applies to applications where the remaining period of the lease is less than five years from the date when the notice was served)

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 extend your lease and to the terms and premium proposed then the matter can proceed to the document stage and steps can be taken to extend the lease accordingly.

Landlord agrees right but disputes terms and/or premium

It should be noted that it is very rare for a landlord 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.

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 the premium for the lease extension.

If you and the landlord, or your appointed surveyors, cannot agree on the price or some other aspects of the conveyance, then after an initial two months negotiation period, following service of the Counter-Notice, either party can apply to the First Tier Tribunal Property Chamber (FTT) 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 after the two months negotiation period has expired 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 lease extension. The FTT determination becomes final 28 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 lease within 21 days of the FTT's determination becoming final (taking into account rights of appeal). The parties are expected to enter into the new lease within a period of two months after the FTT's decision becomes final. If the two month period elapses without exchanging contracts, you must apply to court within a further two months for an order requiring the landlord to meet his obligations.

Important Note on Valuation

We cannot provide advice in relation to the valuation of the premium and advise that you instruct a qualified valuer/surveyor for the purposes of valuation and negotiation.

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. This is an order from the court granting you a new lease on the terms of the Tenant's Notice (including the premium proposed, providing the Court is satisfied that the premium is realistic). The court, if satisfied of your right to a lease extension, 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 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 your lease extension, 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 your right to obtain a lease extension under the 1993 Act he must provide detailed reasons for his dispute in his counter notice. As long as you meet the qualifying criteria, the landlord's objections will usually involve the validity of the initial notice. In the event of such a dispute you can make an application to the County Court for a determination as to the validity of the Tenant's Notice. Should the County Court confirm the 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 the absence of a response from the Landlord.

Costs

You will be responsible for the Freeholder's (and Head Lessee's if applicable) reasonable costs for investigating your title, rights to a new lease, valuation and granting of the lease

The majority of our basic non contentious services relating to 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 it may be necessary to charge for further work but this would not be done without discussing this with you. Your fees will be determined dependent upon the length of time spent on your matter and are charged on an hourly rate basis.

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

If no tribunal application is required (most common)

Investigation of title and eligibility, Preparation and Registration of Tenant's Notice, correspondence with Landlord or their solicitors and related work

£1000 - 1250 + VAT plus disbursements and valuer's costs

Consideration of Counter Notice, Correspondence and Negotiations on terms of dispute, amendments/redrafts for lease, registration of agreed Lease -

£1000 - 1250 + VAT plus disbursements and valuer's costs

If Tribunal or Court action is required:

Preparation of basic application to FTT or County Court - £1200 + 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:

Responses to freeholder's solicitors, dealing with documents, instructing representation at hearings & related work -

£6500 - £9000 + 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, Land Registry fees etc.

You should not allow the above costs to cause concern as applications to the Tribunal or Court are unusual and matters can ordinarily be resolved through negotiation between valuers and legal representatives.