



COMMONHOLD AND LEASEHOLD REFORM ACT 2002

COLLECTIVE ENFRANCHISEMENT

Getting Started



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This leaflet is not meant to describe or give a full interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties then seek specific advice.

Introduction



The Leasehold Reform Housing and Urban Development Act 1993 (as amended by the Commonhold and Leasehold Reform Act 2002) gives tenants the right upon qualification to compel the sale of the freehold of the building or part of the building. Where there is any intervening interest, like a headlease, this must generally be acquired as part of the purchase by the tenants.

The formal procedure for collective enfranchisement is started by the service of the Initial Notice on the landlord; it then follows a prescribed route. This must be served by a Nominee Purchaser on behalf of the participating tenants. The Nominee Purchaser is usually a company formed by the participants to acquire the freehold ultimately. Although this is the beginning of the statutory procedure, the service of the notice should follow a period of preparation to ensure that the 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.

Basic Outline of the process:

- Checking eligibility (of the building, the tenants etc)
- Organising for enfranchisement
- Choosing the Nominee Purchaser
- Selecting and instructing professional advisers (solicitors and surveyors)
- Assessing the purchase price
- Serving the Initial Notice
- Preparing for the subsequent procedures

The above need not necessarily be in this order and in most cases several issues will proceed together. It is important, however, that all the steps are taken and no critical area neglected. Once the Initial Notice has been served, the procedure is running and the nominee purchaser is likely to be subject to demands for information and to deadlines; a default at any stage could endanger the action.

The participating tenants are liable for the freeholder's and any other relevant landlord's reasonable professional fees from the moment they serve Initial Notice, whether they complete or not.

Checking eligibility

The first action must be to check that the building complies and that there are enough qualifying tenants to be able to proceed. Full details of the criteria are available by clicking on the links below.

You should first check that the building qualifies:

- are there at least two flats in it?
- are at least two-thirds of the flats let to *qualifying tenants*?

To be a *qualifying tenant* requires a long lease, which is:

- a lease of a term of years in excess of 21 years; (qualification is governed by the original term of the lease when first granted);
- a shorter lease which contains a clause providing a right of perpetual renewal;
- a lease terminable on death or marriage or an unknown date (including the so-called 'Prince of Wales' clauses);
- the continuation of a long lease under the Local Government Housing Act 1989 following the expiry of the original term;
- a shared ownership lease where the tenant's share is 100%;
- A lease granted under the 'right to buy' or 'right to acquire on rent to mortgage terms'.

But, even if the tenant satisfies the above criteria, he or she *will not be a qualifying tenant* if any of the following cases apply:

- the landlord is a charitable housing trust and the flat is provided as part of the charity's functions;
- the tenant owns more than two flats in the building. This is either jointly with others or solely in their own name. Please note where this applies these flats will be discounted from the two-thirds;
- the tenant has a business or commercial lease.

- **does it pass the 25% non-residential rule?:**

If more than 25% of the internal floor area of the building, excluding any common parts, is neither used or intended to be used for residential purposes then the building will not qualify. This could be shops, offices etc. Please note garages and parking spaces specifically used by flats in the building will be classed as residential.

There is no right of collective enfranchisement where:

- the building is a conversion into four or fewer flats **and**
 - not a purpose-built block; **and**
 - the same person has owned the freehold since before the conversion of the building into flats; **and**
 - he or an adult member of his family has lived there for the past 12 months.
- the freehold includes any track of an operational railway, including a bridge or tunnel or a retaining wall to a railway track.

Some properties are completely excluded from the rights of lease extension and collective enfranchisement:

- buildings within a cathedral precinct;
- National Trust properties;
- Crown properties*.

* Although the Crown is not bound by the legislation, the Minister has made a statement to the House of Commons that the Crown will be prepared to comply with the principles of it.

You will then need to establish that there are enough qualifying tenants for a successful action. The minimum number of participating tenants must equal half the total number of flats in the building; for example, if there are 10 flats in the building, at least five of the flats of qualifying tenants must participate in the action. It should be noted that where there are only two flats in the building, both flats of qualifying tenants must participate.

Organising for enfranchisement

Having worked through the qualification criteria, you will know the minimum numbers of tenants required to take part in the service of the Initial Notice. It may be that more than the minimum will wish to take part, or you may have to actively canvass support from your neighbours. Either way, the first suggested task is the organisation of a working group and, perhaps, the construction of some form of association or agreement to facilitate proceedings from this stage.

Where sufficient numbers are prepared to proceed, on the basis of whatever outline costs can be estimated, it is strongly recommended that all participating tenants enter into a formal participation agreement (for more on this see our guide *Participation Agreements*) amongst themselves to govern joint actions prior to and during the collective enfranchisement procedures – rights of voting, the negotiation and agreement of terms and, most important, the individual tenant's financial contributions. This is particularly important for large blocks where difficulties or delays in reaching decisions could endanger the application. It can also be useful to record in an agreement what will happen after the freehold is acquired, for example, that the new freeholder will grant new leases to all those tenants participating in the purchase; this is a common outcome of enfranchisement and seen as one of its main benefits.

In small blocks, or where amounts involved are small, it may be possible to dispense with the agreement by everyone paying their share up-front. With a structure in place, tenants will be able to agree the means and finance to move to the next stage.

Choosing the Nominee Purchaser

The Nominee Purchaser is the person named in the Initial Notice, who will acquire the freehold and become the new landlord. The Nominee Purchaser must be decided upon at an early stage, in that he or she conducts the later stages of the process and, on completion, will be responsible for the management of the building.

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. There are currently no controls or qualifications in the legislation governing selection of Nominee Purchasers and the tenants are free to choose whoever or whatever agency they wish.

The most common format is a company wholly owned by the tenants and, if this is the vehicle chosen by the participating tenants, **the company must be established prior to being put forward in the Initial Notice**. A solicitor, managing agent or accountant will be able to advise how to establish a company and can produce the Articles of Association to reflect the purpose of the company and to govern voting rights and control of shares.

Establishing the finance and a cost fund

Leaseholders may find it useful to establish a cost fund or 'fighting fund' to cover the initial steps – the valuation, the information gathering and arranging for the Nominee Purchaser, including setting up a company (all the early steps preceding service of the Initial Notice) and then, prior to service, to formalise future funding arrangements, including loans and mortgages.

Instructing professional advisers

To aid the preparation and serving of the Initial Notice and to assist in subsequent steps, at some point in the action tenants are advised to appoint a valuer and a solicitor.

In addition to their general advisory capacity, the roles of the two professional advisers in an action of collective enfranchisement include:

The valuer:

- providing 'best and worst' valuation advice to fully appraise the tenants of the possible outcome of the negotiations;
- advising on the amount of the offer to be made in the Initial Notice;
- responding to the landlord's Counter-Notice;
- negotiation and settlement of the price;
- advice on structural and repair condition and implications for future maintenance costs/service charges;
- advice on future management.

The solicitor:

- preparation of information for the action;
- setting up the company;

- service of the Initial Notice;
- response to the landlord's requests for substantiation of claim;
- the conveyance of the title;
- amendment of terms of leases after enfranchisement.

Leaseholders should take all possible steps to ensure their chosen adviser(s) have full knowledge and experience of the legislation, practices and procedures.

Whilst LEASE does not recommend any particular professional advisers, lists of solicitors and surveyors claiming expertise in the legislation are available from us.

Assessing the purchase price

An initial valuation of the property by a qualified valuer or surveyor is strongly recommended in order to provide enfranchising tenants with an idea of the final purchase figure prior to commencing the action.

Valuation is far from an exact science and it will be virtually impossible for the valuer to provide an accurate estimation of the eventual settlement figure. The valuer should however be able to provide a 'best and worst' figure, valuing from both tenants' and landlord's perspective and, from local experience, anticipating areas of claim and counter-claim. There is no such thing as a finite, fixed price for a freehold and tenants should make themselves aware, from the beginning, of the likely range within which the price will be settled to avoid surprise at a later stage.

In considering the likely purchase price, the tenants' liability for the landlord's costs should also be borne in mind. The eventual cost to each tenant will be the share not only of the cost of the freehold but also of both the landlord's reasonable costs and the tenants' legal and valuation costs.

Further details are available in our guidance *Valuation for Collective Enfranchisement*.

Gathering information

Prior to the serving of the Initial Notice tenants will need to amass all necessary information

- to ensure that the Initial Notice is correct and valid;
- to respond to challenges from the landlord following service of the Initial Notice.

The Initial Notice must be correctly served on the freeholder(s) and must include correct information on the interests of the participating tenants and any intervening interests.

In some cases the freehold interest may be in one or more different ownerships (a 'severed' or 'flying' freehold). This does not, in itself, form any obstacle to enfranchisement, but tenants will need to have details of all freeholders of the property. You will need to obtain the following information:

- the identity of the freeholder(s) – a person or company name and address;
- details of any intervening or headleases and the identity and address of the relevant lessees;
- the full names and addresses of all the tenants of the building and details of their leases;
- details of any flats in the control of the landlord and let on periodic tenancies.

Some of this information you will already know; the remainder can be obtained by a number of means: from rights to information under Landlord and Tenant legislation, from the records of the Land Registry or by the service of Information Notices.

Landlord and Tenant legislation: you are entitled to obtain details of the name and address of your landlord under rights provided by the Landlord and Tenant Act 1985. The information, if requested must be provided within 21 days and failure to do so is an offence. Your ground rent demands should also carry the same details.

A problem here is that the landlord may not necessarily be the sole freeholder, but one of the freeholders or a head-lessee.

Land Registry: as long as the property is registered (most are), you are entitled to inspect the register and to obtain copies of the entry relating to the freehold. The entry will provide the name and address of the registered owner(s) and details of any other interests in the freehold, including other freeholders, head-lessees and mortgagees. There is a small fee for copies of the register.

There are a number of District Land Registries serving the country and you should contact the nearest office to find the Registry serving the area in which your property is located (www.landreg.gov.uk).

Information Notices: Section 11 of the 1993 Act provides a right for tenants to serve notices on the freeholder, the landlord (if different) or any other persons with an interest in the property, requiring details of that interest.

You can therefore require from the landlord details of any other freeholders, any intermediate leases, including the name and address of the lessee and the terms of the lease. The Information Notices can also require sight of relevant documents, for example, giving details of service charges or surveys.

The recipients of the Notices are required to respond within 28 days. The service of the Information Notice does not formally start the enfranchisement process or commit the tenants in any way and there is no liability for costs.

The right to participate

There is no right to participate or be invited to join in the freehold purchase. However, participating tenants may find it useful to ensure that all tenants are aware of their proposals, although there is at present no legal obligation to do so.

The Initial Notice

The Initial Notice triggers the statutory procedures for acquiring the freehold and the participating tenants are jointly and individually liable for the landlord's reasonable costs as from the date he receives the Notice. It is therefore important that the Notice is complete and contains no inaccuracies or misdescriptions, because, although these may in some cases be corrected by application to the county court, it is an area of expense to be avoided. An incomplete Notice can be rejected as invalid.

A protection for the enfranchising tenants is provided by the right to register the Initial Notice with the Land Registry, either as a Class C(iv) Land charge in unregistered land or as an 'estate contract' in registered land by a Unilateral Notice under the Land Registration Act 2002. This provides protection for the company against the landlord's sale of the freehold since any purchaser of the freehold, subsequent to the registration of the Initial Notice, will take the freehold subject to the application for enfranchisement.

The procedure will therefore be able to continue as though the new owner had originally received the Initial Notice.

The service of the Initial Notice also fixes the 'valuation date' as the same date that the Initial Notice is served. The valuation date is the date on which the variables affecting the price of the freehold are set, for example, the remaining number of years left on the leases, the present values of the flats and their assumed future value. Therefore, however long the negotiation or determination of the price takes, it will be based on the factors applying on the date of the service of the Initial Notice.

The information required in the Notice is set out in The Initial Notice section (*see page 13*). It is advisable to instruct a solicitor for the preparation and service of the Initial Notice.

Absent landlords

If, after all reasonable efforts, the landlord cannot be found, this should not prove an obstacle to enfranchisement; the issue can be resolved in other ways:

- if the landlord was a company which has been struck off, or ceased to trade for some other reason, its property may have passed to the Crown through the Treasury Solicitor. Enquiries should be made of the Treasury Solicitor who will usually be prepared to sell the freehold to the tenants at open market value. This must be done by negotiation and there is no need (or legal ability) to serve the Initial Notice.
- if the landlord is a company in receivership, then the Initial Notice may be served on the Receiver; similarly, if the owner is an individual who is bankrupt, the Notice may be served on the Trustee in Bankruptcy. Both the Receiver and the Trustee are acting as landlord for the time being and are equally bound by the 1993 Act to respond, as landlord, in the service of a Counter-Notice and sale of the freehold.
- if the landlord just 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. They must make efforts to find the freeholder first, such as placing an advertisement in the local paper.

If the court is satisfied with the efforts made and qualification, then it will, in effect, sell the freehold to the tenants in the landlord's absence. This is subject to application to the Leasehold Valuation Tribunal for determination of the price.

Preparing for subsequent procedures

After the service of the Initial Notice the 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. Where this information is required it must be provided within 21 days and the participating tenants should therefore ensure that their solicitor is fully equipped with all necessary information and documents to enable response within the time limits. In the event that title is not deduced, the Initial Notice would be deemed withdrawn, with costs payable to the landlord. 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.

The landlord has the right to inspect the property, including the participating tenants' flats, subject to 10 days notice given to the occupier.

The landlord's Counter-Notice

The landlord must serve his Counter-Notice by the date specified in the Initial Notice; this must:

- agree your right to the freehold and accept your terms (or propose alternative terms); or
- *not* agree your right and give reasons why not (which will then need to be determined by the county court); or
- *neither* admit nor deny entitlement, but state that an application is to be made to court for an order that the right to enfranchise cannot be exercised on the grounds the landlord intends to redevelop the whole or a substantial part of the premises;
- any leaseback proposals must be specified.

The landlord will not be obliged to sell the freehold if he can prove to the court that he intends to demolish and redevelop the whole or a substantial part of the building. This can only apply where at least two-thirds of all the leases in the building are due to terminate within a period of five years from the date of service of the Initial Notice.

Where, after service of the freeholder's Counter-Notice, the Nominee Purchaser and the freeholder 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 Leasehold Valuation Tribunal for an independent determination on the issue. Clearly, the tenants' professional advisers must have all relevant documents at hand to deal with such an application.

In cases where the landlord fails to serve a Counter-Notice by the date specified in the Initial Notice, the participating tenants may apply to the county court for a Vesting Order. This is an order allowing them

to acquire the freehold on the terms of the Initial Notice (including the premium proposed). The court, if satisfied of the right to enfranchise, will grant the Order. The application must be made to the court within six months of the date on which the Counter-Notice should have been received.

Further advice and guidance on the law is available from the Leasehold Advisory Service at any time during the preparation stage or following commencement of the action.

Procedures and statutory time limits



- Leaseholders serve S11 Information Notice (discretionary).
- Landlord must respond within 28 days
- Leaseholders must make arrangements for a Nominee Purchaser and, if forming a company, register at Companies House.
- Participating tenants serve S13 Initial Notice.
- ● The 'valuation date' will be fixed as the date of service of the S13 Initial Notice.
- Landlord may request additional information, but he must do so within 21 days of receipt of the Initial Notice.
- The Nominee Purchaser must respond to his request within 21 days.
- Landlord must serve a Counter-Notice by the date specified in the Notice. This date must be at least two months from the date of service of the Initial Notice.
- ● Where the landlord fails to serve the Counter-Notice, the Nominee Purchaser must apply to court within six months for a Vesting Order, otherwise the Initial Notice is deemed withdrawn.
- If the Counter-Notice disputes qualification, the Nominee Purchaser must apply to the court, within two months of Counter-Notice, for declaration that Initial Notice is valid.
- ● After service of the Counter-Notice, if terms cannot be agreed, either party may apply to the Leasehold Valuation Tribunal. This must be done at least two months from, but within six months of, the date of service of the Counter-Notice.
- ● The Leasehold Valuation Tribunal (LVT) determination becomes final 21 days after it is sent out by the LVT. Appeals must be made within this period to the Lands Tribunal with leave of the LVT.
- Landlord must provide a draft contract within 21 days of the LVT'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 LVT's decision becomes final (the 'appropriate period').
- If the appropriate period elapses without exchanging contracts, then the participating tenants must apply to court within a further two months for a Vesting Order.

The requirements of the Initial Notice are set out in S13 of the 1993 Act

The Initial Notice



It must include the following:

- 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, eg garages, and any proposed rights of way over land not acquired;
- 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);
- details of any leasehold interests to be acquired, eg an intervening headlease, and any flats subject to mandatory leaseback to the freeholder;
- the price proposed, including a price for any intermediate interests;
- 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;
- the name and address of the Nominee Purchaser;
- the date by which the freeholder is to provide the Counter-Notice (at least two months after service of the Initial Notice is given).

Where the freehold is severed (in different ownerships) the participating tenants must decide which of the freeholders is to be considered as the reversioner for the purpose of receiving the Notice. Some care should be taken in this selection since the freeholders have the right to go to court for an order to change the reversioner to another of their number, with possible cost implications to the tenants. Generally the major freeholder – the freeholder with the greater share of the freehold – should be chosen as reversioner. Copies of the Notice must be served on all other freeholders.

The Notice must be signed by or on behalf of all the participating tenants.

The Initial Notice must be served on the freeholder and any other person known or believed to be a 'relevant landlord' (a person with a leasehold interest proposed to be acquired by the action).

Useful addresses

Leasehold Valuation Tribunals

London

10 Alfred Place, London WC1E 7LR
Tel: 020 7446 7700 Fax: 020 7637 1250
Email: london.rap@communities.gsi.gov.uk

Northern

1st Floor, 5 New York Street, Manchester M1 4JB
Tel: 0845 100 2614 or 0161 237 9491 Fax: 0161 237 3656
Email: northern.rap@communities.gsi.gov.uk

Southern

1st Floor, Midland House, 1 Market Avenue, Chichester PO19 1JU
Tel: 0845 100 2617 or 01243 779394 Fax: 01243 779389
Email: southern.rap@communities.gsi.gov.uk

Midlands

2nd Floor, Louisa House, 92-93 Edward Street, Birmingham B1 2RA
Tel: 0845 100 2615 or 0121 236 7837 Fax: 0121 236 9337
Email: midland.rap@communities.gsi.gov.uk

Eastern

Unit 4C, Quern House, Mill Court, Great Shelford, Cambridge,
CB22 5LD,
Tel: 0845 100 2616 or 01223 841 524 Fax: 01223 843 224
Email: eastern.rap@communities.gsi.gov.uk ;

Wales

1st Floor, West Wing, Southgate House, Wood Street, Cardiff CF10 1EW
Tel: 029 2023 1687 Fax: 029 2023 6146
Email: sjr.enquiries@wales.gsi.gov.uk

Other useful addresses

Her Majesty's Stationery Office (HMSO)

Printed copies of all legislation and other official publications produced by
HMSO are obtainable from:

The Stationery Office Ltd (TSO), PO Box 29, St Crispins, Duke St
London NR3 1GN

Tel: 0870 600 5522 Fax: 0870 600 5533

Email: book.orders@tso.co.uk

Online ordering: www.tso.co.uk/bookshop

Association of Residential Managing Agents (ARMA)

178 Battersea Park Road, SW11 4ND

Tel: 020 7978 2607 Fax: 0207 498 6153

Email: info@arma.org.uk Website: www.arma.org.uk

Association of Retirement Housing Managers (ARHM)

Southbank House, Black Prince Road, London SE1 7SJ

Tel: 020 7463 0660 Fax: 020 7463 0661

Email: enquirers@arhm.org Website: www.arhm.org

The Royal Institution of Chartered Surveyors (RICS)

12 Great George Street, Parliament Square, London SW1P 3AD

Tel: 020 7222 7000

The Federation of Private Residents' Associations

PO Box 10271, Epping CM16 9DB

Tel: 0871 200 3324 Email: www.fpra.org.uk

Residential Property Tribunal Service (RPTS) National Helpline:

Tel: 0845 600 3178

The Leasehold Advisory Service (LEASE)

Maple House, 149 Tottenham Court Road, London W1T 7BN

Telephone: 020 7383 9800 Fax: 020 7383 9849

Email: info@lease-advice.org Website: www.lease-advice.org



L E A S E

THE LEASEHOLD
ADVISORY SERVICE

Fleetbank House 2-6 Salisbury Square London EC4Y 8JX
Telephone: 020 7832 2500 Fax: 020 7832 2529
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