

## Collective Enfranchisement Procedure – Factsheet

---

### Qualification and your right to obtain the freehold

In order to qualify to exercise the right to collective enfranchisement, the following criteria must be fulfilled:-

- (1) The building must be self-contained building or self-contained part of the building
- (2) at least 2/3<sup>rds</sup> of the flats in the building must be let on long leases (i.e. the leases were originally granted for a term of 21 years or more)
- (3) at least half of the flats must participate in the collective enfranchisement claim
- (4) if there are any commercial units, the floor space must not exceed 25% of the total floor space (excluding the common parts)

### Valuation

You should obtain a valuation from a specialist valuer who will be able to advise you of the premium you can expect to pay for the freehold following negotiations and they will also be able to advise the initial offer price to put forward to the freeholder. This will also ensure that following negotiations, you are paying a fair price for the freehold interest.

### Pre-notice Legal Work

The work that we need to undertake to put you in the position to start the statutory process includes:

- Checking the freeholder's and any intermediary titles.
- Checking the leasehold title and lease to enable us to prepare the statutory initial notice (known as the Section 13 Notice) which is served on the freeholder.
- Drafting the Participation Agreement - an Agreement between the participating flat owners to confirm obligations to each other including agreement in respect of your individual shares of the premium and costs
- Setting up a Company to act as the nominee in the process prior to serving the Initial Notice of Claim (if required).

### Initial Notice

Following the pre-notice work mentioned above we will:-

- Draft the Initial Notice.
- Serve the Initial Notice on the freeholder and any intermediate landlords which starts the statutory procedure and fixes the valuation date.
- Register the Initial Notice at the Land Registry to protect you against the freeholder selling or otherwise dealing with the property without the buyer being bound by the terms of your Initial Notice.

### Freeholder's response to Initial Notice

Before responding to the Initial Notice, the freeholder is entitled to:

- Inspect the flat - If it chooses to do so, the freeholder must give you not less than three days prior notice of its intention to inspect, and this must also be at a convenient time to you.
- Request formal confirmation of your title – we will supply copies of all the titles that we obtained in the pre-notice stage detailed above.

The freeholder has a little over two months in which to respond to the Initial Notice by serving a counter notice. The freeholder has the following options:

- Accept that the participating tenants have a right to exercise a collective enfranchisement claim and the sum offered in the Initial Notice.
- Accept that the participating tenants have a right to exercise a collective enfranchisement claim but dispute the sum offered (this is the normal situation) and sometimes the extent of the land to be acquired.
- Dispute that the participating tenants have a right to exercise a collective enfranchisement claim.
- Not respond at all (unusual but great news for you).

If the freeholder fails to respond within the time limit, then you are entitled to acquire the freehold on the terms set out in the Initial Notice i.e. at the proposed offer price.

If the freeholder accepts the right to buy the freehold and agrees to the proposed premium to be paid then you will proceed to the conveyancing procedure detailed below.

If the freeholder accepts the right to buy the freehold but disputes the proposed premium to be paid/land to be acquired, the parties' valuers will attempt to negotiate the disputed sum. There is an initial period of two months during which your valuer and the freeholder's valuer will attempt to negotiate the premium. There is then a further period of four months during which your solicitor can make an application to the Tribunal to determine the terms in dispute. If the premium is not agreed during this initial six month period, we will make an application to the Tribunal to ensure that your claim remains 'alive' and is not 'deemed withdrawn'.

The Tribunal will list the matter for a hearing approximately three months after the application is made. Please note that applying to the Tribunal is usually a protective measure and does not necessarily mean you will have to attend a hearing. The proceedings can be vacated at any time (including the morning of the hearing!) if terms are agreed and cases very rarely proceed all the way to a Tribunal hearing. In most cases a Tribunal application simply forces your landlord to negotiate sensibly and for terms to be agreed.

If the matter does proceed to a Tribunal hearing, the Tribunal will determine the price payable and any other disputed terms. You and the freeholder will pay your own costs in this regard.

### **Leasebacks**

If the freeholder lets out any of the flats in the building to secure tenants **they will be required** to take a 999 year lease back over those units. In the event that any of the flats are not let out on long leases, or they are commercial units let out on commercial leases the freeholder has the option of taking a 999 year lease back over those units. This means that immediately after the Transfer of the freehold, the new freeholder (the freehold company controlled by the participating leaseholders) will be required to grant 999 year leases over these units to the previous freeholder.

You will not be responsible for paying any part of the premium attributable to these flats/commercial units.

### **Appurtenant Land**

The statutory provisions allows the participating flat owners to claim in addition to the actual building, appurtenant land which is either demised by a lease held by a qualifying tenant of a flat or it is land which a tenant is entitled to use under the terms of their lease in common with occupiers of other premises. Often appurtenant land includes gardens, car parking spaces, garage and common paths and forecourts. We will advise you of the land which you are entitled to claim.

Often where the participating tenants are entitled to claim the appurtenant land the freeholder agrees to dispose of the land, however the freeholder does have the right to retain the appurtenant land on the basis that the freeholder grants to the nominee purchaser permanent rights. That is, to ensure that the occupiers of the flats have, as nearly as may be, the same rights as those enjoyed in relation to that property on the date that the Initial Notice of Claim is served.

### **Proceedings to the Tribunal**

If you decide to make an application to the Tribunal, we will write to you, detailing and advising you on the relevant statutory/procedural steps and the costs involved.

Please note:

- Due to the number of cases currently being heard, there is often a delay in obtaining a hearing date.
- Unlike court proceedings, the Tribunal has very few powers to award costs except in the most exceptional circumstances, and both parties will therefore be responsible for their own costs whether or not they are successful.

### **Conveyancing Procedure**

Whilst the premium is being negotiated, we will seek to agree the terms of the Transfer Deed and Leaseback/s (if applicable). This will involve drafting and agreeing the terms of the Transfer Deed and Leaseback/s (if applicable) with the freeholder's solicitors.

Once the premium and terms of the Transfer and any Leaseback are agreed or determined by the Tribunal, we will:-

- Arrange for execution and completion of the Contract, Transfer Deed and Leaseback/s (if applicable).
- Register the Transfer Deed at the Land Registry.

You have a period of four months from the date that both the terms of the Transfer Deed, any Leaseback and premium have been agreed in which to complete the purchase of the freehold.

### **Withdrawal**

At any time, before completing the purchase of the freehold or entering into a contract, you are able to withdraw from the process. However, please note that you will not be able to make another claim for a further 12 months from the date of such withdrawal and you will also have to pay both your own and the freeholder's recoverable legal and surveyor costs incurred to the date of withdrawal.

### **Timescales**

A typical collective enfranchisement claim will take between 6-12 months once the Initial Notice is served; however, once the Initial Notice is served the valuation date is **fixed**. This means that even if the acquisition takes 12 months or longer to complete, the premium will not increase due to the delay.

We are also able to work with your timescales. If you need to complete the claim for the freehold more urgently we will take steps to push the procedure forward. If on the other hand you are in no rush to complete and need more time to save for the premium we are able to slow the process down. We will work with you to achieve your objectives.

### **Costs of the Acquisition of the Freehold**

In addition to our fees and disbursements, please note you will be responsible for paying the following:-

1. The premium – as outlined above, your valuer will advise you of the expected premium and the breakdown of the premium between each flat. The premium is paid at the end of the process just prior to completion.

2. Your valuer's fees – you will pay your valuer for their Initial Valuation report (usually a fixed fee) and their costs for carrying out negotiations (usually charged by their hourly rate).
3. Landlord's costs - once the Notice of Claim has been served you become liable for the reasonable legal and valuation costs of the freeholder and any intermediate landlords. The freeholder and any intermediate landlords are not however entitled to recover costs from you in connection with any hearing at the Tribunal. If the matter did proceed to the Tribunal then both parties would bear their own costs. Generally, the landlord is entitled to claim their costs from the tenant in respect of any investigation reasonably undertaken of whether the flat owners qualify for the right of collective enfranchisement and the property to be acquired under the claim; deducing, evidencing and verifying the title to any such interest; any valuation of the Building prior to serving the Counter-Notice and the costs of drafting and completing the Transfer Deed and any leaseback. The freeholder is not entitled to recover its negotiation costs.
4. Your own legal costs – we will provide you with a fixed fee for dealing with all aspects of the collective enfranchisement (including making the application to the Tribunal) save for preparing and attending the Tribunal hearing. In the event that we are instructed to proceed to a Tribunal hearing we will provide you with a full estimate of our additional costs to prepare and represent you at a hearing which will be based on the time we will spend on the matter in accordance with our hourly rates.
5. Arrears of ground rent and service charge – the landlord is entitled to require you to pay all arrears outstanding with the premium on completion. If your building has been subject to unresolved service charge issues/disputes we have a specialist property litigation solicitor who specialises in this area and will be happy to assist you.

### **How We Can Help You**

We are specialists in property law and in particular in lease extensions, collective enfranchisement claims, service charge disputes and right to manage claims. We are always willing to offer a no obligation telephone call or meeting to discuss with you the process and answer your queries. Please contact Joanna Botley (020 7590 9318 or [jbotley@ashleywilson.co.uk](mailto:jbotley@ashleywilson.co.uk)) or Jade Wilson (020 7802 4812 or [jwilson@ashleywilson.co.uk](mailto:jwilson@ashleywilson.co.uk)) who will be able to assist.