

Lease Extension Procedure – Factsheet

Qualification and your right to obtain a lease extension

In order to qualify for this lease extension right, your lease must originally have been granted for a term exceeding 21 years and you must have been the registered proprietor (owner) of your flat for at least two years. The statutory right allows you have your lease extended by 90 years, have the ground rent removed and for certain defects in your lease to be remedied.

Valuation

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

Pre-notice Legal Work

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

- Checking the landlord's and any intermediary titles.
- Checking the leasehold title and lease to enable us to prepare the statutory initial notice (known as the Section 42 Notice) which is served on the landlord

Initial Notice

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

- Draft the Initial Notice which will need to be signed personally by you.
- Serve the Initial Notice on your landlord and any intermediate landlords which starts the statutory procedure, fixes the valuation date and puts forward your initial offer price.
- Register the Initial Notice at the Land Registry to protect you against your landlord selling or otherwise dealing with the property without the buyer being bound by the terms of your Initial Notice.

Landlord's response to Initial Notice

Before formally responding to the Initial Notice, the landlord is entitled to:

- Inspect the flat - If it chooses to do so, the landlord 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.
- Require payment of 10% of the sum offered in the initial notice. You will have 14 days to meet this demand.

The landlord has a little over two months in which to respond to the Initial Notice by serving a counter notice.

The landlord has the following options:

- Accept the right to extend the lease and the sum offered in the Initial Notice.
- Accept the right to extend the lease but dispute the sum offered (this is the normal situation).
- Dispute the right to extend the lease.
- Not respond at all (unusual but great news for you).

If the landlord fails to respond within the time limit, then you are entitled to a new lease on the terms set out in the Initial Notice i.e. at the proposed offer price.

If the landlord accepts the right to extend the lease and agrees to the proposed premium to be paid then you will proceed to the conveyancing procedure detailed below.

If the landlord accepts the right to extend the lease but disputes the proposed premium to be paid, the parties' valuer's will attempt to negotiate the disputed sum. There is an initial period of two months during which your valuer and the landlord'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 of the lease extension. 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 lease terms. You are unable to recover your costs from the landlord in this regard (both parties pay their own costs).

Proceedings to the Tribunal

If the matter does proceed to a Tribunal hearing, we will write to you in good time before the hearing, 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

Once the premium for the Lease extension has been agreed in negotiations or determined by the Tribunal, we will then finalise your new lease. This will involve:

- Drafting and agreeing the terms of the lease extension with the landlord's solicitors.
- Arranging for execution and completion of the lease extension Deed.
- Registering the new lease at the Land Registry.
- If the new lease is granted under the statutory lease extension procedure (or approved to being agreed without the need to start the process) then your lender (if any) will not normally need to execute any documentation.

You have a period of four months from the date that both the terms of the lease document and premium have been agreed in which to complete the lease extension.

Development Right

The landlord is entitled to require that the new lease to include a right in its favour to break the lease on two occasions. Firstly, in the last 12 months of what would have been the original term of your lease and secondly, at any time before five years from the end of the new lease term. The landlord can only break the lease on the grounds of redevelopment. To prove that ground the landlord would have to show at the relevant time that he intended to demolish or reconstruct or to carry out substantial works of construction to the whole or a substantial part of the premises containing your flat and that he could not reasonably do so without obtaining possession of your flat, i.e. if he intended demolishing the entire building and replacing it with another.

If the landlord did manage to prove redevelopment grounds, then you would be entitled to compensation based on the market value of your flat, if sold on the open market at that time. This valuation would be based on the assumption that:

- You had no further right to acquire the freehold or a further extension of the lease (on the basis of the remaining years of your newly extended lease).
- That the sale is with vacant possession.
- That the sale is subject to any restrictions already present in your title (as to the development of your premises for example).
- No payment is made for the disturbance of having to move out.

Your valuer can advise you how the compensation would be calculated in your case and whether you would effectively get back the total capital investment you will be making including for example the cost of improvement works you may have in mind.

Withdrawal

At any time, before completing the new lease or entering into a contract for the grant of a new lease, you are able to withdraw from the process. However please note, that you will not be able to apply for a new lease for 12 months from the date of such withdrawal and you will also have to pay both your own and the landlord's legal and surveyor costs incurred to date.

Timescales

A typical statutory lease extension will take between 4-12 months; however, once the Initial Notice is served the valuation date is **fixed**. This means that even if the lease extension takes 12 months 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 lease extension more urgently, for example, if you are selling your property, we will take steps to push the procedure forward. If on the other hand you are in no rush to complete the lease extension 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.

Selling Your Property during the Lease Extension Process

If you are planning on selling a property that requires a lease extension, it is possible to sell the property with the benefit of the Section 42 Notice. The procedure would require you to serve the Initial Notice on the landlord between exchange and completion of the sale and then on completion you would assign the benefit of the Initial Notice to your buyer who would then effectively step into your shoes to complete the lease extension. We would also be able to assist with this.

Costs of the Lease Extension

The costs involved in your lease extension will include the following:-

1. The premium – as outlined above, your valuer will advise you of the expected premium and you will pay 10% of the offer price to your landlord after we serve the Initial Notice as a deposit. The remainder of the premium is paid at the end of the process.
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 landlord and any intermediate landlords. The relevant landlords 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 the tenant's right to a new lease; any valuation of the tenant's flat prior to serving the Counter-Notice and the costs of drafting and completing the new lease. The landlord must however pay its own valuer's negotiation fees in connection with the negotiation of the premium.
4. Your own legal costs – we will provide you with a fixed fee for dealing with all aspects of the lease extension (including making the application to the Tribunal) save for our fees will exclude 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.

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) or Jade Wilson (020 7802 4812 or jwilson@ashleywilson.co.uk) who will be able to assist.