

Lease Extension Process

Qualification and your right to obtain a lease extension

In order to qualify for the right to an extended lease, your lease must originally have been granted for a term exceeding 21 years and you must have been registered as the owner of your flat for at least two years.

You are then entitled to have the term of your lease extended by 90 years, to have the obligation to pay ground rent removed and certain defects to be remedied.

The process is set out below in broad terms.

If you do not qualify for the statutory right to an extended lease you can still seek to negotiate terms for a new lease with your landlord although they might ignore you or require terms that are not acceptable to you.

Preparation for making the claim:

To put you in the position to start the statutory claim process involves:

- Investigating your landlord's title(s).
- Checking your leasehold title and lease.
- Dealing with any issues required to prepare the Initial Notice to be served on your landlord.
- Obtaining your title deeds from your bank or building society (if required).
- Establishing the address for your landlord at which the notice can be safely served. In this regard please carefully check your papers for (and supply copies of):
 - the latest ground rent demand;
 - correspondence/notices from your landlord notifying you of the address to use for the service upon them of either notices (generally) or a notice claiming a new lease in particular;
 - S48 notice
- The Initial Notice claiming an extended lease may be invalid if the wrong address is used to serve it. That would result in you incurring wasted costs with your landlord and ourselves and risk the premium payable pursuant to a fresh notice being higher.
- Drafting the Initial Notice for you to sign.

Commencing the claim involves:

- Serving the Initial Notice on your landlord – this starts the statutory procedure and fixes the valuation date.
- Registering the Initial Notice at the Land Registry to protect you against your landlord selling or otherwise dealing with its interest in the property free of your entitlement.
- Before responding to the Initial Notice, your landlord is entitled to:

- Inspect the flat – If it chooses to do so, your 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. You will need to liaise with the landlord.
- Request evidence of your right to a new lease – We would supply copies of the titles obtained in the pre-notice stage detailed above.
- Require payment of 10% of the sum offered in the initial notice as a deposit. You will have 14 days to meet this demand.

Landlord's response to Initial Notice

Your landlord has approximately two months (the date will be specified in your initial notice in time) in which to respond to the Initial Notice by serving its Counter Notice via which it can:-

- Accept your right to extend the lease and the terms offered in the Initial Notice, in which case you would proceed straight to the conveyancing procedure, detailed below (rare); or
- Accept your right to extend the lease but dispute the terms offered (this is the normal situation). The parties' surveyor's will then normally attempt to negotiate the terms. If negotiation fails and the terms of your new lease are still in dispute 2 months later then either party can apply to the Tribunal to determine the outstanding issues i.e. the premium or other terms of the new lease. You are unable to recover your costs from your landlord in this regard and vice versa. This application must be made within 6 months of the counter notice or you will be deemed to have withdrawn; or
- Dispute your right to extend the lease, in which case the onus is on your landlord to apply to the County Court for an order to that effect; or
- Not respond at all (unusual but great news for you as the landlord is then obliged to grant you a new lease on the terms set out in your notice).

Proceedings before the First Tier Tribunal (Property Chamber) ("Ft-T")

Depending on the gap between the parties premium positions it may make sense for you to apply to the Tribunal as early as possible so as to improve your position in negotiations. If you decide to make this application we will advise you on the relevant statutory and procedural steps and the costs involved including our time cost.

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. You will also be deemed to have withdrawn your claim for a new lease if you do not observe the various time limits.

The consequences of withdrawal are that you will not be able to apply for a new lease for 12 month's from the date of withdrawal (by which time the premium may be higher i.e. if the remaining terms of your lease falls beneath 80 years in the meantime) and you would have to pay both your own and the freeholder's legal and surveyor costs incurred to the date of withdrawal.

Conveyancing Procedure

This applies once the terms have been agreed (or determined by the Tribunal) and involves:-

- Arranging for execution and completion of the new lease.
- Registering the new lease at the Land Registry.
- If the new lease is granted outside the statutory procedure then your lender (if any) will need to consent and execute a related Deed.

Development Right

Your landlord is entitled to require that the new lease includes a right in its favour to break the lease and take back possession on two occasions:-

1. In the last 12 months of what would have been the original term of your lease; and
2. At any time during the last five years of the new lease term.

Your landlord can only break the lease on the grounds of redevelopment. To prove that ground, your landlord would have to show at the relevant time that he intended to demolish or reconstruct or carry out substantial works of construction to the whole or a substantial part of the building 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 your 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, subject to certain assumptions.

Your surveyor can advise you how this would work out 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.

Costs and other payments

You will be responsible for:-

1. Your landlord's reasonable legal and survey costs insofar as they fall within certain permitted heads of expenditure. It is possible to challenge these fees but the procedure is time consuming and you are not able to recover the fees you incur with us from the landlord where you are successful.
2. Our fees and disbursements. Fees are invoiced at key stages, such as the issue of the initial notice.
3. Your surveyor's fees.
4. Arrears of service charge (if any). These must be paid on completion of the new lease or, if agreed with the landlord, monies paid to us to hold in escrow until liability is determined. Resolving unpaid or disputed service charge accounts can be very time consuming and therefore costly. Please tell us at the outset if there are any such problems. Our retainer excludes dealing with any such disputes. We can provide a fee estimate to provide this advice on request.

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