

Your questions about lease extensions & sale of freehold

Property Disputes

Q. I have received a formal looking Notice asking for a new lease/transfer of the freehold. What should I do?

A. Timing is important here. You must act quickly or potentially miss out. We'd recommend taking legal advice at the earliest possible stage.

Once you receive a Notice under either s13 or s42 of the Leasehold Reform (Housing & Urban Development) Act 1993, you must respond within a strict timescale of 2 months. During those two months, there is a lot to be done including:

- whether you want to resist the claim
- the price you want tenants to pay
- your particular requirements

There are a number of strict deadlines under the procedure, which if missed, could see you losing out on the value of your asset.

Q. Can I resist the tenants' claim to acquire the freehold?

A. You may be able to. As well as technical challenges, this will often depend on factors such as the layout of the building, whether there is a non-residential element, and the types of leases.

Q. Can I resist the tenants' claim for a lease extension?

A. Unfortunately, it is difficult to resist a claim for a lease extension, and most successful challenges are limited to technical defects in the tenant's Notice. If you have any grounds to resist, we will advise you promptly as this could be a valuable negotiating point.

Q. If I can't resist the claim, how will I receive a fair price (or 'premium')?

A. The premium is calculated using a specific formula set out by the legislation. The calculation is complex and we would recommend that you take advice from a qualified surveyor to calculate the premium and negotiate with the surveyor acting for your tenant(s). The surveyors usually negotiate and agree the premium. The procedure provides for some of your surveyor's fees to be recovered (see *Who Pays the Costs* below and *Fact Sheet Landlord's Costs* for more information).

Q. Who decides if this cannot be agreed?

A. The First Tier Tribunal (Property Chamber) decides the amount of the premium and any of the other 'terms of acquisition' that cannot be agreed. Either the landlord or tenant will apply to the Tribunal where the case will usually be decided in a hearing.

Q. How can the process benefit me?

A. It ensures you receive a fair premium for the sale of your freehold. In the case of lease extensions it can provide an opportunity to improve the wording of the new lease.

Q. How much will it cost?

A. If we are dealing with freehold acquisition our fees will be affected by numerous factors including the building layout and size, the nature of the leases, and the number of tenants participating. In all circumstances we will supply estimates and will keep you regularly updated regarding the costs as things progress. If any costs are recoverable from your tenants we will advise you. For both standard lease extensions and standard new leases we offer fixed price options which offer excellent value. Where individual requirements are more complex or where First Tier Tribunal (Property Chamber) hearings are involved additional costs may apply.

Q. Who pays the costs?

A. Your legal and surveyor costs are paid by you. The legislation gives you the right to recoup a contribution from your tenants. We will make sure you receive the maximum benefit of these provisions, where possible. Unfortunately you are not entitled to recover the costs of negotiating with your tenants over the premium or other terms, or dealing with an application to the First Tier Tribunal (Property Chamber). We will make clear what costs you stand to recover and which you do not.

Q. Who will deal with my case?

A. Your case will be handled by a qualified solicitor under supervision of a partner to guide you through the early stages. Once the premium and other terms of acquisition are agreed (or determined), a suitably experienced solicitor in our non-contentious Residential Property team provides support in respect of the drafting and approving of the new leases (for extended terms); the transactional aspects of freehold acquisitions and lease extensions; mortgagees' consent and registration formalities.

Where appropriate certain tasks may be carried out by legal assistants or paralegals, but always with an experienced solicitor or partner having the overall responsibility for the file.

Q. I want to sell the freehold/headlease of my building - is there anything stopping me?

A. If the building contains residential property then care must be taken that you comply with the Right of First Refusal, if it applies. If the right applies, you must offer the property to be sold to the tenants before selling it to a third party and give them at least 2 months to accept the offer. The right arises not just in relation to sales, but anything deemed to be a 'disposal' under the legislation, including the grant of certain leases. Failure to comply is serious as civil and criminal proceedings could be brought against you. In addition, the tenants can require the property be transferred to them on the same terms. If in doubt, take legal advice before acting to protect your interests.

Our Property Disputes team will be happy to speak to you on 0800 923 2064.