



EVERYTHING YOU NEED TO KNOW ABOUT LEASE EXTENSIONS

The right to extend the lease of a flat is dealt with under the Leasehold Reform Housing and Urban Development Act 1993 ('the 1993 Act').

INTRODUCTION

This leaflet serves as a general guide and does not provide a comprehensive interpretation of the law, as only courts can offer such interpretations. Additionally, it does not cover every scenario. One disadvantage of owning a flat or maisonette on a long lease is its diminishing value over time. As the lease term decreases, the property's value also declines. To address this issue, the law grants the leaseholder (tenant) the right to extend their lease after owning it for two years.

This right allows for an extension of 90 years to the remaining lease term at a nominal rent (referred to as a 'peppercorn rent'), meaning no ground rent is payable. For instance, if the current lease has 70 years remaining, the extended lease would be for 160 years.

The landlord is entitled to a premium for extending the lease, calculated according to a formula outlined in the 1993 Act, as amended by any subsequent legislation.

This guide outlines your legal entitlement to extend your lease. Alternatively, you may attempt to negotiate a lease extension with your landlord on mutually agreeable terms. However, there are no strict regulations governing negotiations, and your landlord reserves the right to refuse an extension or stipulate terms such as increasing ground rent.

If negotiations fail, the statutory process outlined in this guide must be followed. This process commences with serving the Tenant's Notice on the landlord, initiating a prescribed route. Preparation is crucial before commencing this procedure, including confirming eligibility, identifying the 'competent landlord,' engaging professional advisers (surveyor and legal advisor), assessing the premium, securing necessary funds, gathering required information, drafting the tenant's notice, and preparing for subsequent steps.

Although the order of these tasks is flexible, all must be completed before initiating the procedure. Failure to comply with requests for information or deadlines may jeopardise the lease extension application. Furthermore, the leaseholder is responsible for the landlord's reasonable professional fees incurred from the date of serving the tenant's notice, regardless of the application's success.

It's important to note that applying for a lease extension will be suspended if other leaseholders jointly apply to purchase the freehold through the collective enfranchisement process outlined in the 1993 Act. Similarly, lease extension applications cannot proceed while a collective enfranchisement application is pending.

CHECKING ELIGIBILITY AND STARTING THE PROCESS

Qualifying as a leaseholder

To qualify as a leaseholder, you must have held a long lease for the past two years. A long lease, primarily defined as one originally granted for over 21 years, regardless of the remaining duration, determines eligibility. What matters is the duration of the lease at its inception.

However, even if these conditions are met, you won't qualify if either of the following scenarios applies:

- The landlord is a charitable housing trust providing your flat as part of their charitable work.
- The lease is for business or commercial purposes.

Starting the process

You commence the procedure by serving the tenant's notice (section 42 notice) on the 'competent landlord'. The competent landlord refers to the landlord with a sufficient interest in the property to grant a 90-year extension—meaning their interest exceeds the time left on your lease by over 90 years.

Typically, the immediate landlord is the freeholder and is the obvious recipient for your notice. However, in some instances, the immediate landlord may hold an intermediate lease too short to grant a 90-year extension. This situation doesn't hinder your ability to extend your lease, but it necessitates identifying the competent landlord capable of granting the extended lease.

INSTRUCTING PROFESSIONAL ADVISERS

For a successful application, it's advisable to engage a valuer and legal advisor experienced in lease extension matters. Apart from providing general guidance, their responsibilities include:

Valuer:

- Offering a range of valuations, from best to worst-case scenarios, to anticipate negotiation outcomes.
- Advising on the appropriate offer to include in the notice.
- Responding to the landlord's counter-notice.

- Negotiating and finalising the price and terms of the lease, including representation at the tribunal if necessary.

Legal Advisor:

- Compiling information for the application.
- Serving the notice on the competent landlord and providing copies to other landlords, if applicable.
- Addressing the landlord's requests for supporting information.
- Managing the legal procedures involved in acquiring the new lease (conveyancing).

It's crucial to ensure that the chosen advisors possess comprehensive knowledge and experience in relevant legal practices and procedures.

ASSESSING THE PREMIUM YOU SHOULD PAY

While there is no legal requirement for a comprehensive valuation when applying for a new lease, it is strongly advised not to proceed without obtaining proper valuation guidance.

The concept of valuation is inherently imprecise, making it nearly impossible for the valuer to determine the exact final settlement figure. Instead, they can provide a range, considering both your and the landlord's perspectives, along with potential claims the landlord might make.

It's crucial to understand that there's no fixed price for a new lease, and being aware of the likely range from the outset helps avoid surprises later on. Additionally, remember to consider that you'll be responsible for the landlord's expenses, on top of the premium. These include both your and the landlord's 'reasonable' legal and valuation costs, excluding any related tribunal proceedings.

GATHERING INFORMATION

Before serving the tenant's notice, you or your legal advisor must gather all necessary details to ensure the notice's accuracy and validity and to address any challenges from the landlord afterward.

This information includes:

1. Identifying the competent landlord, whether an individual or a company, and obtaining their name and address.
2. Gathering information on any intervening or head leases, along with the relevant head leaseholders' details.
3. Acquiring a copy of your lease and documents confirming flat ownership, such as Land Registry entries.

The competent landlord

Typically, your immediate landlord serves as the competent landlord, especially if they are the freeholder or a head leaseholder with a lease at least 90 years longer than yours. However, if your immediate landlord holds a lease only slightly longer than yours, you must identify the landlord with sufficient interest to grant you the new lease. This may involve identifying any intermediate landlords between you and the freeholder and understanding their lease lengths. You can obtain this information through various means, including:

- The Landlord and Tenant Act 1985, which grants you the right to request your landlord's details, to be provided within 21 days.
- Land Registry, where you can inspect the register and obtain copies of the freehold entry for a fee.

Information notices under section 41 of the 1993 Act, allowing you to request details from your immediate landlord, freeholder, or other interested parties, with a required response within 28 days. Serving information notices doesn't formally initiate your lease application or incur any liability for costs.

FINANCING THE LEASE

Prior to commencing the lease process, it is essential to determine the financing method for the new lease. It is imperative to ensure immediate provision for covering the solicitor's and valuer's professional fees.

Should you choose to withdraw your application after serving the notice, you are obliged to cover the landlord's reasonable legal and surveyor's expenses (as well as your own costs) up to the withdrawal date.

PREPARING THE TENANT'S NOTICE

The tenant's notice initiates the legal proceedings for acquiring the new lease, with the tenant becoming liable for the landlord's reasonable costs upon the notice's receipt. Hence, accuracy and completeness are crucial in the notice, as any errors may result in additional expenses associated with correction through the county court. Incomplete notices risk rejection by the competent landlord.

If the "competent landlord" differs from the immediate landlord, the original notice must be served on the competent landlord, with copies dispatched to other landlords. It is essential to specify recipients of the notice within the communication to the competent landlord.

Registering the tenant's notice with the Land Registry provides protection in the event of the landlord selling the freehold, ensuring continuity of the procedure under the new ownership. Additionally, serving the tenant's notice establishes the "valuation date" as the date of notice, anchoring crucial financial figures affecting the lease price.

THE TENANT'S NOTICE

As per section 42(3) of the 1993 Act, the tenant's notice must include:

- Full name and flat address.
- Sufficient property details for identification.
- Lease particulars, including start date and duration.
- Proposed premium for the new lease or other relevant payments.
- Proposed lease terms, if differing from the present lease.
- Representative's name and address, if applicable.
- Deadline for landlord's counter-notice, which must be at least two months from the tenant's notice date.

Note: The quoted premium may not reflect the final price agreed upon, but serves as the basis for the landlord's deposit calculation. The proposed premium should be genuine and not artificially low to reduce the deposit, as it may invalidate the notice.

ABSENT LANDLORDS

In cases where the landlord is unreachable despite reasonable efforts, this should not hinder the lease application process. If the landlord is a company in receivership or an individual bankrupt, the tenant's notice can be served on the appointed receiver or trustee, respectively. They are mandated to respond and grant the new lease under the 1993 Act.

If the landlord cannot be located at all, application for a "vesting order" can be made to the county court to extend the lease. Upon satisfying eligibility criteria, the court may grant the lease in the landlord's absence, often referring the case to the tribunal to determine the premium.

PREPARING FOR SUBSEQUENT PROCEDURES

Upon serving the tenant's notice, the landlord may request proof of flat ownership and duration of ownership within 21 days. Failure to provide this evidence within the specified timeframe may result in the landlord issuing a default notice and seeking a court order for its submission. Additionally, the landlord must provide a three-day written notice before inspecting the flat for valuation purposes.

Deposit

Following receipt of the tenant's notice, the landlord reserves the right to demand a deposit, which can amount to either 10% of the proposed premium or £250, whichever is higher.

The landlord's counter-notice

The landlord must serve their counter-notice by the deadline stipulated in the tenant's notice, wherein they can either acknowledge the tenant's right to a new lease and agree (or propose alternative) terms, dispute the tenant's right with reasons, or assert their right to redevelop the property. In cases of disagreement regarding price or other aspects, a negotiation period of two to six months ensues, during which either party can apply to the tribunal for resolution. Should the landlord fail to serve a counter-notice, the tenant can petition the court for a vesting order within six months to obtain the new lease.

Assigning the application

Upon serving the tenant's notice, the application can be assigned with the lease, enabling the sale of the flat with the application benefits. This facilitates immediate application by the buyer without the stipulated two-year ownership requirement, particularly advantageous in cases of limited remaining lease years posing mortgage challenges.

Personal representatives

If the right to acquire a new lease is held but the applicant passes away before making an application, the personal representatives retain the right to apply for up to two years following probate or letters of administration.

Terms of the new lease

It is important to understand the legal prerequisites concerning the conditions under which the new lease can be granted. These requirements are outlined as follows:

- A nominal rent (referred to as a peppercorn rent) will be applied for the entire duration of the term, encompassing the 90-year extension in addition to the remaining duration of the current lease.
- The terms of the new lease must align with those of the existing lease, with minor adjustments permitted to accommodate alterations to the property or building since the original lease inception, or to rectify any lease-related issues.
- Certain clauses pertaining to lease renewal, early termination, or the landlord's rights upon flat sale should be excluded to comply with the 1993 Act's provision for lease renewal.
- The new lease should incorporate a clause granting the landlord the right to reclaim the flat for redevelopment purposes at the end of the existing lease term. However, this right can only be exercised after the current lease term concludes. The landlord must seek court approval and provide compensation equivalent to the remaining 90 years of the lease. This provision should not pose challenges if a mortgage on the flat is required.

Additional guidance and assistance are available from us throughout the preparation phase and after serving the tenant's notice.

Procedures and time limits

- You may issue an information notice under Section 41 of the 1993 Act, although it is not mandatory.
- The landlord is required to respond within 28 days.
- Subsequently, you serve a tenant's notice under Section 42 of the Act.
- The "valuation date" is determined as the date when the tenant's notice is served.
- The landlord may request further information, but this must be done within 21 days of receiving the tenant's notice.
- You have 21 days to furnish any requested information to the landlord.
- The landlord must serve a counter-notice by a specified date mentioned in the tenant's notice, which must be at least two months from the date of service.
- Failure by the landlord to issue a counter-notice within the stipulated timeframe requires you to apply for a vesting order from the court within six months.
- Following the issuance of a counter-notice by the landlord, either party can seek an independent decision from the tribunal. However, this can only be done between two to six months after the counter-notice is served.
- The tribunal application fee is £100, with an additional £200 hearing fee once a hearing date is confirmed.
- The tribunal's decision becomes conclusive after 28 days. Should you disagree with the decision, you can appeal to the Upper Tribunal (Lands Chamber) before it becomes final, provided you have obtained permission from the tribunal.
- After the tribunal's decision becomes final, both you and the landlord have a period of two months to finalize the new lease.
- Failure to enter into the new lease within two months of the tribunal's decision becoming final grants you an additional two months to petition the court for enforcement of the landlord's obligations.

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