

The collective right to purchase the Freehold

What is it?

This is a right for certain flat owners to get together to buy the freehold of the building and the benefit of any leases between their own and the freehold i.e. head leases. There is also a right to buy the freehold of (or at the freeholder's election to have perpetual rights over) any property and areas that the flat owners are allowed to use which are not part of the building e.g. gardens, garages and parking spaces.

There are detailed rules in relation to who is able to do this and as to the procedure to be followed precisely what can and cannot be acquired and what should be paid for it.

It is important to understand that the participating flat-owners will still have leases of their flats but will, as a group, have become their own landlord.

What are the advantages of doing this?

The advantages depend on the particular circumstances but may include one or more of the following:

- In theory the shorter a lease gets the less value it has although in practice usually there is no reduction in the valuation of a lease which has more than 70 years to run. When a freehold is acquired the participating flat owners usually grant themselves new long leases of say 999 years.
- Most leases will have a ground rent. When participating tenants grant themselves new leases they usually replace this with a requirement to pay only a nominal figure (a "peppercorn" rent). This removes any uncertainty that there may be as to what future ground rent may be under a rent review clause some of which can cause rents to increase substantially.
- Many old leases are defective and the freeholder may not be obliged to agree to them being amended or if he can be obliged to do so the cost of arranging for that can be prohibitive. The participating flat owners could deal with any such problem when they grant themselves new leases after purchasing the freehold.
- The price that is paid is not the full valuation of the benefit to be acquired by the flat owner. This is particularly so for those leases which have more than 80 years to run from when the "Initial Notice" is served.
- This gives the participating flat owners control over the running of their building. This will be particularly important if there have been problems with the landlord(s) in the past or such problems are anticipated.

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Reasons not to do it

- You need at least 50% of qualifying flat owners to do this operating as a group. It can be difficult to overcome apathy and manage this process and the more flats there are the more difficult it is.
- Instead of buying the freehold you may be entitled to oblige the landlord to sell you individually a longer lease of your flat; usually this is not as good as acquiring the freehold, because your group do not then control the whole interest in the building and, although the cost of buying a longer lease may be marginally cheaper, the legal and valuation fees will come to more per person because each case proceeds separately so there are no savings. Generally we would advise that the lease extension route should only be used where you cannot organise enough flats to participate in a freehold acquisition.
- If management of the building is the only problem then there is an alternative procedure under which at least half of the flat owners can get together to follow a similar procedure to acquire a right to manage without purchasing the freehold. If this is done the money to purchase the freehold does not need to be raised and the costs are also usually substantially less.
- Professionals such as valuers and solicitors need to be employed and a contribution must be made towards the freeholder's valuation and legal fees. In some cases the total costs can be high.
- The freeholder is not usually required to sell the freehold of the communal grounds but can elect to grant the same rights that the flat owners have on a permanent basis instead. The freeholder may also be entitled to have restrictive covenants (eg rights to prevent future development without his consent) over the freehold that is sold. This means that purchasing the freehold may not achieve complete autonomy over the building and grounds and there may be a dispute with the landlord over those issues.

Who qualifies?

Most blocks of flats will now qualify. The detail needs to be checked by a specialist but the basic rules of qualification for each flat are:

1. The flat was let originally on a lease of at least 21 years granted for residential purposes.
2. The flat owner must not own more than two flats in the building.
3. There must be at least two flats in the building owned by qualifying flat owners.
4. The total number of flats owned by qualifying flat owners must be not less than two thirds of the total number of flats in the building.
5. The qualifying flat owners who participate must comprise at least one half of the total number of flats in the building. Where there are only two flats in the building both flat owners must participate.
6. There are certain more complicated rules and exceptions particularly where there are commercial premises or a resident landlord in the building upon which special advice is needed.

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The steps to be followed

1. Initial check of eligibility by Lacey's and as to whether the leases will get to the point that they will have less than 80 years in the next few years (in which case urgent action should be taken).
2. Contact neighbours and establish how many are interested and organise a group.
3. Obtain initial valuation from specialist valuer (we can advise on this).
4. Establish initial "fighting fund" (we usually suggest £250 per flat if more than 8) and instruct Lacey's.
5. Lacey's sets up nominee company of which the participating tenants will be shareholders and carries out initial investigations (from a date to be decided by the Government new regulations may come into force specifying the type of company).
6. Lacey's prepares participation agreement and possibly shareholders' agreement which signed by all participating tenants.
7. Lacey's gathers detailed information in relation to all the flats, the freeholder and any other person who has an interest in the building and prepares the "initial notice" to serve on freeholder. This gives details of participants and the proposed price amongst other matters.
8. Lacey's serves Initial Notice on freeholder and any head landlords and registers it.
9. Flat owners give freeholder access on 10 days notice if required.
10. Lacey's gives evidence of all participants right to participate within 21 days if required.
11. Freeholder serves counter notice on solicitor saying whether accepts participants have right and if so counter proposal on price.
12. Valuers negotiate on price and solicitors on other terms.
13. Unresolved disputes over price or terms referred by Lacey's to Leasehold Valuation Tribunal.
14. Participants put solicitor in funds for balance of price and costs.
15. Lacey's completes the purchase.
16. Lacey's grants the new extended peppercorn leases to the participating tenants.

What will it cost?

The price to be paid for the freehold is the total of the following:

- a) The open market value of the freeholder's interest.
- b) The freeholder's share of the "marriage value". The marriage value is the theoretical increase in value arising from the joining of the freehold and leasehold interests. The freeholder's share is now fixed at 50% of the "marriage value" and for a lease with more than 80 years left at the date of the Initial Notice it will be taken as nil.
- c) In addition payment must be made to the freeholder for any other losses arising from the enfranchisement and to any landlord of a lease between the participating tenants and the freehold for the value of those lease although in practice sums paid for this are likely to be small or nil.

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Once the Initial Notice has been served, irrespective of whether the matter proceeds to a purchase, the participating tenants are liable to contribute towards the freeholder's and other relevant landlord's costs although this does not include the cost of a hearing before the Leasehold Valuation Tribunal itself.

The participating tenants, as a whole, will also have their own solicitors' and surveyors' costs of going through the above process. We are pleased that, partially as a result of a challenge to the rules of Stamp Duty in these cases by Lacey's in the High Court, the law was changed in April 2009 so no Stamp Duty should be payable on the purchase.

We are happy to give estimates of what this might cost in an individual case.

Why choose Lacey's?

Lacey's has a specialist team of two partners and an experienced solicitor and legal executive. Some of their benefits are:

- Specialist knowledge avoids technical mistakes in this difficult and rapidly changing area of practice.
- Our development of efficient systems means we are able to spend less time doing the work and so reduce the cost to you (solicitors usually charge on a time basis for this type of work).
- Whenever possible the partners supervise the other members of the team in doing the work so that much of it is done at a lower hourly rate (ask for our terms of business to see the rates).
- We can do our work quickly and so keep the momentum going in the process to help drive the matter through to a conclusion; it is difficult enough for you to manage your group through the process without having a solicitor who delays.
- We have the confidence where necessary to stand up for your rights and fight for the best deal for you. We have demonstrated this by taking a case on a 'no win no fee' basis to challenge the Government on what we believed to be an unfair interpretation of the tax rules in this situation. Our case was debated in Parliament which led to the law being changed to abolish Stamp Duty in this situation.

Urgent Action

If your leases have not long to run until there is less than 80 years to run on them you need to act fast, as when they get to that point, the purchase price may increase substantially as is explained above.

For further advice and a more detailed estimate of our fees, please contact:

Mark Timberlake: m.timberlake@laceyssolicitors.co.uk or 01202 755200

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