

Right to First Refusal



The Landlord and Tenant Act 1987 imposes an obligation upon a landlord of a building containing flats not to sell the building without first offering the leaseholders a right of first refusal. The landlord must use the procedure set out in section 5 of the Act and serve a notice on each of the flat owners. The offer can be accepted by majority of the flat owners exceeding 50%.

Summary of the procedure under the 1987 Act

The Act contains a number of time scales and deadlines which must be adhered to in order to achieve a successful result for the tenants. The acceptance notice can be signed by the tenants' solicitor and must stipulate the names and flats of the participating owners.

The tenants have a further period of 2 months to stipulate the name of the Nominee Purchaser. This will be a company formed for the purpose of which each tenant will be a member. The company can either have shareholders or be a company limited by guarantee where there is only a membership certificate. When the company has been formed the details can be supplied to the landlord's agent in the form of the second notice.

Once the details of the nominee purchaser are served on the landlords' agent, the landlord must instruct its solicitor to issue a draft contract within a further period of one month.

The nominee purchaser must offer to exchange contracts and lodge the deposit within a further two months.

The landlord must then exchange contracts. The Notice served by the landlord states that completion must occur within 14 days and that the purchaser must bear the landlord's reasonable fees and expenses and all arrears due under the leases.

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Withdrawal

Either party can withdraw from the transaction at any time before exchange of contracts but if the landlord does withdraw, it cannot sell to anyone else for less than the price offered during the following 12 months period.

If either party withdraws before exchange of contracts the Act entitles the other to claim for costs and expenses incurred after the date the notice of nominee purchaser was given. However, either party can withdraw without penalty in the four week period after date of the notice of Nominee Purchaser has been served.

Participation Agreement

An agreement must be signed by each interested tenant so that all of them are bound by its terms. The agreement sets out the names and responsibilities of the Steering Committee and the obligations to contribute to fees and the price.

Steering Committee

It is not feasible for SA Law to deal with enquiries from individual tenants so all enquiries must be channelled through the steering committee. It will make the day to day decisions and give instructions to SA Law as required.

Payment

No money is due to the landlord until the date of exchange of contracts. This is likely to occur within 2 – 3 months from the date the Contract is issued by the landlord's solicitor.

Cleared funds will need to be lodged with SA Law before exchange of contracts. Completion of the purchase will normally occur 2 – 4 weeks after exchange of contracts.

This note is intended to be a brief summary only of the background and statutory procedure.