

A Guide to Statutory Lease Extension

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Entitlement

A lessee who has owned a long leasehold flat or maisonette for more than two years has the right to claim a lease extension under the terms of the Leasehold Reform, Housing and Urban Development Act 1993 as amended (“the 1993 Act”). The lease will be extended by 90 years and the rent will reduce to a “peppercorn” (nil) rent.

Procedure

The statutory procedure is activated by service of a Notice signed personally by the lessee. The Notice must state the price considered to be appropriate to pay the landlord for the lease extension. The Notice must be served on the freeholder and any other landlord.

Price payable

The Notice must state the price that the lessee wishes to pay for the lease extension and any other term that that

the Notice must state the price that the lessee wishes to pay for the lease extension and any other term that that tenant seeks as it may be possible to modify some of the existing terms if, for example, they are defective in any respect. The price must be calculated by a surveyor experienced in using the valuation method set out in the 1993 Act. The premium payable to obtain a lease extension increases as the lease shortens. The surveyor will give the minimum figure he or she considers could be justified were the matter to be argued in the Tribunal.

If a lease length is approaching 80 years it is important that a lease extension is sought before it reduces further as where a lease has less than 80 years to run the surveyor must include in the valuation a figure for marriage value. Marriage value represents an additional sum to be paid to the landlord to recognise the financial benefit to the flat owner of having a lease extension.

Additionally, where the direct landlord does not have a long enough lease term to grant a lease extension, the surveyor will have to quote a figure for the

compensation he or she calculates as being an appropriate sum to pay that landlord for loss of its ground rent income.

Sale of flat or maisonette

If a lessee wishes to sell the flat after the Notice has been served the benefit of the Notice can be assigned to the buyer. If this is not done the Notice will lapse at that point and the lessee will be liable for fees incurred to that stage. The buyer would not be able to serve another Notice either unit they had owned the property for two years.

Given that the lease extension process can take between 4 and 12 months or even longer if the matter reaches the Tribunal it is sensible to obtain a lease extension well before planning to sell a flat. Once the lease is extended it will be more attractive to a potential purchaser as a buyer may not be willing to accept an assignment of the benefit of the Notice to enable the lease to be extended by the buyer after the sale has gone through.

Liability for fees

Once the Notice has been served the lessee is responsible for the reasonable costs incurred by the landlord in employing his own surveyor to prepare a valuation and the landlord can also claim his solicitor's fee for advice in connection with service of the counter notice.

Payment of a deposit

The landlord can request payment of a deposit of 10% of the price quoted in the Notice and this must be paid within 14 days of request.

Landlord's counternotice

The landlord must respond by serving his counter notice within 2 months. The counter notice will normally make a counter proposal for a higher price for the lease extension. Negotiations usually follow

between the party's surveyors. If it is not possible to agree terms then we would apply to the First Tier Tribunal for a Hearing to determine the price to be paid. If any other issues arise concerning the terms to be offered to you apart from the price then these issues would also be referred to the Tribunal. The procedure will take some months to conclude if the landlord is not accommodating. Most lease extensions proceed without the necessity of actually attending a Hearing as a Tribunal Hearing can involve significant extra cost.

Tribunal proceedings

If necessary we will represent a lessee in the Tribunal proceedings and at any final hearing, although often where issues relate to valuation, rather than interpretation of the lease documentation, representation can be provided by the surveyor without the necessity for solicitors to attend the hearing as well.

Withdrawal by a lessee

A lessee cannot be required to proceed to take the lease extension once the price has been fixed. If for any reason a lessee is unable to proceed with the lease extension any deposit paid will be returned but the landlord will be entitled to recover the valuation fees incurred and for the cost of the initial advice from his solicitor in responding to the Notice. However, the landlord cannot recover any other costs incurred in dealing with negotiations or in relation to the Tribunal proceedings.

Lease extension deed

Once the price for the lease extension is resolved the freeholder's solicitors will draft the Deed of Lease Extension and the lessee's solicitors will then deal with the conveyancing work required to enable the lease to be finally extended. At that point the lessee will be responsible additionally for the landlord's legal fees incurred in connection with this work as well as his or her own solicitor's fees.

Non statutory lease extension

It is open to the freeholder and lessee to negotiate the grant of a new lease without having to go through the statutory process. This may be quicker and cheaper in respect of professional fees if the parties can agree terms. The terms that may be agreed are more flexible than when a statutory lease extension is undertaken but if the parties cannot agree terms then there will be no alternative but to make use of the statutory procedure.

Contact Us

For Further information, guidance or advice please contact our Enfranchisement Team

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