

**MENNEER SHUTTLEWORTH GUIDE TO COLLECTIVE PURCHASE OF THE  
FREEHOLD FLATS  
Otherwise known as  
COLLECTIVE ENFRANCHISEMENT**

The Law is found in Part I Leasehold Reform, Housing and Urban Development Act 1993 (as amended by the Commonhold Leasehold and Reform Act 2002)

This legislation gives the right to tenants to enfranchise (or purchase collectively) the freehold title to their individual flats from their Landlord (the "Right")

CRITERIA

The Right is only conferred on 'Qualifying Tenants' defined as a tenant of a flat situated in a building with a long lease defined as a lease for a term of more than 21 years.

There must be at least two flats in the building and at least two-thirds of the total number of flats must be held by Qualifying Tenants. For example, if there is a building consisting of 6 flats, at least 4 flats must be held by Qualifying Tenants to satisfy the criteria.

The number of those Qualifying Tenants participating in the acquisition must own at least half the total number of flats in the property. So, taking the example provided above, at least three Qualifying Tenants must participate in the acquisition of the freehold title.

NB. If there are only two flats, both owners must participate.

GETTING STARTED

Before exercising the Right, it is important to ensure that Tenants as a body:-

1. Meet the criteria as set out above;
2. The Land Registry have copies of your lease and Registered Title and are available for ec Flat. The immediate Landlord must be identified and his address for service of the Initial
3. Solicitor and Valuer should be appointed.
4. The amount to be paid for the Freehold has been assessed by the Valuer appointed;
5. Finances are in place to pay the tenant's legal costs, the Landlord's costs, and the purchase cost. Costs will be payable even if the application is withdrawn.

N.B. It is advisable at the outset of the process to assess the overall amount required and to collect contributions from each participating tenant to form a "fighting fund".

### VOLUNTRY PROCESS

Once a valuation for the purchase price has been obtained it may be possible for the Qualifying Tenants and the Landlord to agree the transfer of the freehold from the Landlord to the Nominee Purchaser (see below).

If this occurs then Statutory Procedure will not be necessary unless there is some breakdown in the Voluntary Process.

### STATUTORY PROCEDURE

#### (1) INITIAL NOTICE

The procedure for Collective Enfranchisement is initiated by the Participating Tenants serving an Initial Notice on the Landlord.

The Notice must: -

1. Identify a 'Nominee Purchaser' who will acquire the freehold title on behalf of the Participating Tenants and who will become the 'New Landlord'. This can be an individual Participating Tenant nominated by the other participants or a Company formed by the Tenants specifically for the purposes of acquiring the Freehold. (Note that once the legislation in this area is in full force, the Right

to Collectively Enfranchise will only be exercisable by a 'Right to Enfranchise (RTE) Company'. [Please see the article regarding how to form this type of company]);

2. Provide the details of the title to be acquired together with a plan;
3. Contain a statement confirming that the Tenants qualify for Collective Enfranchisement;
4. State the proposed purchase price based on the valuation previously obtained;
5. State the full names and addresses of all Participating Tenants together with sufficient details of their lease i.e. date granted and length of term;
6. The date by which the Landlord is to serve the Counter-Notice.

There is no need for the notice to be served on non-participating Qualifying Tenants.

## (2) COUNTER-NOTICE

The Landlord has a period of 21 days from the date he receives the Initial Notice in which to request evidence of the participating tenant's title to their flats, usually by Land Registry Official Title Entries or a copy of individual Leases. If the Tenants fail to provide this information, the Initial Notice will be deemed to have been withdrawn. If this happens, a new notice cannot be served for at least 12 months.

The Landlord must serve the Counter-Notice on the Participating Tenants by the date specified in the Initial Notice (which must not be less than 2 months from the date of the Initial Notice) stating whether or not: -

1. He agrees with their right to Collective Enfranchisement and that he either accepts the tenants terms or proposes alternative terms; or
2. He disagrees with their right to Collective Enfranchisement with his reasons; or
3. He neither admits nor denies their entitlement to Collective Enfranchisement but states that he will be making an application to the court. The application will request an order that the Right cannot be exercised on the grounds that the landlord intends to re-develop the land

If the Landlord fails to serve the Counter-Notice by the time specified in the Initial Notice, the Tenants can apply to the County Court for a 'Vesting Order' within 6

months of the date from which the Counter-Notice should have been served. A Vesting Order is a request to the court for it to transfer the Freehold to the Nominee Purchaser due to the default of the landlord. The Order will be made based on the terms proposed in the Initial Notice.

### (3) PURCHASE PRICE

The purchase price of the Freehold will be determined by reference to: -

1. the Aggregate value of the Landlord's interest in the property
2. the Landlord's share of the 'marriage value' (fixed at 50%). Marriage value is ignored in the case of a Lease held by one of the Qualifying Tenants participating in the claim where the unexpired term of the lease exceeds 80 years
3. Compensation

The purchase price is assessed at the date of the Initial Notice. This is to encourage the Landlord to proceed with the transaction quickly.

If a purchase price cannot be agreed by the Nominee Purchaser and the Landlord, an application to the Leasehold Valuation Tribunal (LVT) can be made by either party. The application must be made within 2 months from, but within 6 months of, the date of service of the Counter-Notice. The LVT will determine the amount to be paid by the Nominated Purchaser for the Freehold.

### (4) COSTS

The participating tenants are jointly and individually liable to pay the landlord's costs from the date the landlord receives the Initial Notice even if it is subsequently withdrawn.

### TRANSFER OF TITLE

Whether or not the Voluntary Process or Statutory Procedure is used the Freehold will be transferred from the Landlord to the Nominee Purchaser using a Land Registry Transfer usually form TR1.

The Transfer will then be registered at the appropriate Land Registry

## GENERAL

Each Participating Tenant will have a share in the Freehold. They will continue to have Leasehold Flats subject to mortgages if relevant. Lenders will not be effected by the change in ownership of the Freehold.

When flats are sold the share in the share owned by the departing tenant will have to be transferred to the new flat owner as part of the transaction.

For further guidance and advice please contact either David Collins or Nikki Coward.

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