

MENNEER SHUTTLEWORTH GUIDE TO LEASE EXTENSIONS

(Part I, Chapter 2 Leasehold Reform, Housing and Urban Development Act 1993 (as amended by the Commonhold Leasehold and Reform Act 2002) ('the Act')

The Act gives Leaseholders the Right to Acquire a 90 year extension to their existing Lease at a peppercorn rent (£1) (the Right). The Leaseholder may wish to take advantage of the Right where they are considering selling their property and there is less than 65 years left remaining on the term of the Lease. Generally mortgage lenders will not lend funds for a flat purchase unless there is more than 65 years remaining on the Lease term. The lack of a sufficient term will effect the value and therefore the saleability of their property.

VOLUNTARY PROCESS

It is not always necessary to use the provisions under the Act to obtain an extension. Many Landlords are willing to grant a Lease Extension and negotiations can take place without the need to serve Notices. When the Landlord will not voluntarily grant a Lease Extension that the leaseholder must follow the procedure set out under the Act.

CRITERIA

The Right is conferred on 'Qualifying Tenants' defined as a Tenant of a flat situated in a building with a Long Lease i.e. a Lease granted for a term of more than 21 years. The only other prerequisite is that the Qualifying Tenant has owned his Lease for a period of at least 2 years. A Qualifying Tenant cannot exercise the Right until this condition is satisfied.

GETTING STARTED

Before exercising the Right, it is important to ensure that: -

1. You meet the above criteria set out above;
2. You have a copy of your Lease and registered title issued by the Land Registry and you have identified your immediate Landlord and his address for serving the Initial Notice;
3. You have identified a suitable Solicitor and Valuer;
4. You know the amount the premium likely to be payable for the Lease Extension based on a 'worst and best' figure provided by the Valuer. This will enable negotiations to take place with the Landlord as to the amount of the Premium to be paid (see further below);
5. You have in place the funds to pay the Premium for the Lease Extension and, importantly, the deposit which the Landlord can request at any time after service of the Initial Notice which may be 10% of the proposed Premium or £250, whichever is the greater.

INITIAL NOTICE

In order to exercise the Right, the Qualifying Tenant must serve on the Landlord an Initial Notice. The Notice must: -

1. State the Tenant's full name and address of the flat in respect of which an Extension is claimed;
2. Particulars of the flat and the lease in order to identify the same;
3. The Premium the Tenant proposes to pay for the new Lease;
4. The terms that should be contained in the new Lease, if any;
5. The name of the Solicitor appointed to act;
6. The date in which the Landlord must serve his Counter-Notice.

If the Landlord cannot be found, and therefore an **Initial Notice** cannot be served, the **Qualifying Tenant** may make an application to the Court for a **Vesting Order**. A Vesting Order is an order of the Court granting the **Qualifying Tenant** a new lease. The terms of the new lease in these circumstances will be determined by the **Leasehold Valuation Tribunal** ('LVT').

COUNTER-NOTICE

The Landlord must serve any **Counter-Notice** on the **Qualifying Tenant** by the date specified in the **Initial Notice** (which must not be less than two months after the date of the **Initial Notice**) stating whether or not her: -

1. The **Qualifying Tenant's** Right to a new Lease is admitted
2. If denied, stating reasons; or
3. Admitting or denying the Right but stating that the he intends to make an application to Court for an Order preventing the exercise of the **Qualifying Tenant's** right on the grounds of 'intended redevelopment' i.e that the Landlord intends to demolish, reconstruct or carry out substantial works of construction on the whole or a substantial part of any premises in which the flat is contained

If the **Counter-Notice** admits the Right, it must also state which of the **Qualifying Tenant's** proposals are accepted or alternatively put forward counter-proposals. If an agreement cannot be reached between the parties within two months of the date of the Counter-Notice an application may be made to the LVT for a determination.

If the **Counter-Notice** denies the Right the Landlord must apply to the Court to determine the dispute.

If the Counter-Notice states the Landlord's intention to redevelop, the Landlord must make the requisite application to Court within 2 months of the date of the **Counter-Notice**.

THE PREMIUM

The Premium payable for the new Lease will be the aggregate of: -

1. The diminution in value of the Landlord's interest in the property (i.e. the difference in value of the Landlord's interest with the present Lease and the value of his interest after the grant of the New Lease with an additional 90 year term).

This is calculated by reference to the loss of income from the ground rent for the remainder of the original term (as stated above, the New Lease will be at a peppercorn rent) and the loss due to the additional 90 years the Landlord will have to wait until expiry of the Lease.

2. The Landlord's share of the 'Marriage Value' (fixed at 50%).

This is the increase in the value of the property following the Lease Extension and it is shared equally between the parties and is, therefore, 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

This will be payable in respect of any other decrease in the value of the Landlord's interest. This does not generally apply.

COSTS

The **Qualifying Tenant** is liable for all of the Landlord's reasonable costs (i.e. legal costs and Valuer's costs) incurred from the date of service of the **Initial Notice**.

Of course the costs of Tenant's own Solicitor and Valuer will also be payable by the Tenant.

CONVEYANCING

The Tenant's Solicitor is responsible for agreeing the form of Lease with the Landlord's Solicitors. The New Lease will be signed in duplicate and the Original Lease registered at the Land Registry.

If the Tenant has an existing mortgage it will be necessary to arrange for what is known as a Deed of Substituted Security whereby the existing mortgage is replaced by a new mortgage against the registered title of the new Lease. Most mortgage lenders charge a fee.

Your Solicitor will take care of these aspects for you.

General

For more information and advice please contact David Collins dcollins@menneershuttleworth.co.uk or Nikki Coward ncoward@menneershuttleworth.co.uk

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