

AIMS Information Sheet

Leaseholders' Rights to Buy the Freehold of Flats

The Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) gives leaseholders of blocks of flats the right to buy the freehold of their building if qualifying conditions are met. This collective right to buy the freehold is known as collective enfranchisement.

Qualifying conditions for collective enfranchisement

1. The building and premises must contain two or more flats and at least two-thirds of these flats must be held on long leases (a lease that is initially granted for a period of more than 21 years). However, there is no requirement for any leaseholder to have resided in the property for any minimum length of time.
2. No more than a quarter of the building must be in non-residential use.
3. Leaseholders from at least half of the flats in the building are required to participate. If there are only two flats, both leaseholders must participate.
4. Leaseholders who have shared ownership would not qualify unless they own 100% of the equity in their flat.

Collective enfranchisement only applies to blocks of flats and so cannot be exercised in respect of an entire retirement scheme. This can create some difficulties as there could be two or more different freeholders on the same scheme with a lease that states that services must be provided in common.

Nominee Purchasers

Although the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) included significant changes to the legislation on collective enfranchisement, the provision of using a Right to Enfranchise (RTE) company to buy the freehold has not been commenced. This means that all applications to buy the freehold have to be made through a Nominee Purchaser. This can be up to four individual leaseholders, another individual, a private company or Housing Association or, in most cases, a company formed by leaseholders specifically for the purpose of buying the freehold (if there are more than four leaseholders).

The Nominee Purchaser will be named in the Initial Notice (a notice served on the freeholder by qualifying leaseholders of their claim to exercise their right to buy the freehold) and will become the landlord. The Nominee Purchaser will be responsible for carrying out the management or for appointing another organisation and monitoring them. Any company formed by the leaseholders must be established prior to the Initial Notice being served. The leaseholders would need to obtain expert advice from a legal provider on how to form a company and they would need Memorandum and Articles.

The status of the lease

Exercising collective enfranchisement does not necessarily affect the terms of the lease or residents' leasehold status. Those participating in collective enfranchisement will be leaseholders with a collective share in the freehold (they do not become freeholders). Those not taking part will remain solely as leaseholders. The Nominee Purchaser will be their new landlord. With the exception of amendments such as the freeholder's identity, changes in the terms of the lease would require the agreement of all leaseholders, regardless of whether they have taken part in the collective enfranchisement process. However, it is likely that some changes might be agreed by all parties such as abolishing or reducing the ground rent.

Leaseholders will need to estimate how much money they will need for the freehold purchase and to pay the fees of a valuer and solicitor. In the event of leaseholders withdrawing from collective enfranchisement part way through the process, they will have to pay the landlord's costs as well as their own.

Assessing the price of the freehold

An initial valuation of the freehold of the block by a surveyor or qualified valuer is recommended in order to give the leaseholders participating in collective enfranchisement an indication of the price. It is very unlikely that the valuer will quote a fixed price and leaseholders should be aware that they are likely to be given a range from the highest to the lowest estimated figure.

Collecting information

The Initial Notice must be correctly served on the freeholder and must include specific information. Leaseholders will need to obtain:

1. The identity of the freeholder(s) – an individual or the company name and address.
2. Details of any head leases and the identity of these lessees.
3. The full names and addresses of all of the leaseholders in the building and details of their leases.
4. Details of any flats that are under the control of the freeholder and therefore let on periodic tenancies.

Section 11 of the 1993 Act gives participating leaseholders the right to serve an Initial Notice on the freeholder or any other interested parties who might require details. This would include details of any other freeholders and any intermediate leases. The recipients of these notices are required to respond in full within 28 days.

Serving the Initial Notice

The Initial Notice starts the statutory procedure for collective enfranchisement and the participating leaseholders are jointly and individually liable for the landlord's costs as from the date they receive the Initial Notice. Some protection for leaseholders is provided by the right to register the Initial Notice with the Land Registry. AIMS recommends the instruction of a solicitor or provider with expertise to prepare and serve the Initial Notice.

What happens next?

After the service of the Initial Notice, the landlord is entitled to request evidence of the leaseholders' title to their flats. The landlord has 21 days from receiving the Initial Notice to request this information. It also needs to be provided within 21 days so the participating leaseholders need to ensure that their solicitor has all the necessary details and documents for a full response within the time limit. In the event that the title is not

forthcoming, the Initial Notice would be deemed withdrawn with costs payable to the landlord. This would also mean that another Initial Notice could not be served for at least 12 months. The landlord also has the right to inspect the building, including the participating leaseholders' flats, subject to 10 days notice.

The landlord's Counter Notice

The landlord must serve a Counter Notice by the date specified in the Initial Notice. This Counter Notice must:

1. Agree the right to the freehold and accept terms (or propose different terms); or
2. Not agree terms and explain why not. The matter will then need to be determined by the county court; or
3. Neither admit nor deny entitlement but inform the participating leaseholders that an application is being made to the county court for an order that collective enfranchisement cannot be exercised on the grounds that the landlord intends to redevelop the whole or a substantial part of the premises.

This third option is currently unlikely to happen in retirement housing as little was developed prior to 1980 and the landlord's exemption from collective enfranchisement only applies when at least two-thirds of the leases are due to end within five years of the service of an Initial Notice.

The landlord will not be able to resist collective enfranchisement if the above qualifying conditions are met but can dispute the price. If, after the service of a Counter Notice, the Nominee Purchaser and the freeholder are unable to reach an agreement on the price then, after two months, either party can refer the matter to a Leasehold Valuation Tribunal (LVT). The LVT is an independent local body whose members are drawn from a panel of lawyers, valuers, surveyors and specialist lay people. LVT hearings are less formal than Court hearings and the tribunal does not have the direct power to award costs.

If either the Nominee Purchaser or the landlord do not agree with the LVT's decision, either party can appeal within a set period of time to the Lands Tribunal. However, the appeal may only be made with the permission of the LVT or the Lands Tribunal.

In cases where the landlord fails to serve a Counter Notice by the date specified in the Initial Notice, the participating leaseholders may apply to the county court for a Vesting Order. If this is obtained, this takes the issue of collective enfranchisement away from the landlord and requests that the county court should allow the freehold to be transferred to the participating leaseholders. The application to the county court must be made within six months of when the Counter Notice should have been received.

The Valuation of the Freehold

This is complex but the total value of the freehold will consist of:

1. The value of the landlord's ongoing financial interest in the property, which will be the loss of ground rent plus any additional income streams such as rent on the resident manager's flat or parking charges.
2. The value of the landlord's reversion which is estimated as the present value of his eventual possession of the flat at the expiry of the lease.
3. Half of any marriage value (any additional value of freehold and leasehold interests being brought under the same control), which will only be payable when leases have less than 80 years left before they expire.

4. Where appropriate, compensation for any potential future loss resulting from the enfranchisement, such as loss of potential revenue from scheme development.
5. Landlords will be entitled to recover any reasonable costs that they incur in dealing with collective enfranchisement.

After the collective enfranchisement process has been completed

The Nominee Purchaser will have to decide whether to retain the existing managing agents, manage the building themselves or appoint new managers. As in cases where Right to Manage is successfully exercised, AIMS recommends that leaseholders in retirement housing appoint managing agents who are members of a recognised trade body such as the Association of Retirement Housing Managers and the Association of Residential Managing Agents. AIMS does not recommend self-management due to the responsibilities and liabilities that become increasingly onerous such as health and safety requirements.

The Nominee Purchaser needs to be aware that they will have to carry out formal consultation under Section 151 of the 2002 Act if they wish to make the initial contract with the managing agents for longer than one year, as the annual value of the contract will be more than £100 per flat.

Further information

AIMS, Age Concern and Help the Aged, Astral House, 1268 London Road, London SW16 4ER
 Tel: 020 8765 7465 or lo-call helpline: 0845 600 2001 (open 9.30am-4.30pm, Mon-Fri)
 Email: aims@ace.org.uk Web: www.ageconcern.org.uk/aims

Association of Residential Managing Agents (ARMA), 178 Battersea Park Road, London SW11 4ND
 Tel: 020 7978 2607
 Email: info@arma.org.uk Web: www.arma.org.uk

Association of Retirement Housing Managers (ARHM), Southbank House, Black Prince Road, London SE1 7SJ
 Tel: 020 7463 0660
 Email: enquiries@arhm.org Web: www.arhm.org

Citizens Advice Bureaux (CAB)
 To find your local CAB, look in Yellow Pages or on web: www.citizensadvice.org.uk

Lands Tribunal, Procession House, 55 Ludgate Hill, London EC4M 7JW
 The Tribunal is an independent judicial body set up to resolve land disputes.
 Tel: 020 7029 9780 Email: Lands@dca.gsi.gov.uk
 Web: www.landtribunal.gov.uk

Leasehold Advisory Service (LEASE), 31 Worship Street, London EC2A 2DX
 Tel: 020 7374 5380 (open 9.30am-1pm, 2pm-3.30pm, Mon-Fri)
 Email: info@lease-advice.org Web: www.lease-advice.org

Residential Property Tribunal Service (RPTS)
 To find your local LVT, phone 0845 600 3178 or web: www.rpts.gov.uk. For Wales, call LVT direct on 02920 922 777.

May 2009. AIMS is Age Concern and Help the Aged's **A**dvice, **I**nformation and **M**ediation **S**ervice for people living or working in private retirement or sheltered housing.

This information sheet does not provide a full, detailed interpretation of the law, nor does it attempt to cover every case, only the Courts can do that. If you are in any doubt about your rights and duties under this aspect of the legislation, you should seek specific advice from an appropriate provider.

Age Concern England (charity number 261794) has merged with Help the Aged (charity number 272786) to form Age UK, a charitable company limited by guarantee and registered in England: registered office address 207-221 Pentonville Road, London, N1 9UZ, company number 6825798, registered charity number 1128267. Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age NI, Age Cymru.