

The Collective Rights of Leaseholders

This guide briefly explains the statutory rights of leaseholders to assume the landlord's management responsibilities and acquire the landlord's freehold interest. Both are valuable tools for taking over the management responsibilities either because the landlord has not sufficiently maintained the building or through a desire to control the service charge budget.

Collective Enfranchisement

Tenants are entitled collectively to purchase the freehold title of the building in which their flats are situated from the landlord by virtue of The Leasehold Reform Housing and Urban Development Act 1993 as amended.

The process generally consists of employing a solicitor to manage the claim and serve the required notices on the landlord, and employing a surveyor to value the premium payable for the freehold title.

Tenants can only exercise the right if they themselves qualify and if the building also qualifies.

Qualification

In order for the right to apply:

- For a tenant to qualify the original term of his lease has to be 21 years or more;
- It is not necessary for the tenant to live at the premise or to have owned it for any period of time;
- A tenant does not qualify if he owns more than two flats in the building;
- For the building to qualify two-thirds of the tenants must qualify;
- The tenants participating must own at least half of the flats in the building;
- Not more than 25% of the building is used for non-residential purposes;
- Certain landlords are exempt such as local housing authorities.

The process

1. We will investigate the tenants' claim to ensure that the tenants and building qualify and all the required parts of the building and grounds are included.
2. All qualifying tenants are invited to participate and a 'participation agreement' is prepared if desired. This is to ensure that all the participants are committed to proceed and will contribute towards the costs.
3. A company will be set up, if desired, and the participating tenants will all become members. If a company is not used then the participants must nominate one or more of themselves to be the nominated purchaser.
4. A surveyor is instructed to assess the price to be offered for the freehold. This will be dependent on the length of the leases and the value of the flats.
5. A notice is served on the landlord notifying of the tenants' desire to purchase the freehold and the price offered.

In most cases the landlord will willingly sell the freehold after negotiating on price, but if not the claim will be referred to the Leasehold Valuation Tribunal for a decision.

The tenants will be liable to pay all or part of the landlord's reasonable costs.

Comparison with the right to manage

The benefits of acquiring the freehold title are that the tenants collectively become their own landlord and so can grant themselves new longer leases. This will be important if the leases are getting too short to be readily saleable or mortgaged. The tenants will no longer need to pay ground rent, and they will control the maintenance of the building and grounds. The drawbacks are: acquiring the freehold can take a lot longer; the freehold title is purchased from the landlord and so a purchase price must be paid and, the tenants need to employ a surveyor to value the premium further adding to the expense.

The right to manage

Leaseholders have the right to take over from their landlord the landlord's managerial responsibilities most significantly being the maintenance and repair of the building. Often by doing this the tenants can save maintenance costs and ensure that works are performed to a satisfactory standard. If the task is daunting then the tenants can instruct managing agents to manage the maintenance.

Qualification

The landlord's ability to object to a right to manage claim is severely restricted and as long as the building and the tenants qualify the claim should be successful.

The same qualifying criteria apply as with collective enfranchisement except there is no limit on the number of flats a tenant can own in the building.

The process

1. We will investigate the tenants' claim to ensure the qualification criteria are met.
2. All qualifying tenants are invited to participate and a 'participation agreement' prepared if desired. This is to ensure that all participants are committed to proceed and will contribute towards the costs.
3. A 'right to manage company' will be set up and the participating tenants will all become members. It is the company that will manage the block. The landlord is entitled to be a member of the company.
4. A claim notice is served on the landlord.
5. If the landlord disputes the claim, we will deal with the landlord's counter-notice and apply to The Leasehold Valuation Tribunal to decide the claim.

The tenants will be liable to pay the landlord's reasonable costs in connection with the claim notice.

Comparison with purchasing the freehold

The same result can be achieved by purchasing the freehold title from the landlord, but acquiring the right to manage is simpler, faster and less expensive. There is no premium to pay the landlord and generally no need to employ a surveyor. There are drawbacks such as the landlord's permission is still

required to extend leases for which the landlord can demand a premium, the landlord continues to collect rent, and if there are separate buildings they have to be managed separately and correspondingly there will be separate right to manage claims.

Right of first refusal

Before a landlord can sell or dispose of its freehold title it must first offer it for sale to the qualifying tenants for the same price that it would offer it for sale to a third party. The right is set out in The Landlord and Tenant Act 1987.

The landlord is obliged to serve a notice on all of the qualifying tenants giving them the option of purchasing the freehold title and giving the tenants at least two months in which to respond. If the tenants serve a notice of acceptance, a procedural timetable will follow that will ultimately end with the transfer of the freehold title to the tenants for the price set out in the landlord's notice of offer.

In order for the right to apply:

- The internal floor area of any non residential parts of the premises must not exceed 50%;
- The landlord must not be exempt, e.g. must not be a local authority or housing corporation;
- The number of flats held by the qualifying tenants must exceed 50% of the number of flats in the building;
- The tenants qualify by holding a residential lease other than a short term letting.

If the landlord sells the freehold title to a third party without first offering it for sale to the residents, or does serve notice but subsequently sells to the third party at a lower price, then the tenants can compel the new owner to sell the freehold to them at the price it paid for it.

The tenants should become aware of any sale or transfer as the landlord is legally obliged to inform them.

Companies & Participation Agreements

For all of the above procedures thought should be given to whether a company is needed (it is compulsory for a right to manage claim), and if a participation agreement is required. We would advise that for all but the simplest of cases both are required and will make the process and ongoing management less complicated.

By asking the tenants to sign a participation agreement you should eliminate the less committed tenants at an early stage and ensure that all participants are financially committed to pursue the claim.

Pursuing a claim in the legal entity of a company eases the administrative burden especially where there are many participants, but the greatest benefit is in the future when the flat is sold as a tenant's share in a company is far easier to transfer than a share in a property.

Contact us

If you would like to find out more about any of these rights and how Warners can help you, please contact either Robert Twining or David Redgate.