

a guide to
leaseholds

Key facts to consider when purchasing a lease

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When you buy a flat you will be buying a lease irrespective of whether you are also buying a share in the freehold. As leases decrease with time you might at some stage need to consider purchasing an extension prior to selling the property. This can be a daunting task without professional advice to lead you through the process. Kerr & Co have many years experience in providing such advice as well as providing the contact details of various professionals you would need to complete the process. The law currently states a qualifying lessee has the right to extend their lease by an additional 90 years over the existing undiminished term all at a peppercorn ground rent.



In order for you to qualify to extend your lease you must meet the following criteria:

1. Your lease was more than 21 years when originally granted.
2. You have been the registered owner of your flat for 2 years. You do not need to have lived there for 2 years merely owned it for that time.

Please note that if your freeholder is the Crown, National Trust or part of a building within a cathedral precinct your flat might be excluded from the right to extend your lease; however specialist advice should be sort. Part or shared ownership leases do not qualify unless they have already bought 100% ownership from the housing association or other interested party. As the length of your lease diminishes this can affect the value of



your property and also make your flat harder to sell. This becomes more apparent when your lease drops below 80 years remaining. When this happens the cost of extending it increases because you will need to pay what is known as the marriage value. Unfortunately there is no hard and fast rule as to the cost of a lease extension as there are many variables as to the costs involved and each case is unique. These variables include ground rent, improvements you have made to the property, unexpired lease term, current market value and market value with the extended lease.

The first steps you would need to take would be to have the lease extension cost valued by a surveyor, preferably a local surveyor who knows the intricacies and vagaries of the local

market. The surveyor would carry out an inspection of your property and request a copy of your current lease as well as information from you regarding improvements that might have made to the flat. This information will assist in determine the cost of your extension. The surveyor would provide you with a range of values within which he or she feels that the cost should fall.

Once you have a figure there are then two ways of proceeding this being either formally or informally. The formal route would mean serving a Section 42 Notice on the freeholder which details the proposed amount you are willing to offer for the lease extension (Bearing in mind this may not be the price you eventually pay after negotiations). At this point the benefit of the notice can be assigned to a potential buyer securing their rights to continue the process and establish the principle costs involved. Once the Section 42 notice has been served the freeholder has a period of two months in which to serve a counter notice (Section 45) either accepting or rejecting your offer. In the event of rejection the freeholder's counter notice will detail the premium they would be willing to accept. If the freeholder deems the premium proposed in the Section 42 notice is derisory he or she can apply to the courts to have the notice struck off and you would then need to wait a further 12 months before serving a new notice.

The informal route would be for you to contact the freeholder directly and make them an offer - although sometimes the freeholder will then insist upon going down the formal route of notices being served. The statutory extension of 90 years at a peppercorn ground rent need not necessarily apply in these circumstances as alternative lease arrangements can be

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agreed. Again once agreement is made on the cost of the lease extension you would need to employ the service of a solicitor to complete the process as with the formal route.

Once both parties are in agreement then it would be up to your solicitor and the freeholders solicitor to draw up the new lease ready for signature and eventual registration at land registry. You have a period of 4 months from formal agreement to finalise and pay the premium otherwise you would need to apply to the courts for a extension or run the risk of having to wait a further 12 months to start the process again.

If no agreement can be reached either formally or informally you then have the right to apply to the Leasehold Valuation Tribunal who would consider the case and make a binding



decision on both parties as to a fair cost of extension. However you need to have applied to the L.V.T. within six months of the date of the freeholders counter notice (Section 45) otherwise you will be deemed to have withdrawn your application for lease extension and would then need to wait a further 12 months before repeating the process.

There are additional costs involved with extending your lease, these being the "reasonable costs" incurred by the freeholder in ascertaining their own opinion of value, namely their professional advisors including surveyor and their legal representation, in finalising the process. You would also be liable for your own legal costs and surveying costs.

Glossary of Terms

Freeholder

A proprietor who holds a piece of land outright and has the right to lease, rent or sell as he or she determines.

Lessee

An individual who has the right of use of a property through a lease agreement with the freeholder of the property.

Share Of Freehold

This is where you would be responsible for the management of your own property jointly with the other flat owners in the building.

Ground Rent

A yearly payment securing the right to occupy and improve a piece of land or property held on a lease. This can vary from a peppercorn (literally one peppercorn as you would find in a pepper mill) to a percentage of the properties value per annum.

Lease

The document detailing both the lessee and the freeholder responsibilities pertaining to the flat as well as the terms of ownership by the lessee.

Marriage Value

This is the difference between the value of the property with the existing lease and an extended lease, with the difference in values being split between the freeholder and lessee.

Section 42 Notice (of the Leasehold Reform, Housing and Urban Development Act 1993):

The United Kingdom 1993 Leasehold Reform Housing and Urban Development Act (as amended) provides the right for the grant of a new lease for a term of 90 years, plus the present unexpired term, all at a peppercorn rent (that is, rent free). This right is initiated by the service of a Section 42 Notice of Claim (otherwise known as the Tenant's Notice) by a tenant on the competent landlord.

It must contain the following:

The lessee's notice must include the following:

- (a) state the full name of the tenant and the address of the flat in respect of which he claims a new lease under this section 42 subsection 3;
- (b) contain the following particulars, namely:
 - (i) sufficient particulars of that flat to identify the property to which the claim extends,
 - (ii) such particulars of the tenant's lease as are sufficient to identify it, including the date on which the lease was entered into, the term for which it was granted and the date of the commencement of the term,
 - (iii) such further particulars as are necessary to show that the tenant's lease is, in accordance with section 8 (as that section applies in accordance with section 39(3)), a lease at a low rent, and
- (c) specify the premium which the tenant proposes to pay in respect of the grant of a new lease under this Chapter and, where any other amount will be payable by him in accordance with any provision of Schedule 13, the amount which he proposes to pay in accordance with that provision;
- (d) specify the terms which the tenant proposes should be contained in any such lease;
- (e) state the name of the person (if any) appointed by the tenant to act for him in connection with his claim, and an address in England and Wales at which notices may be given to any such person under this Chapter;
- (f) specify the date by which the landlord must respond to the notice by giving a counter-notice under section 45. This should not be less than 2 months from the date the notice is served

Leasehold Valuation Tribunal (L.V.T.)

The Leasehold Valuation Tribunal (L.V.T.) is the formal name given to the body appointed to make decisions on various types of dispute relating to residential leasehold property. The L.V.T. is an independent decision making body which is completely unconnected to the parties or any other public agency. The Tribunal will look at the

matter of the Leasehold Dispute for the property following an application to the Tribunal.

The Leasehold Advisory Service is a Non Departmental Public Body (NDPB) funded by Government to provide free advice on the law affecting residential leasehold property in England and Wales.



For more information on the Leasehold Advisory Service

Leasehold Advisory Service

www.lease-advice.org

Residential Property Tribunal Services

www.rpts.gov.uk

Leasehold Advice Centre www.leaseholdadvicecentre.co.uk

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