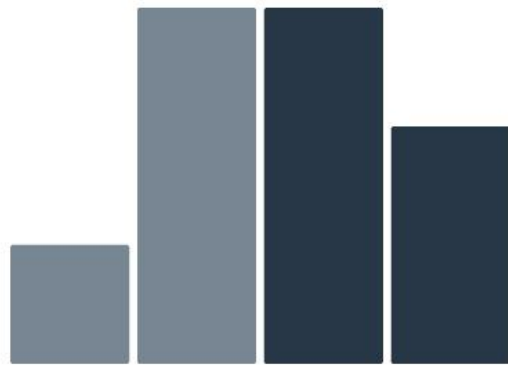


Insider's Guide to: Enfranchisement



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What is Enfranchisement?

Rights for tenants to acquire the superior interest in their properties have existed for many years. The Leasehold Reform, Housing and Urban Development Act 1993 introduced a new, more formal procedure, enabling tenants to call for the sale of superior interests by their landlords in a process known as 'the collective right to enfranchise'.

Commonly, enfranchisement applies to the sale of freehold reversions in blocks of multiple residential units. Buildings must be independent, or capable of being developed independently. Tenants may elect a nominated person or persons, or establish a limited company within which each tenant takes a share. The tenants or company, funded by the shareholding tenants, buys the freehold from the landlord as a vehicle on behalf of all of the participating tenants.

In order to bring about a collective enfranchisement action, set statutory procedures must be followed and tenants are well advised to ensure that they have all the necessary costs calculated and funding to hand before commencing the process.



Participating Tenants and Qualifying Properties

The building must contain at least two flats, and leases of at least two-thirds of the flats' leases must have been granted for over 21 years. Alternatively, shorter leases must be capable of ongoing renewal or, in the case of shared ownership leases, the tenant's share must be 100%. Right-to-buy leases also qualify for rights of enfranchisement.

Excluded tenants include charitable housing leaseholders and business and commercial tenants. Tenants who own three or more flats in a building are also excluded from exercising the right. Buildings will not qualify for enfranchisement if they are comprised of four or less units and one occupier is the freeholder, if more than 25% of the internal floor space is used for non-residential purposes or where the building forms part of an operational railway.

At least half of the qualifying tenants in a building must be willing to proceed; for example, if a building contains 12 flats, at least 6 tenants must qualify and participate. If the building contains only two flats, both tenants must participate in the acquisition.

Where tenants are proposing to exercise a right of enfranchisement, in the first instance landlords are advised to ascertain whether the tenants who are a party to the application qualify.



Procedure:

Service of Initial Notice

Tenants, usually acting by a limited company, must serve an Initial Notice on their landlord, notifying it of their intention to exercise their right of enfranchisement. The Initial Notice should specify, inter alia, the extent of the property to be acquired by reference to a plan, details of both the qualifying and participating tenants, the proposed purchase price and details of the purchaser.

A valuation, obtained by tenants prior to service of the Initial Notice, will advise tenants as to the freehold reversion value to be specified in the Initial Notice; advice is generally given as to the 'best' and 'worst case' scenarios and a valuation should comprise:

- the investment value of the building to the freeholder, including valuation as to the ground rents and reversion value;
- the increased value to the tenants of the ability to grant extended leases to themselves;
- compensation for any loss of value of other property owned by the freeholder, such as loss of development value.

Tenants should expect to take responsibility for the freeholder's legal fees.

The valuer will continue to advise the tenants following receipt of a Landlord's Counter-Notice and will likely also deal with negotiation and agreement on the purchase price.



Landlord's Response

Once an Initial Notice has been received by a landlord, it should request further information from the tenants including evidence of their leasehold interests. Information must be supplied within 21 days; where information requested is not supplied within the specified timeframe, tenants are unable to apply again for a further 12 months.

A landlord is entitled to serve a Counter-Notice, acknowledging the tenants' right to purchase and either agreeing to their terms or proposing alternatives. An application may be made to Court where a landlord does not agree to the exercise of the right, requesting an Order which may state why the right cannot be granted or to have the landlord's reasons for refusal verified. Either party may apply to Court if the purchase price cannot be agreed.

Where a landlord intends to demolish and/or redevelop a building, or a substantial part of it, that landlord is not obliged to sell the freehold to the tenants. However, this can only apply if at least two-thirds of the leases in the building will end within 5 years of the date of the Initial Notice.



Completion of the Transfer

Following settlement on a purchase price, the parties will proceed to an exchange of contracts. Where an application has been made to Court, a landlord must send to the tenants a draft contract within 21 days of the date of judgment.

Parties should exchange contracts within two months of the judgment, agreeing a date for completion; if this deadline is not achieved, tenants are entitled to make a further application to Court for an Order stating that the property is transferred and vested in them by Court Order.



Points to Consider

Enfranchisement is a complex process, governed by strict time limits. Where landlords receive Initial Notices, it is recommended that clear legal advice is obtained immediately and experienced solicitors allowed to direct the process from that point.

Strong relationships with tenants will enable landlords to ascertain whether an application is being discussed between tenants, and open communication will make for a clearer pathway for all parties.



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