

A Guide to Collective Enfranchisement



For Lessees of flats

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Collective Enfranchisement

Entitlement

The Leasehold Reform Housing and Urban Development Act 1993 as amended is the 'Act'.

A group of lessees that own properties within a block of flats or an estate is entitled to collectively enfranchise the freehold interest (i.e. purchase the freehold interest from the landlord).

In order to enfranchise, the building has to have at least two flats and at least two thirds of the flats have to be let to 'qualifying tenants'. A qualifying tenant must have a long lease (original term in excess of 21 years) at a low rent.

If the landlord is a Charitable Housing Trust tenants cannot enfranchise.

If the lessee owns more than two flats in the building they do not count as a "qualifying tenant".

The building cannot have more than 25% of the internal floor area in commercial usage.

Some properties such as properties owned by the National Trust and the Crown, are specifically excluded from the rights of collective enfranchisement.



Photo by RODNAE Productions

Organising Participation in the Enfranchisement Process

Where there is a significant number of properties involved there needs to be a formal agreement between the lessees. This can take the form of a participation agreement which can be drawn up by a solicitor.

In order to enfranchise, the lessees will need to create a nominee purchaser, (which can be an individual or a company) to acquire the freehold and become the new landlord.

Again, a solicitor can advise on the best option for a particular group of leaseholders.

One of the main issues, which we regularly come across, is the commitment of lessees to go through this very complicated and (probably) long process. It is therefore necessary to set up a 'fighting fund' to ensure that there are sufficient funds to pay all of the costs associated with the enfranchisement and to ensure that the participating lessees commit to the process.



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Valuation

Once these steps have been taken, Kirkby Diamond as valuers can get involved to a greater extent in valuing what price should be paid to the freeholder under the terms of the Act.

This is a prescriptive form of valuation, which includes the valuation of the diminution in the freeholder's reversion value, the valuation of the marriage value, the valuation of the loss of other income earning potential held by the freeholder (such as loss of potential development value or income from insurance premiums).

The valuation is used as the basis for the figure proposed in the initial notice under Section 13.

Negotiations

Once the landlord's counter-notice is received, setting out the figure that the landlord seeks for the freehold interest, Kirkby Diamond can then negotiate on behalf of the nominee purchaser and settle the price.

In many cases, the price is settled by agreement. In some cases it is necessary to go to the First Tier Tribunal (Valuation Tribunal) to settle the price to be paid. Jean Howe gives Expert Witness evidence at Valuation Tribunals on a regular basis.

Further Advice

Thereafter, Kirkby Diamond can advise on the future management of the block and whether or not there is any need for structural or ongoing repairs and the implications for future service charge commitments.

This may include the preparation of a planned maintenance schedule, in order to ensure that service charges are realistic going forward, to enable the block to be maintained to a good standard/

Absentee Landlord

Jean Howe has acted on behalf of several nominee purchasers where there is an absentee landlord which includes having the valuation scrutinised by the First Tier Tribunal (Valuation Tribunal).



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