

A Guide to Lease Extensions



Tenant Edition

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A Guide to Lease Extensions for Tenants

Entitlement

A lessee who has owned a flat or maisonette for more than two years has the right to claim a lease extension under the terms of the Leasehold Reform, Housing and Urban Development Act 1993 as amended. The lease will be extended by 90 years and the Ground Rent will be reduced to a "peppercorn" (nil) rent.

Procedure

The procedure is activated by the service of a Notice signed personally by the lessee. The Notice must state the price considered to be appropriate to pay the landlord for the lease extension (The Notice must be served on the freeholder and any other landlord). Kirkby Diamond would recommend that a solicitor prepares the Section 42 Notice to ensure the validity of the Notice, as this is critical to the process.

Price Payable

The Section 42 Notice must state the price that the lessee wishes to pay for the lease extension. The price should be calculated by a Chartered Surveyor experienced in using the valuation methods set out in the 1993 Act. Kirkby Diamond provide the valuation of the price, considered justifiable were the matter to be argued in the First Tier Tribunal (Valuation Tribunal). NB. The ultimate valuation date is the date upon which the Section 42 Notice is served.

Marriage Value

When a lease has less than 80 years to run, the Surveyor will include within the valuation a figure for Marriage Value representing an additional sum to be paid to the landlord to recognise the benefit to the flat owner of having a lease extension.

Intermediate Leasehold Interests

Where there are several leasehold interests Kirkby Diamond can provide the values (premiums payable) to each of the superior interests.

Sale of Flat or Maisonette

If a lessee wishes to sell the flat after the Notice has been served, then the benefit of the Notice can be assigned to the buyer. If this is not done the Notice will lapse at that point and the lessee will be liable for fees incurred to that stage.



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Liability for Fees

Once the Notice has been served the lessee is responsible for the reasonable costs incurred by the landlord in employing his own surveyor to prepare a valuation. The landlord can also claim his solicitor's fee for advising in connection with the service of the counter notice.

Normally the lessee appoints Kirkby Diamond to negotiate the final settlement to avoid the significant costs of going to First Tier Tribunal (Valuation Tribunal). This is charged separately to the initial valuation fee.

Payment of Deposit

The landlord can request payment of a deposit of 10% of the price quoted in the Notice and this must be paid within 14 days of request.

Landlord's Counter Notice

The landlord must respond by serving his counter notice within 2 months. The Landlord will normally make a counter proposal for a higher price for the lease extension. Negotiations usually follow between the party's surveyors. If it is not possible to agree terms then the First Tier Tribunal will determine the price to be paid. If any other issues arise concerning the terms to be offered to you apart from the price then these issues would also be referred to the Tribunal. The procedure will take some months to conclude if the landlord is difficult.



Photo by Vladimir Kudinov

First Tier Tribunal Proceedings

An application to the First Tier Tribunal has to be made within 6 months of the date of the Section 42 Notice – if not made, the claim will be discontinued.

Kirkby Diamond can represent a lessee in the First Tier Tribunal hearing as Expert Witness or Advocate, where the issues only relate to valuation.

Withdrawal by a Lessee

A lessee cannot be required to proceed to take the lease extension once the price has been fixed. If for any reason a lessee is unable to proceed with the lease extension any deposit paid will be returned but the landlord will be entitled to recover the valuation fees incurred and for the cost of the initial advice from his solicitor in responding to the Notice. However, the landlord cannot recover any other costs incurred in dealing with negotiations or in relation to the First Tier Tribunal proceedings.



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Lease Extension Deed

Once the price for the lease extension is resolved, the freeholder's solicitor will draft the Deed of Lease Extension and the lessee's solicitors will then deal with the conveyancing work required to enable the lease to be finally extended. At that point the lessee will be responsible additionally for the landlord's legal fees incurred in connection with this work as well as his or her own solicitor's fees.

Can I buy the Freehold of my Flat?

It may be a good idea to buy the freehold as the flat owner may gain control of the management and would be able to extend their existing lease.

In general a flat owner can buy the freehold of the building jointly with the other flat owners through a nominee purchaser.

Alternatively, a flat owner may extend his or her lease by using the procedure under the 1993 Act.

Your Landlord in general cannot sell the freehold to anyone else without first offering it to the flat owners. This is done by serving notice under Section 5 of the Landlord and Tenant Act 1987. If a majority of flat owners wish to buy they may do so through a nominee purchaser.

This note is only a brief summary of the complex requirements set out in the legislation and is not intended to explain all of the issues that might arise in practice where a claim for a lease extension is made.



Click here to read more on the lease extension process



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