
Leasehold Extension

Leasehold Reform Housing and Urban Development Act 1993

For General Information Only

The following is intended to raise awareness of some the issues relating to leasehold properties and the rights and varying costs of extending existing leases.

None of the following should be construed as being individual client advice and nor should it be relied upon as such.

No liability is accepted for the opinions expressed herein.

Lease Extensions

Background

Increasingly long leaseholders (of flats) are learning to their cost, that it is becoming frequently more difficult to sell their properties, once the lease has a period of near 80 years or less to run.

It is now commonplace for prospective purchasers to insist that a lease in the region of 80 years, be extended before they purchase. Any prudent lessee should therefore consider obtaining an extension to the lease preferably before the lease reaches 80 years unexpired. Once the lease has less than 80 years to run, it is essential that an extension is negotiated.

Valuation Matters

The valuation issues involved are fairly complex, but briefly the landlord (freeholder) is entitled to compensation for:

- Loss of the ground rent income, which is payable under the terms of lease
- Loss of the right to the reversionary interest at the expiration of the lease. That is to say the right to receive the flat back at the end of the original lease.
- Where the lease has less than 80 years to run, under current legislation, the landlord is entitled to a 50% share of any additional value (marriage value), which results from the difference in value of the flat held on the original terms, to the value it will have with the benefit of a ninety-year extension to the existing lease. The difference in these respective values will increase for each year that passes, once the lease has reduced to 80 years unexpired.

Collective Enfranchisement for Freeholders

Background

Most landlords are aware that freehold reversionary interests are a valuable investment, but few in our experience are aware of the impact of statutory legislation and the associated valuation procedures, that must be considered, if the leaseholders serve formal notice to acquire the freehold.

It is fair to say that many landlords have no interest in selling their freeholds voluntarily and do not welcome enquiries from leaseholders. However since 1993 the law has changed. Subject to certain qualifying criteria, long leaseholders can ultimately force a landlord to sell the freehold. Consequently whenever a query is received it is imperative that sound professional advice is obtained.

Qualification

The rules have been adjusted to help more leaseholders become joint owners of their freehold.

In brief at least 50% of the long leaseholders must be in agreement to acquire the freehold. In addition at least two-thirds of the flats must be sold on long leases. These are the two main considerations, although there are other factors that may need to be taken into account.

There is an additional head of claim entitled "other losses". Generally most claims will not provide for any compensation to be paid under this heading. However there may be instances where for example the landlord has retained part of property, for example the roof space, or an outbuilding, or maybe he has retained a flat within the development. Any such issues and others will need to be considered.

The Solution

Warmans Chartered Surveyors, have been actively involved in negotiating lease extensions since the *Leasehold Reform Housing and Urban Development Act 1993*, first gave leaseholders the statutory right to an extended lease.

We are able to;

- provide you with initial valuation advice to suit your particular circumstances
- negotiate on your behalf to try and reach an agreement,
- prepare and attend the Leasold Valuation Tribunal on your behalf.

Frequently Asked Questions

How long do I have to wait before I have the right to extend my lease?

Assuming you are a qualifying tenant in all other respects, you have the right to extend your lease once you have been the registered owner of the flat for two years. You do not have to have lived there, just owned it.

Am I a qualifying tenant for lease extension?

Generally, you will be a qualifying tenant, if your lease was more than 21 years when originally granted and you have been the registered owner of your flat for 2 years. 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 but specialist advice should be taken.

I want to extend my lease; are there any additional costs payable other than the price of the lease extension?

You will be responsible for your landlords' reasonable costs. This is limited to legal and valuation costs e.g. the landlord's valuation, legal costs of drawing up the new lease and checking your right to make the claim for a lease extension.

You do not have to pay the landlords costs of going to a Leasehold Valuation Tribunal

How long can I extend my lease for?

The right under the Leasehold Reform, Housing and Urban Development Act 1993 is to add 90 years to what is left on your existing lease. For example, if you have 75 years left on your lease you will be given a new lease of 165 years. Alternatively you may be able to extend your lease to any number of years by negotiating with your landlord.

Why do I have to extend my lease?

A lease is a right to use the property for a period of time. As a lease gets shorter the value of the lease decreases and it becomes more expensive to extend the lease. This is why it is often a good idea to increase the term of the lease. Sometimes it is difficult to sell a property with a short lease because mortgage lenders may be reluctant to lend money on such properties.

What happens if we cannot agree on how much the lease extension should cost?

Where there is disagreement about what the lease extension should cost, under the Leasehold Reform, Housing and Urban Development Act 1993 it is possible to make an application to the Leasehold Valuation Tribunal to determine the price. Usually, the professionals involved would try and negotiate a price and it is only where there is no agreement that an application to the Leasehold Valuation Tribunal may become necessary.

Will the ground rent increase after a lease extension?

If you obtain a lease extension under the Leasehold Reform, Housing and Urban Development Act 1993 you will only have to pay a "peppercorn rent" which will mean no ground rent at all. If you extend your lease by negotiation with your landlord you may still have to pay ground rent depending on what you agree.

Do I have to go through the Act to extend my lease?

No, you can negotiate informally with your landlord to extend your lease, either on the same terms as under the Act or on different terms. If you cannot agree the terms you will not be able to go to the Leasehold Valuation Tribunal unless you have applied to extend your lease under the Act.

I am a freeholder. Do I have to grant a lease extension to the leaseholder?

Yes, provided that the leaseholder qualifies under the Leasehold Reform, Housing and Urban Development Act 1993 and has served the correct notice under Section 42 of the Act they have a right to extend their lease.

I am undertaking a lease extension. Can the landlord insist on making variations to the lease?

If you are using the Leasehold Reform, Housing and Urban Development Act 1993 the landlord is permitted to make certain variations to the lease so long as they are in accordance with the provisions of Section 57 of the Act.

If you are extending a lease by private negotiation there are no rules because you are acting outside of the provisions of the Act. You can try to negotiate with the landlord and if they insist on varying the lease you can either accept their offer or proceed using the Act if applicable.

I am proceeding under the Leasehold Reform, Housing and Urban Development Act 1993 and have agreed the terms of the lease extension but have not completed. What can I do?

If a new lease has not been entered into within 2 months of the agreement or Leasehold Valuation Tribunal (LVT) determination, either party can make an application to the County Court for an order to deal with the conclusion of the lease extension. This application must be made within 2 months of the initial 2 months period expiring.

When should I extend my lease?

When a lease drops below 80 years the premium to extend the lease increases because marriage value becomes payable. Marriage value is the increase in the value of the flat arising from the grant of the new lease. It is therefore advantageous from the lease holder's perspective to extend the lease before the term reduces below 80 years.

How much will the premium increase when the remaining lease term reduces?

The cost of premium can rise dramatically and to illustrate the impact of the reducing lease term we set out below the likely premium payable for a hypothetical flat:

Property Details –

The flat is judged to have a capital value of £300,000 (which excludes tenant's improvements) following the extension of lease

There is an existing fixed ground rent of £100 pa.

Estimated Impact on Premium with Reducing Lease Term

Years Remaining	Estimated Premium Payable
81 Years	£5,972
79 Years	£16,117
69 Years	£26,478

TYPICAL CALCULATIONS

81 year Lease Remaining

90 Year Extension

Investment Rate

5%

Assumptions

£100 pa Fixed Ground Rent
£300,000 Capital Value

After extension but excluding Tenants Improvements

Valuation in accordance with s.56 and Schedule 13 of the Leasehold Reform Urban Development Act 1993

A Diminution in value of the landlord's freehold interest.

(1) Value before extension of the lease

Ground Rent	pa	100	
YP 81 yrs @ 5%		19.1208	1912.08
Reversion to freehold with vacant possession excluding value of tenants' improvements		215000	
PV £1 (81 years) @ 5.00%		<u>0.0192162</u>	<u>4131</u>
			6044
<u>Less</u>			

(2) Value after the extension of the lease

Peppercorn Ground Rent		0	
Reversion to freehold with vacant possession excluding value of tenants' improvements		300000	
PV £1 (171 yrs)@ 5.00%	0.012386 (90Yrs)	<u>0.00023801</u>	<u>71</u>

Diminution in Value

5972

B Marriage Value

Deemed not to be applicable

Premium

Diminution of freehold interest	5972
50% Marriage Value	<u>0</u>

Total Premium

5972

79 Years Remaining

90 Year Extension

Investment Rate 5%

Assumptions

£100 pa Fixed Ground Rent
 £300,000 Capital Value

After extension but excluding Tenants Improvements

Valuation in accordance with s.56 and Schedule 13 of the Leasehold Reform Urban Development Act 1993

A Diminution in value of the landlord's freehold interest.**(1) Value before extension of the lease**

Ground Rent	pa	100	
YP 79 yrs s@ 5%		19.5763	1957.63
Reversion to freehold with vacant possession excluding value of tenants' improvements		300000	
PV £1 (79 yrs) @ 5.00%		<u>0.0211858</u>	<u>6356</u>
			8313

Less**(2) Value after the extension of the lease**

Peppercorn Ground Rent		0	
Reversion to freehold with vacant possession excluding value of tenants' improvements		300000	
PV £1 (169 yrs) @ 5.00%	0.0123869	(90 yrs) <u>0.0002624</u>	<u>79</u>

Diminution in Value

8235**B Marriage Value**

Value of freehold interest after the extension of the lease	79	
Value of the leasehold interest after the extension of the lease	<u>300000</u>	300079

Less

Value of freehold interest before extension of the lease	8313	
Value of leasehold interest before extension of lease	<u>276000</u>	<u>284313</u>

Relativity estimated @ 92.00%

Marriage Value 15765

50% Marriage Value **7883**

Premium	Diminution of freehold interest	8235
	50% Marriage Value	<u>7883</u>

Total Premium 16117

9 Years Remaining	90 Year Extension	Investment Rate	5%
-------------------	-------------------	-----------------	----

Assumptions

£100	pa	Fixed Ground Rent	
£300,000		Capital Value	After extension but excluding Tenants Improvements

Valuation in accordance with s.56 and Schedule 13 of the Leasehold Reform Urban Development Act 1993

A Diminution in value of the landlord's freehold interest.

(1) Value before extension of the lease

Ground Rent	pa	100	
YP 69 yrs s@ 5%		19.3098	1930.98
Reversion to freehold with vacant possession excluding value of tenants' improvements		300000	
PV £1 (69 yrs) @ 5.00%		<u>0.0345095</u>	<u>10353</u>
			12284

Less

(2) Value after the extension of the lease

Peppercorn Ground Rent		0	
Reversion to freehold with vacant possession excluding value of tenants' improvements		300000	
PV £1 (159 yrs) @ 5.00%	0.0123869 (90 yrs)	<u>0.0004275</u>	<u>128</u>
Diminution in Value			12156

B Marriage Value

Value of freehold interest after the extension of the lease		128	
Value of the leasehold interest after the extension of the lease		<u>300000</u>	300128
<u>Less</u>			
Value of freehold interest before extension of the lease		12284	
Value of leasehold interest before extension of lease		<u>259200</u>	<u>271484</u>
<i>Relativity estimated</i>	@	86.40%	
		Marriage Value	28644
	50%	Marriage Value	14322

Premium	Diminution of freehold interest	12156
	50% Marriage Value	<u>14322</u>

Total Premium	26478
----------------------	--------------

END