



Collective Enfranchisement

Getting Started

Introduction

This leaflet is not meant to describe or give a full interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties then seek specific advice.

The right provided by the Leasehold Reform Housing and Urban Development Act 1993 is for the enforced sale of the freehold of the building, to the nominee purchaser of a group of leaseholders of the flats who represent at least half of the flats in the building. Where there is any intervening interest, like a headlease, this must generally be acquired as part of the purchase by the leaseholders.

The formal procedure for collective enfranchisement is started by the service of the Initial Notice on the landlord; it then follows a prescribed route. Although this is the beginning of the statutory procedure, the service of the notice should follow a period of preparation to ensure that the participating leaseholders are fully equipped and advised to complete their action.

There is a substantial amount of work to be completed if the application is to be successful.

In simple terms the tasks that need to be undertaken will include:

- *Checking Eligibility*
- *Organising for Enfranchisement*
- *Establishing the Finance and Cost Fund*
- *Selecting and Instructing Professional Advisers*
- *Assessing the Purchase Price*
- *Gathering the Information*
- *Arranging the Nominee Purchaser*
- *Serving the Participation Notice*
- *Serving the Initial Notice*
- *Preparing for the subsequent Procedures*

They need not, necessarily, be in this order and in most cases several issues will proceed together. It is important, however, that all the steps are taken and no critical area neglected. Once the Initial Notice has been served, the procedure is running and the nominee purchaser will be subject to demands for information and to deadlines; a default at any stage could endanger the action. The leaseholders are liable for the freeholder's and any other relevant landlord's professional fees from the moment they serve Initial Notice whether they complete or not. The procedures are relatively simple and the qualifications and conditions are there as safeguards to both parties. There is no reason why any group of leaseholders should not be able to successfully complete a collective enfranchisement action.



Checking Eligibility - doing the sums

The first action must be to check that the building complies and that there are enough qualifying leaseholders to be able to proceed. Full details of the criteria are set out in the [Qualification](#) appendix below.

You should first check that the building qualifies:

- are there at least two flats in it?
- are at least two-thirds of the flats let to qualifying leaseholders?
- does it pass the 25% non-residential rule?

You will then need to establish that there are enough qualifying leaseholders for a successful action. The minimum number of participating leaseholders must equal half the total number of flats in the building; for example, if there are 10 flats in the building, at least five of the flats of qualifying leaseholders must participate in the action.

Where there are only two flats in the building, both flats of qualifying leaseholders must participate.

Organising for Enfranchisement

Having worked through the qualification criteria, you will know the minimum numbers of leaseholders required to take part in the service of the Initial Notice. It may be that more than the minimum will wish to take part, or you may have to actively canvass support from your neighbours. Either way, the first task must be the organisation of a working group and, perhaps, the construction of some form of association or agreement to facilitate proceedings from this stage.

Where sufficient numbers are prepared to proceed, on the basis of whatever outline costs can be estimated, it is strongly recommended that all participating leaseholders enter into a formal participation agreement amongst themselves to govern joint actions prior to and during the collective enfranchisement procedures - rights of voting, the negotiation and agreement of terms and, most important, the individual leaseholder's financial contributions. This is particularly important for large blocks where difficulties or delays in reaching decisions could endanger the application. It can also be useful to record in an agreement that, on completion of the purchase of the freehold, the new freeholder will grant new leases to all those leaseholders participating in the purchase; it is, after all, one of the main benefits of the enfranchisement.

Further details of such agreements are set out in our leaflet '[Participation Agreements](#)'.

In small blocks, or where amounts involved are small, it may be possible to dispense with the agreement by everyone paying their share up-front. With a structure in place, leaseholders will be able to agree the means and finance to move to the next stage.



The nominee purchaser

The Commonhold and Leasehold Reform Act 2002 provides that the application and eventual acquisition of the freehold must be through a Right to Enfranchise (RTE) Company. However, this provision has not yet been commenced and applications, for the time being, will continue to be through a nominee purchaser.

The nominee purchaser is the person named in the Initial Notice, and who will acquire the freehold and become the new landlord. The nominee purchaser must be decided upon at an early stage, in that he or she conducts the later stages of the process and, on completion, will be responsible for the management of the building.

The nominee purchaser can be a person, one of the leaseholders, or a corporate person, a trust or, more probably, a company formed by the leaseholders for the purpose. There are no controls or qualifications in the legislation governing selection of nominee purchasers and the leaseholders are free to choose whoever or whatever agency they wish, by whatever means of selection.

There is also the ability to invite another company to step in; some lessees have selected a housing association with management experience, but it must be borne in mind throughout the selection process that the nominee purchaser is the person or body the leaseholders are putting forward to be their new landlord and responsible for the management of the building.

The most common format is a company wholly owned by the leaseholders and, if this is the vehicle chosen by the participating leaseholders, the company **must be established** prior to being put forward in the Initial Notice. A solicitor, managing agent or accountant will be able to advise how to establish a company and can produce the Memorandum & Articles to reflect the purpose of the company and to govern voting rights and control of shares.

There is a guide to the process in 'Running a Flat Management Company' (Fourth Edition) by Nigel G Cox, published by Jordans (ISBN 085308 860 8).

Establishing the Finance and a Cost Fund

Leaseholders will need to know, before they start, where the finance for acquisition is coming from, within the parameters given by the initial assessment of the purchase price. More urgently, they must commit funds to the professional fees of the valuer and solicitor. In the event of leaseholders having to withdraw, they will still have to pay their own and the landlord's costs and funds should be established for this purpose, aside from provision for the purchase price.

Leaseholders may find it useful to establish a cost fund or 'fighting fund' to cover the initial steps - the valuation, the information gathering and arranging for the nominee purchaser, including setting up a company (all the early steps preceding service of the Initial Notice) and then, prior to service, to formalise future funding arrangements, including loans and mortgages.



Instructing Professional Advisers

At some point in the action leaseholders are advised to appoint a valuer and a solicitor.

In addition to their general advisory capacity the roles of the two professional advisers in an action of collective enfranchisement include:

The valuer:

- providing 'best and worst' valuation advice to fully appraise the leaseholders of the possible outcome of the negotiations;
- advising on the amount of the offer to be made in the Initial Notice;
- responding to the landlord's Counter-Notice;
- negotiation and settlement of the price;
- advice on structural and repair condition and implications for future maintenance costs/service charges;
- advice on future management.

The solicitor:

- preparation of information for the action;
- setting up the company;
- service of the Initial Notice;
- response to the landlord's requests for substantiation of claim;
- the conveyance of the title;
- amendment of terms of leases after enfranchisement.

Leaseholders should take all possible steps to ensure their chosen adviser has full knowledge and experience of the legislation, practices and procedures.

Whilst LEASE does not recommend any particular professional advisors, lists of [solicitors](#) and [surveyors](#) claiming expertise in the legislation are available from us.

Assessing the Purchase Price

An initial valuation of the property by a qualified valuer or surveyor is strongly recommended in order to provide enfranchising leaseholders with an idea of the final purchase figure prior to commencing the action.

Valuation is far from an exact science and it will be virtually impossible for the valuer to provide an accurate estimation of the eventual settlement figure. The valuer should however be able to provide a 'best and worst' figure, valuing from both leaseholders' and the landlord's perspective and, from local experience, anticipating areas of claim and counter-claim. There is no such thing as a finite, fixed price for a freehold and leaseholders should make themselves aware, from the beginning, of the likely range within which the price will be settled to avoid surprise at a later stage.

In considering the likely purchase price, the leaseholders' liability for the landlord's costs should also be borne in mind. The eventual cost to each leaseholder will be the share not only of the cost of the freehold but also of both the landlord's and the leaseholders' legal and valuation costs.

Further details are available in our leaflet '[Valuation for Collective Enfranchisement](#)'.



Gathering Information

Prior to the serving of the Initial Notice leaseholders will need to amass all necessary information

- to ensure that the Initial Notice is correct and valid;
- to respond to challenges from the landlord following service of the Initial Notice.

The Initial Notice must be correctly served on the freeholder(s) and must include correct information on the interests of the participating leaseholders and any intervening interests.

In some cases the freehold interest may be in one or more different ownerships, a 'severed' or 'flying' freehold. This does not, in itself, form any obstacle to enfranchisement, but leaseholders will need to have details of all freeholders of the property. You will need to obtain the following information:

- the identity of the freeholder(s) - a person or company name and address;
- details of any intervening or head leases and the identity and address of the relevant lessees;
- the full names and addresses of all the leaseholders of the building and details of their leases;
- details of any flats in the control of the landlord and let on periodic tenancies.

Some of this information you will already know; the remainder can be obtained by a number of means: from rights to information under Landlord and Tenant legislation, from the records of the Land Registry or by the service of Information Notices.

Landlord and Tenant legislation: you are entitled to obtain details of the name and address of your landlord under rights provided by the Landlord and Tenant Act 1985. The information, if requested must be provided within 21 days and failure to do so is an offence. Your ground rent demands should also carry the same details.

A problem here is that the landlord may not necessarily be the sole freeholder, but one of the freeholders or a head-lessee.

Land Registry: as long as the property is registered (most are), you are entitled to inspect the register and to obtain copies of the entry relating to the freehold. The entry will provide the name and address of the registered owner(s) and details of any other interests in the freehold, including other freeholders, head-lessees and mortgagees. There is a small fee for copies of the register.

There are a number of District Land Registries serving the country and you should contact the nearest office to find the Registry serving the area in which your property is located (www.landregisteronline.gov.uk).

Information Notices: Section 11 of the 1993 Act provides a right for leaseholders to serve notices on the freeholder, the landlord (if different) or any other persons with an interest in the property, requiring details of that interest.

You can therefore require from the landlord details of any other freeholders, any intermediate leases, including the name and address of the lessee and the terms of the lease. The Information Notices can also require sight of relevant documents, for example, giving details of service charges or surveys.



The recipients of the Notices are required to respond within 28 days. The service of the Information Notice does not formally start the enfranchisement process or commit the leaseholders in any way and there is no liability for costs.

Suitable forms for S11 Notices are published by Oyez Forms and are available from the Solicitors' Law Stationery Society Ltd, Oyez House, P O Box 55, 7 Spa Road, London SE16 3QQ or from the Oyez shop at 144 Fetter Lane, London EC4.

The right to participate (proposed)

The Commonhold and Leasehold Reform Act 2002 provides a statutory right for all qualifying leaseholders in the building to participate in the purchase and requires service of a formal invitation to participate on all non-participating leaseholders. However, this provision has not yet been commenced.

Participating leaseholders may find it useful to ensure that all leaseholders are aware of their proposals, although there is at present no legal obligation to do so.

The Initial Notice

The Initial Notice triggers the statutory procedures for acquiring the freehold and the participating leaseholders are jointly and individually liable for the landlord's costs as from the date he receives the Notice. It is therefore important that the Notice is complete and contains no inaccuracies or misdescriptions, because, although these may be corrected by application to the county court, it is an area of expense to be avoided. An incomplete Notice can be rejected as invalid.

A protection for the enfranchising leaseholders is provided by the right to register the Initial Notice with the Land Registry, either as a Class C(iv) Land charge in unregistered land or as an 'estate contract' in registered land by a Unilateral Notice under the Land Registration Act 2002. This provides protection for the company against the landlord's sale of the freehold since any purchaser of the freehold, subsequent to the registration of the Initial Notice, will take the freehold subject to the application for enfranchisement.

The procedure will therefore be able to continue as though the new owner had originally received the Initial Notice.

The service of the Initial Notice, where served on or after 28 February 2005, also fixes the 'valuation date' as the same date that the Initial Notice is served. The valuation date is the date on which the variables affecting the price of the freehold are set, for example, the remaining number of years left on the leases, the present values of the flats and their assumed future value. Therefore, however long the negotiation or determination of the price takes, it will be based on the factors applying on the date of the service of the Initial Notice.

The information required in the Notice is set out in [The Initial Notice](#) section and a suitable form is obtainable from Oyez.

Leaseholders are recommended to instruct a solicitor for the preparation and service of the Initial notice.



Absent landlords

If, after all reasonable efforts, the landlord cannot be found, this should not prove an obstacle to enfranchisement; the issue can be resolved in other ways:

- if the landlord was a company which has been struck off, or ceased to trade for some other reason, its property may have passed to the Crown through the Treasury Solicitor. Enquiries should be made of the Treasury Solicitor who will usually be prepared to sell the freehold to the leaseholders at open market value. This must be done by negotiation and there is no need (or legal ability) to serve the Initial Notice.
- if the landlord is a company in receivership, then the Initial Notice may be served on the Receiver; similarly, if the owner is an individual who is bankrupt, the Notice may be served on the Trustee in Bankruptcy. Both the Receiver and the Trustee are acting as landlord for the time being and are equally bound by the 1993 Act to respond, as landlord, in the service of a Counter-Notice and sale of the freehold.
- if the landlord just cannot be found then the Initial Notice cannot be served. In this case, the leaseholders may make application to the county court for a Vesting Order. If the court is satisfied as to the leaseholders' eligibility for collective enfranchisement, then they will, in effect, sell the freehold to the leaseholders in the landlord's absence. The case will also have to be referred to the Leasehold Valuation Tribunal for determination of the price.

Preparing for subsequent Procedures

After the service of the Initial Notice the landlord is entitled to require evidence of the participating leaseholders' title to their flats.

The landlord has a period of 21 days from the giving of the Initial Notice in which to request the information. Where this information is required it must be provided within 21 days and the participating leaseholders should therefore ensure that their solicitor is fully equipped with all necessary information and documents to enable response within the time limits. In the event that title is not deduced, the Initial Notice would be deemed withdrawn, with costs payable to the landlord. Where an Initial Notice is withdrawn, or deemed to be withdrawn, a new notice cannot be served again for another 12 months, beginning on the date of the withdrawal.

The landlord has the right to inspect the property, including the participating leaseholders' flats, subject to 10 days notice given to the occupier.



The landlord's Counter-Notice

The landlord must serve his Counter-Notice by the date specified in the Initial Notice; this must:

- **agree your right to the freehold and accept your terms (or propose alternative terms)**
- or
- **not agree your right and give reasons why not (which will then need to be determined by the county court)**
- or
- **neither admit nor deny entitlement, but state that an application is to be made to court for an order that the right to enfranchise cannot be exercised on the grounds the landlord intends to redevelop the whole or a substantial part of the premises.**

The landlord can refuse to sell the freehold if he can prove to the court that he intends to demolish and redevelop the whole or a substantial part of the building. This can only apply where at least two-thirds of all the leases in the building are due to terminate within a period of five years from the date of service of the Initial Notice.

Where, after service of the freeholder's Counter-Notice, the nominee purchaser and the freeholder cannot agree on the price or some other aspects of the conveyance, then after the initial two months, following service of the Counter-Notice, either party can apply to the Leasehold Valuation Tribunal for an independent determination on the issue. Clearly, the leaseholders' professional advisers must have all relevant documents at hand to deal with such an application.

In cases where the landlord fails to serve a Counter-Notice by the date specified in the Initial Notice, the participating leaseholders may apply to the county court for a Vesting Order. This application is not for a court order requiring the landlord to serve the Counter-Notice, but effectively takes the matter out of his hands in a request to the court to transfer the freehold to the participating leaseholders in the landlord's default. The court, if satisfied of the right to enfranchise, will grant the Order on the terms proposed in the Initial Notice. The application must be made to the court within six months of the date on which the Counter-Notice should have been received.

Further advice and guidance is available from the Leasehold Advisory Service at any time during the preparation stage or following commencement of the action.



Procedures and Statutory Timelimits

- Leaseholders serve S11 Information Notice (discretionary).
- Landlord must respond within 28 days
- Leaseholders must make arrangements for a nominee purchaser and, if forming a company, register at Companies House.
- Participating leaseholders serve S13 Initial Notice.
- The 'valuation date' will be fixed as the date of service of the S13 Initial Notice (for notices served on or after 28 February 2005). Landlord may request additional information, but he must do so within 21 days of receipt of the Initial Notice.
- The nominee purchaser must respond to his request within 21 days.
- Landlord must serve a Counter-Notice by the date specified in the Notice. This date must be at least two months from the date of service of the Initial Notice.
- Where the landlord fails to serve the Counter-Notice, the nominee purchaser must apply to court within six months or a Vesting Order, otherwise the Initial Notice is deemed withdrawn.
- If the Counter-Notice disputes qualification, the nominee purchaser must apply to the court, within two months of Counter-Notice, for declaration that Initial Notice is valid.
- After service of the Counter-Notice, if terms cannot be agreed, either party may apply to the Leasehold Valuation Tribunal. This must be done at least two months from, but within six months of, the date of service of the Counter-Notice.
- The Leasehold Valuation Tribunal (LVT) determination becomes final 21 days after it is sent out by the LVT. Appeals must be made within this period to the Lands Tribunal with leave of the LVT.
- Landlord must provide a draft contract within 21 days of the LVT's determination.
- The parties are expected to enter into the contract within a period of two months after the LVT's decision becomes final (the 'appropriate period').
- If the appropriate period elapses without exchanging contracts, then the participating leaseholders must apply to court within a further two months for a Vesting Order.



Qualification

The right to purchase the freehold of a building may only be exercised where the participating leaseholders represent at least half the total number of flats in the building; for example, if there are 10 flats in the building, at least half of the flats in the building must participate in the purchase. Where there are only two flats in the building both leaseholders must participate.

Qualifying as a leaseholder

To be a qualifying leaseholder requires a long lease, which is:

- o a lease of a term of years absolute in excess of 21 years; (the present unexpired term is not relevant, qualification is governed by the original term of the lease when first granted);
- o a shorter lease which contains a clause providing a right of perpetual renewal;
- o a lease terminable on death or marriage or an unknown date (including the so-called 'Prince of Wales' clauses);
- o the continuation of a long lease under the Local Government Housing Act 1989 following the expiry of the original term;
- o a shared ownership lease where the leaseholder's share is 100%.

But, even if the leaseholder satisfies the above criteria, he or she will not be a qualifying leaseholder if any of the following cases apply:

- o the landlord is a charitable housing trust and the flat is provided as part of the charity's functions;
- o the leaseholder owns more than two flats in the building;
- o the leaseholder has a business or commercial lease.

The building

- o there must be a minimum of two flats in the building;
- o at least two-thirds of the flats must be leasehold;
- o no more than 25% of the internal floor area to be in non-residential use.

There is no right of collective enfranchisement (but there is a right to renew the lease) where:

- o the building is a conversion into four or fewer flats and not a purpose-built block and the same person has owned the freehold since before the conversion of the building into flats and he or an adult member of his family has lived there for the past 12 months.
- o the freehold includes any track of an operational railway, including a bridge or tunnel or a retaining wall to a railway track.

Some properties are completely excluded from the rights of lease extension and collective enfranchisement:

- o buildings within a cathedral precinct;
- o National Trust properties;



- Crown properties*.
*Although the Crown is not bound by the legislation, the Minister has made a statement to the House of Commons that the Crown will be prepared to comply with the principles of it.

The Initial Notice

The requirements of the Initial Notice are set out in S13(3) of the Leasehold Reform Act 1993.

It must include the following:

- details of the property to be acquired, including a plan. This must include details of any additional land the leaseholders wish and have a right to acquire, eg garages, and any proposed rights of way over land not acquired;
- a statement showing that the premises qualify for the right of collective enfranchisement on the relevant date;
- details of any leasehold interests to be acquired, eg an intervening head lease, and any flats subject to mandatory leaseback to the freeholder;
- the price proposed, including a price for any intermediate interests;
- the full names and addresses of all the qualifying leaseholders in the property and sufficient details of their leases to show that they are long leaseholders. This will require details of the date the lease was entered into, the date of commencement and the term;
- the name and address of the nominee purchaser;
- the date by which the freeholder is to provide the Counter-Notice (at least two months after **service** of the Initial Notice **is given**).

Where the freehold is severed (in different ownerships) the participating leaseholders must decide which of the freeholders is to be considered as the reversioner for the purpose of receiving the Notice. Some care should be taken in this selection since the freeholders have the right to go to court for an order to change the reversioner to another of their number, with possible cost implications to the leaseholders. Generally the major freeholder - the freeholder with the greater share of the freehold - should be chosen as reversioner. Copies of the Notice must be served on all other freeholders.

The Notice must be signed by all the participating leaseholders (caselaw has determined that the actual leaseholder must sign - there is no provision for substitution by persons acting for the leaseholder under appointment of power of attorney).

The Initial Notice must be served on the freeholder and any other person known or believed to be a relevant landlord (a person with a leasehold interest proposed to be acquired by the action).