



EXTENDING THE LEASE OF YOUR FLAT

If your flat is held under a long lease with fewer than 90 years left to run you should consider applying for an extension. Failure to do so may make the property more difficult to sell or mortgage. This guide explains the process of applying for an extension to your lease.

1. Why do I need to extend my lease?

When a landlord grants a lease, it is for a fixed number of years. As the term shortens, the lease gradually loses value and the cost of any extension inevitably becomes more expensive.

A short lease can also be more difficult to sell as many buyers are hesitant to purchase a lease with fewer than 85/90 years left to run.

Also, mortgage companies are becoming more and more nervous about their lending habits and will often not lend on properties with fewer than 65 years remaining on the lease.

This means that where there is a property with a short lease, the number of buyers available to purchase the property will be reduced.

If your lease has fewer than 90 years left to run, you should consider obtaining a lease extension. Be aware that the cost of extending your lease will be considerably higher if the number of years remaining on the lease drops below 80 (see below).

2. What can I do about this?

You can seek to extend your lease on a voluntary basis with your landlord. This will only be a consideration if your landlord is willing and you will need to take a view on this from your own experience with your landlord and its attitude towards lease extensions.

If your landlord is willing, then it may offer you a lower premium for the lease extension in return for a higher or increasing ground rent for the remainder of the extended term. You will need to think carefully as to whether this is a good deal and expert surveyors advice should be taken, as the increasing ground rent may have an impact on any future plans to purchase the freehold, extend the lease again, or sell or mortgage the property.

However, if your landlord is unwilling then there is a way to force him to grant you a lease extension. This is what we call a statutory lease extension.

3. How do I qualify for a statutory lease extension?

First of all you must have owned your flat on a long lease for at least 2 years. You do not however need to reside at the property. If the property was part of a shared ownership



scheme, you must now own 100%.

Assuming that you satisfy this criteria, it is likely that you will qualify for a statutory lease extension.

4. What are the terms of the lease extension?

A statutory lease extension will be granted on the following terms:

- A new lease with a term of 90 years in addition to the unexpired term of years remaining on your existing lease (i.e. if you have 81 years left on your lease then the new lease will be for 171 years)
- A peppercorn (i.e. nil) ground rent
- All other terms of the new lease are to be as per the existing lease save only for necessary modernisation, or to remedy defects in the existing lease.

5. Why is it more expensive to extend my lease once the term has dropped below 80 years?

If there are fewer than 80 years left on any long lease then an additional sum known as “marriage value” will become payable to the landlord, making the lease extension more expensive.

Marriage value represents the enhanced value to a landlord of potentially being able to join the leasehold and freehold interests together on the expiry of the lease so as to make the property more valuable. Where marriage value applies, the landlord will be entitled to 50% of the figure attributable to this enhanced value.

This is a valuation point. If you think that this applies to your lease, you will need to instruct an expert surveyor. We are able to recommend expert surveyors who will be able to advise you.

6. What else do I need to think about?

In addition to your own legal and valuation costs, you will also be liable for your landlord’s reasonably incurred legal and valuation costs (excluding the landlord’s costs

of negotiation of the premium or appearing before the First-tier Tribunal (Property Chamber) (FTT)).

The landlord’s costs must be reasonable and these can be assessed by an application to the FTT if necessary. If you decide to withdraw from the claim then you will be liable for the landlord’s costs incurred up to the date that you withdrew. Note that if you do withdraw from the claim then you will be unable to serve another notice for a period of 12 months from the date of withdrawal.

7. How do I start the ball rolling?

The first thing you need to do is appoint a specialist leasehold enfranchisement solicitor who will be able to help you with the legal aspects, which can be complicated. Next, you will need to obtain a valuation of how much it is likely to cost you to extend your lease. Your surveyor will be able to provide you with a best case and a worst case scenario price for the lease extension to enable you to budget accordingly.

Once you have the valuation report, we can serve what’s called an Initial Notice in the prescribed form on your landlord. The landlord is then entitled to ask for a statutory deposit which represents 10% of the proposed price stated in your Initial Notice. This is payable within 14 days of request.

8. What happens after I have served the Initial Notice?

The landlord will then have a period of two months in which to obtain his own valuation and respond with a Counter Notice which will invariably require a higher price for the lease extension.

If the landlord fails to respond then he is deemed to accept your request for a lease extension on the terms as set out in the Initial Notice. Your solicitor will then need to apply to the county court to compel the landlord to grant you a new lease.

Once the landlord has responded with a Counter Notice, the parties will then have a period of two months to agree the price payable for the lease extension. If the



matter is not concluded then either party may apply to the FTT for a determination of the price to be paid.

The costs of taking the matter to the FTT are not recoverable from the losing party and it is likely that the matter will only be referred to the FTT in the event that the parties are far apart in terms of the price payable.

There is a cut off date of six months from service of the landlord's Counter Notice for the parties to agree the price and the terms of the new lease. If these have not been agreed, then your solicitor must make an application to the FTT, otherwise the claim will be deemed to be withdrawn.

It is usually the surveyor who deals with the negotiations as to the price payable, as the arguments tend to relate to the valuation mechanisms under the legislation.

There may also be arguments about the terms of the new lease, which will be dealt with by your solicitor. Once matters are agreed, either by negotiations or through the FTT, a new lease is granted in place of the existing lease.

There is then a further cut-off date of four months from when terms are agreed, for the transaction to complete, failing which your solicitor must make an application to the County Court. The claim will be deemed withdrawn if the application is not made before the cut-off date.

9. What can I do if I am selling my flat?

If you have a short lease then your buyer may be willing to deal with the lease extension claim post-completion of the sale, on the basis that you start the process and they effectively finish it off. This avoids having to extend the lease prior to a sale and means that the buyer does not have to wait two years before extending on the statutory basis.

Care must be taken to assign the benefit of the lease extension claim at the same time as the leasehold interest is assigned. If the two become separated then this will have the effect of deeming the claim withdrawn.

If you are considering this option, it is vital that you

speaking to your solicitor, as additional documentation will be required in order to protect the claim.

Find out more

For further information or to discuss your requirements, please contact Jennifer Sanders using the contact details below.

We hope you have found this guide useful but please do note that it is general in nature and for information purposes only. The guide must not be used as a substitute for legal advice. Please contact us and we can provide further advice based upon your specific circumstances.



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