



Lease Extension: The Right, Selling, Timing and Key Issues

The Right

Tenants of residential flats and houses have the statutory ability, subject to meeting certain criteria, to force their landlord to grant them an extended lease.

To qualify a tenant must have owned the lease of their flat (or house) for at least two years and the lease must have been granted for a term in excess of 21 years originally.

Tenants are entitled to have the term of their lease increased by 90 years and to have the ground rent reduced to nil effectively.

In the case of a house the original lease term would be extended by 50 years and the new rent would be at a market level.

Selling during the process

It is possible to assign the benefit of the process to a buyer for them to complete after their purchase of the existing leasehold interest.

The parties would need to agree who is to bear the costs associated with the procedure and the premium payable for the new lease.

In a buoyant market, buyers are often happy to take on the process and to meet all the costs and premiums without any contribution from the seller.

In a flat or falling market, buyers may be more cautious, perhaps requiring the procedure to be completed before they will acquire the flat or that a pot of money to be set aside from the sale proceeds to fund either the entire cost and premium or a contribution towards it.

Timing for the Application

Whether you are thinking of selling or maintaining the value of your investment, you may be trying to work out whether it is the right time to start the statutory procedure to extend your lease. A few points to consider are:

1. Value - obtaining an extended lease should enhance the value of your interest. A specialist valuer would undertake this calculation for you.
2. Interest - you are likely to increase the pool of possible buyers.
3. Other options - if there are management issues which might reduce interest, you may want to consider pursuing one of the collective rights (to acquire the freehold to the building or the right to manage it). A collective acquisition of the freehold could be completed within a similar time timescale as extending your lease in most cases. The right to manage is likely to be quicker.



4. Obtaining finance - lenders may tighten their criteria in respect of the remaining lease term or may attach more onerous conditions such as requiring a higher deposit.
5. Valuation date - starting the statutory procedure fixes the valuation date by reference to which the premium payable for the new lease is calculated. You will need to balance the upward effect of your term reducing against the possible downward effect of a fall in the market value of your property on the premium payable. A specialist valuer will advise how certain market value fluctuations might affect the premium payable.
6. Marriage Value - once the remaining term of the lease falls below 80 years then an additional element of premium called "Marriage Value" becomes payable. This element of the premium will increase as the remaining term reduces. If you are close to the 80 year mark then it is important to consider starting the process now.
7. Deferment Rate - this is used in the calculation of the premium. It has recently decreased causing an increase in the premium payable. It is currently fixed at the rate of 4.75% for houses and 5% for flats. It is possible that future case law could change

this rate again, possibly reducing the rate further.

Key Issues

- Have you (or your seller if you are to take over the procedure) owned the property for at least two years?
- Is the remaining term of the lease already below 80 years or will it be by the time you have owned the property for 2 years?
- Was the original lease granted for a term exceeding 21 years?
- Have you considered whether the collective rights to acquire the freehold or the management to the building will achieve your aim?

For further information please contact:

Mark Vinall

DT 020 7593 5163
mvinall@wslaw.co.uk