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Introduction

20 or 30 years ago it was common for leases of flats to be granted for a term of 99 or 125 years. These leases are effectively “wasting assets”, which means that their value decreases as each year of the term passes. The issue of whether to extend the term of the lease therefore becomes increasingly important.

This guide seeks to explain both the legal and practical implications of this issue and to give guidance on the ways to extend a flat lease. This is done by seeking to answer a number of questions as follows:-

1. Why should I extend my lease?

There is actually no legal reason why a flat cannot be used and enjoyed up to the time when the lease ends. However, it becomes increasingly difficult to either sell or even secure mortgage finance upon the lease as the term expires.

That is because, although most loans can be secured on a lease with a term of about 50 years, market forces make it increasingly difficult to sell a lease once the remaining term is less than 80 years. This is mostly because the cost of extending a lease increases so dramatically from this point on (as referred to below).



2. How do I extend my lease?

There are two options:-

Informally by agreement

Flat owners can at any time agree informally with their Landlord to extend the term of their lease. The terms upon which the lease is extended can be whatever the parties agree and, once completed, the new lease will replace the old one. The problem is that, until the new lease is actually completed, there is nothing to stop either party from changing their mind and deciding not to proceed.

Right to Extend

By exercising the right to extend the lease under Part 1 - Chapter II of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act").

The Act gives to residential leaseholders the right to obtain an extended lease at a peppercorn rent. This is subject to a number of conditions which can be summarised as follows:

- i. The flat must form part of a self contained building (or part of a building) and any non-residential parts of the building must not be more than 25% of the whole.
- ii. You must be a "qualifying tenant" who owns a lease which was originally granted for a term of over 21 years and has done so for more than two years.

The right to an extended lease is exercised by serving a formal notice on the Landlord which must include details of the terms to be included in the new lease and the proposed price. The notice may be challenged if an unrealistic price is included so it is necessary to obtain a formal valuation from a suitable surveyor.

3. When should I apply to extend my lease term?

Leaseholders can apply to extend the terms of their leases whenever they want to. However, in making the decision when to do so, there are two main factors which will influence them:-

- 3.1 If they are having trouble in selling or mortgaging the property due to the short remaining term of the lease.
- 3.2 If the remaining term of the lease is approaching 80 years. That is because the valuation mechanism in the Act means the price which the leaseholder must pay for an extended lease increases significantly once this point has been reached.

4. What will be the terms of the new lease?

If it is by informal agreement

The parties are free to agree these terms. The lease can be for whatever term the parties agree and can incorporate such amendments in the covenants of the existing lease as they consider necessary or even brand new covenants altogether.

If it is under the Act

- The term of the new lease will be the remaining term of the current lease plus ninety years.
- The new lease will be at a peppercorn (nil) rent but will contain suitable provisions for payment of service charges, insurance etc.
- The lease must contain all covenants necessary for the proper management of the building to the end of the extended lease.

NOTE: The parties are free to agree what these terms should be and can propose alterations to the terms of the existing lease e.g. if they are necessary to remedy defects. This gives the opportunity to deal with defective drafting in the lease (or any necessary updating) and is important because it gives the leaseholder the ability to ensure this is done simply by exercising their right to an extended lease.

5. How much will I have to pay?

If it is by an informal agreement

The price is agreed informally between the parties.

If it is under the Act

There is a strict framework for calculation of the price to be paid for the lease extension. There will nevertheless be price is therefore open to negotiation. If the price cannot be agreed, the Leasehold Valuation Tribunal (“LVT”) will determine the price.

Of the various factors taken into account in determining the price, one of the most important (aside from the value of the flat) is the remaining term of the current lease. In particular the landlord is entitled to a higher price if the remaining term is less than eighty years. It is therefore important to serve notice before that point if a lower price is to be paid.

In both cases

There will be Land Registry fees and Stamp Duty Land Tax may be payable, depending on the price of the extended lease. It may also be necessary to obtain specialist tax advice in some circumstances e.g. if a tenant owned company is granted extended leases without payment of a premium.

6. What costs will I be responsible for?

If it is by informal agreement

This is for the parties to agree between them. However, the leaseholder would usually expect to pay the Landlord’s legal costs. If the parties can agree on the price between them without the need for a formal valuation, there should be no valuation costs to pay.

7. How long will it take?

If it is by informal arrangement

From the point at which the terms of the extended lease have been agreed, it is simply a matter of how long the solicitors for the landlord and leaseholder take to complete. Typically this might be between 4 and 6 weeks, although this could be longer if a mortgage is secured on the lease of the flat. That is because the lender must agree to substitute the extended lease as security for its loan.

If it is under the Act

This is very much dependent on the approach taken by the landlord and its advisors. Sometimes the price and terms will be agreed soon after service of notice on the landlord. In other cases negotiations can become protracted and, in the absence of agreement, an application to the LVT is necessary.

The notice of claim must give the landlord at least two months to respond and, once it has done so, the parties’ valuers will usually negotiate and agree terms. If terms are not agreed within six months of the date of the landlord’s counter-notice, then an application to the LVT must be made.

Once terms have been agreed (or determined) most extended leases proceed to completion without difficulty. If the new lease has not been completed

within four months of agreement (or determination of terms a court application is necessary to preserve the entitlement.

What if I want to sell?

Often the need to extend a lease only becomes apparent when the leaseholder wishes to sell their flat and is advised that, in order to do so, the term of the lease needs extending.

In these circumstances the leaseholder is advised to serve on their landlord the notice exercising their right to an extended lease under the Act. That is because the benefit of this right can be assigned to the buyer of the flat without needing to wait for the lease to actually be extended. Clearly the price the buyer pays for the flat will have to reflect the price which the buyer will ultimately pay for the extended lease and the costs associated with that. However, this does enable a sale to progress without delay and, as mentioned, is also a useful means of rectifying a defective or out of date lease.

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