

OUR GUIDE TO COLLECTIVE ENFRANCHISEMENT UNDER THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

What is collective enfranchisement?

The right to collective enfranchisement was introduced by the Leasehold Reform, Housing and Urban Development Act 1993 (**LRHUDA 1993**). This gives the leaseholders of flats¹, acting together, the right to purchase the freehold of the building in which the flats are contained, together with certain other additional property.

What are the qualifying requirements?

In order for the building to qualify under the LRHUDA 1993, it must:

-  be an independent building or be a part of a building which is capable of independent development; and
-  contain two or more flats held by qualifying tenants; and
-  have at least two thirds of the flats held by qualifying tenants.

The building will not qualify, however, if:

-  it comprises four or less units and has a “resident freeholder”;
-  more than 25% of the internal floor space (excluding common parts) is used for non-residential purposes;

To be a qualifying tenant, the tenant must hold a long lease of their flat, meaning a lease which was originally granted for a term of more than 21 years.

A qualifying tenant cannot own three or more flats in the building; nor can they hold a business lease.

How to prepare for making a claim?

Having established that the building qualifies, you will need to establish whether there is a sufficient number of tenants who wish to participate², both for the purpose of qualifying for enfranchisement and for the purpose of being able to finance the acquisition.

In order to qualify for enfranchisement, the number of participating tenants must comprise not less than one half of all the flats in the building. However, if there are only two flats in the building, then both tenants must participate.

¹ Called "qualifying tenants" under the LRHUDA 1993

² The "participating tenants"

When it has been established that the building qualifies, and that there is a sufficient number of participating tenants, the following steps need to be taken before a claim is made:

1. You need to establish what the whole process is going to cost. This will include the price payable for the freehold, and in that regard, we strongly recommended you instruct a valuation surveyor with experience of the LRHUDA 1993 to advise upon the purchase price. We are happy to recommend a valuation surveyor local to you if required.

In addition to the purchase price, the participating tenants will have to meet their own legal costs and valuation fees, and will be required to reimburse the landlord his reasonable legal costs and valuation fees (see below).

2. The participating tenants will need to establish how to finance the cost of acquisition. It may, for example, be necessary for a number of participating tenants to seek a further advance from a Building Society or Bank. In particular, the participating tenants will have to decide who is to finance the purchase of the non-participants' flats (if any) and on what basis.
3. It will be necessary to establish what vehicle the participating tenants will use in order to buy the freehold, and how they will establish and regulate the relationship between themselves. In most cases, this is likely to involve the formation of a company. The participating tenants may not all have equal shares, and the proportion of the shareholdings will be a matter for negotiation between them.
4. The participating tenants should seek advice to establish whether there are tax implications to the transaction, both in relation to their individual positions and in relation to the company formed to purchase the freehold.
5. The participating tenants should enter into a formal agreement³ in order to regulate their relationship during the course of the claim. The LRHUDA 1993 provides no guidance on the way in which the participating tenants should work together in order to acquire the freehold. A participation agreement will provide a legal framework for their co-operation.

How do we make the claim?

Claiming the right to collective enfranchisement is commenced by the participating tenants serving a notice⁴ on the landlord. Amongst other things the initial notice must specify:

-  the property to be acquired. This must also be shown on a plan attached to the notice;
-  full particulars of all the qualifying tenants of flats in the building, not just the participating tenants;
-  the price proposed for the purchase of the freehold (this must be realistic, and not simply a nominal figure);
-  the name and address of the nominee purchaser. This is the person or company nominated by the participating tenants to purchase the freehold;
-  the date by which the freeholder must give his counter-notice, being a date not less than two months from the date of service of the initial notice.

³ A "participation agreement"

⁴ Called the "initial notice" under section 13 of the LRHUDA 1993

The landlord is likely to respond with a notice requiring the participating tenants to deduce title to their flats, and also for their valuation surveyor to inspect the building for the purpose of carrying out a valuation.

Within the period specified in the initial notice, the landlord must serve his counter-notice. This must state whether or not the claim is admitted. If it is not, then the participating tenants need to decide if they wish to dispute the rejection through the courts.

If the landlord admits the claim, then the counter-notice must state, amongst other things:

- which of the proposals contained in the initial notice are acceptable;
- which of the proposals contained in the initial notice are not acceptable and what are the freeholder's counter-proposals, particularly in relation to the price;
- whether the freeholder wants a leaseback on any units in the building not held by a qualifying tenant (for example, a flat subject to a short-term tenancy or a commercial unit).

Many claims are settled through negotiation. However, if the purchase price to be paid, or any of the other terms of acquisition remain in dispute two months after service of the landlord's counter-notice, an application should be made to the First-tier Tribunal Property Chamber (**the FtT**) for a determination of the matters that remain in dispute. There are strict time limits for making such an application, which must be adhered to in order to avoid the claim being deemed withdrawn.

Once the price and any other terms of acquisition have been agreed or determined by the FtT, then the matter proceeds as a conveyancing transaction with the parties entering into a contract on the terms agreed or determined, and then a transfer of the freehold to complete the transaction.

Once completed, the nominee purchaser becomes the freehold owner of the building, subject to the flat leases. This puts the participating tenants in a position to grant themselves extended leases. There may be taxation consequences of granting an extended lease, particularly for second home owners.

There will also be responsibilities. The participating tenants will become responsible for the management of the building and the administration of the service charge account in accordance with the covenants in the leases. If the nominee purchaser is a company, all participants will be shareholders and some will be directors of that company.

How long will it take?

A collective enfranchisement claim under the LRUHA 1993 generally takes between 6 and 12 months to complete.

Do we have to pay the landlord's costs?

Yes. In addition to the purchaser price, and their own legal costs and valuation fees, the participating tenants have to pay the *reasonable* legal costs and valuation fees incurred by the landlord in relation to the collective enfranchisement claim. These do **not** include any fees incurred by the landlord in relation to negotiations or (save for circumstances of unreasonable conduct) of proceedings before the FtT.

Why choose Coole Bevis LLP?

The provisions of the LRHUDA 1993 are complex. Notices must contain prescribed information and be completed correctly, and time-limits must be strictly adhered to. If they are not, this could have serious consequences for the participating tenants. The initial notice may be invalid, or the collective enfranchisement claim may be deemed withdrawn, resulting not only in the participating tenants having to pay their landlord's wasted costs, but also having to wait another year before they can bring a fresh claim.

When instructing a solicitor, you should therefore choose a leasehold enfranchisement⁵ specialist.

At Coole Bevis LLP, our leasehold enfranchisement department is headed by partner/LLP member Jonathan Everett, who has been acting on behalf of both landlords and tenants since 1996. Jonathan is assisted by Matthew Hollamby, a chartered legal executive who before joining Coole Bevis LLP had built up his own department at another local firm, and Claudia Welbourne, a solicitor who combines leasehold enfranchisement with residential conveyancing experience. We are members of ALEP (Association of Leasehold Enfranchisement Practitioners) and complete over 250 leasehold enfranchisement matters each year. We are frequently recommended to clients by valuation surveyors, both on the south coast and in London.

Unlike many other firms, we do not pass your matter between someone in the litigation department and someone in the conveyancing department, which is neither efficient nor cost-effective. You deal with the same person from start to finish.

Note

This guide is designed to illustrate the requirements and process involved in a collective enfranchisement claim under the LRHUDA 1993. It is designed to be a summary of the points to consider, rather than detailed advice. This guide should not be relied upon as legal advice and you should contact leasehold@coolebevisllp.com or call **01903 213511** for advice on your specific circumstances.

⁵ Leasehold Enfranchisement is the term given to collective enfranchisement and new lease claims under the LRHUDA 1993

