

## OUR GUIDE TO EXTENDING THE LEASE OF YOUR FLAT

### Why should I extend the lease of my flat?

Owning a flat on a leasehold basis gives a right of occupation for the length, or the “term”, of the lease. Typically, leases are granted for terms of 99 or 125 years. As the term diminishes, the lease reduces in value, becoming less attractive to mortgage lenders.

The shorter the remaining term, the more difficult it will be for prospective purchasers to obtain a mortgage. This can affect the saleability of the flat.

There are ways to overcome this “short lease” problem, however.

One option is to approach the freeholder to see if they will agree terms to extend the lease. This is known as a “voluntary” or “non-statutory” lease extension. Whilst this option may appear the most straightforward, particularly if you are looking to extend the lease simply to enhance saleability, it should be noted that a freeholder is not obliged to grant an extension on a non-statutory basis. As a result, this option may not (and frequently doesn’t) result in the best deal for the leaseholder, as freeholders usually insist upon:

- Payment of a non-refundable valuation fee upfront;
- Payment of a large premium for what may only be an extra 20 or so years on top of the remaining term; and
- Increasing ground rent.

Furthermore, if there is a mortgage over the existing leasehold title, a deed of substituted security will have to be obtained from the mortgagee.

The second option is to claim a lease extension under the Leasehold Reform, Housing and Urban Development Act 1993 (**LRHUDA 1993**).

Provided they qualify, a leaseholder<sup>1</sup> can compel the freeholder<sup>2</sup> to extend the lease. The tenant is entitled to an extra 90 years on top of the remaining term, with the ground rent being reduced to a peppercorn (effectively nil). Also, the terms of any mortgage will automatically apply to the extended lease.

### Do I qualify for a lease extension under the LRHUDA 1993?

In order to claim a lease extension under the LRHUDA 1993, a tenant needs to be a “qualifying tenant” of their flat. This means that they must own their flat under a long lease i.e. a lease which was originally granted for a term of more than 21 years. Furthermore, they must have been registered as owner of the flat for at least 2 years.

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<sup>1</sup> Called “the tenant” in the LRHUDA 1993

<sup>2</sup> Called “the landlord” in the LRHUDA 1993

## **How do you claim a lease extension under the LRHUDA 1993?**

Once qualification has been established, you will need to ascertain the amount of the premium payable to your landlord for the lease extension.

The premium is based on a formula set out in the LRHUDA 1993, and is designed to compensate the landlord for the loss of ground rent and the fact that the right to get the flat back at the end of the term is postponed by 90 years. In addition, the landlord may be entitled to half the so-called "marriage value", which is basically the increase in value as a result of the extension. No marriage value is payable where over 80 years is left on the term of the lease.

It is strongly recommended that you instruct a valuation surveyor with experience of the LRHUDA 1993 to advise you on the premium payable. We work with several specialist valuation surveyors across the South East and London, and will be happy to make a recommendation if required.

The claim to acquire a lease extension is made by the giving of a notice (**the tenant's notice**) to the landlord. The tenant's notice must specify, amongst other things, the premium the tenant proposes to pay.

As soon as the tenant's notice is served, the landlord can require the tenant to pay a deposit of £250.00 or 10% of the tenant's proposed premium, whichever is the higher. It is important that before serving their notice, the tenant ensures they have the necessary funds available to enable the deposit to be paid.

The landlord has 2 months to serve a counter-notice. The counter-notice must state whether or not the claim is admitted. If the claim is admitted, the counter-notice must also state, amongst other things, which of the tenant's proposals are accepted and which are not. Invariably, the landlord will not accept the tenant's proposed premium, and will seek a higher premium in the counter-notice.

Many claims are settled through negotiation. If the premium to be paid or the terms of the lease extension remain in dispute 2 months after service of the landlord's counter-notice, however, an application can be made to the First-tier Tribunal Property Chamber (**FTT**) for a determination of the matters that remain in dispute. There are strict time limits for making such applications which must be adhered to in order to avoid the claim being deemed withdrawn. If a claim is deemed withdrawn, the tenant is precluded from bringing a fresh claim for a period of 12 months.

Once the terms of the new lease and the amount of the premium have been agreed, either through negotiation or by FTT determination, the landlord's solicitor prepares the new lease which, once agreed, is signed by all parties, completed and then registered at the Land Registry.

## **How long will it take?**

Lease extension claims under the LRHUDA 1993 generally take between 6 and 12 months to complete.

## **How much will it cost?**

In addition to the premium, tenants claiming a lease extension under the LRHUDA 1993 will have to pay the following:

-  The fees charged by their own solicitor and valuer.

- The “reasonable” fees of their landlord’s solicitor and valuer. These include the costs to the landlord of obtaining their own valuation report, checking the tenant's entitlement to claim a lease extension, preparing and serving a counter-notice, and drafting and completing the lease. They 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.
- Any ground rent and/or service charges due under the terms of the lease.

### Can I sell my flat whilst a lease extension claim under the LRHUDA 1993 is in progress?

Yes. As soon as the tenant’s notice has been served, the rights and obligations arising from the notice can be assigned to a purchaser on completion of the sale of the flat. This avoids the purchaser having to wait 2 years to bring their own claim.

### Why choose Coole Bevis LLP?

The provisions of the LRHUDA 1993 are complex. Notices must contain prescribed information, be completed and served correctly. Time-limits must also be strictly adhered to. If there are errors, this could have serious consequences for the tenant.

If the tenant’s notice is invalid, they will have to start the process again, resulting in delay and wasted costs.

If the tenant’s notice is deemed withdrawn, they will have to wait 12 months before they can start the process again.

When instructing a solicitor, therefore, you should choose a leasehold enfranchisement<sup>3</sup> 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 obtaining a lease extension. 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](mailto:leasehold@coolebevisllp.com) or call **01903 213511** for advice on your specific circumstances.

<sup>3</sup> Leasehold Enfranchisement is the term given to collective enfranchisement and new lease claims under the LRHUDA 1993, and right to manage claims under the Commonhold and Leasehold Reform Act 2002

The logo features two overlapping circles: a pink one on the left labeled 'For You' and a grey one on the right labeled 'For Business'. The pink circle lists services: Residential Property, Personal Injury, Clinical Negligence, Wills, Probate & Trusts, and Family & Mediation. The grey circle lists services: Employment, Dispute resolution, Leasehold enfranchisement, Leasehold disputes, and Landlord & tenant. The intersection of the circles lists: Company Commercial and Commercial Property. The website [www.coolebevisllp.com](http://www.coolebevisllp.com) is displayed in a pink oval. Below the logo, contact details are provided:

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