

INFORMATION SHEET 2

Collective Enfranchisement

WHAT IS IT?

The *Leasehold Reform, Housing and Urban Development Act 1993* gives the right for tenants of flats acting together to purchase the freehold of their building.

WHAT DO YOU RECEIVE?

On successful completion then the participating tenants, will become the freeholders of the building. This will put them in a position to grant themselves extended leases, commonly 999-year lease terms.

DO YOU QUALIFY?

- Your building must be an independent building or a part of a building capable of independent development.
- The building must contain two or more flats held by qualifying tenants.
- At least two thirds of the flats in the building must be held by qualifying tenants.
- You must hold a lease that had a fixed term of more than 21 years when it was originally granted.

YOU WILL NOT QUALIFY IF

- Different people own the freehold of different parts of the building and any of those parts is a self-contained part of the building.
- 25% of the internal floor space (excluding common parts) is used for non-residential purposes.
- The building comprises four or less units and has a “resident freeholder”.
- The building is part of an operational railway.
- If you own three or more flats in the building.
- If you hold a business lease, a lease from a charitable trust or a sub-lease which is in breach of terms of a superior lease.

STEPS INVOLVED IN COLLECTIVE ENFRANCHISEMENT

1. Instruct a properly qualified surveyor and solicitor with experience in the field of enfranchisement.
2. Your solicitor will serve a preliminary notice to obtain information from the Landlord requiring details of the legal interests in the block.
3. Ascertain whether a sufficient number of tenants want to participate.

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4. Your surveyor will inspect the Premises and undertake a valuation to determine the premium payable.
5. The participating tenants should enter into a participation agreement in order to regulate the relationship between them during the course of the claim.
6. Working with your solicitor you will need to establish what vehicle the participating tenants should use in order to buy the freehold e.g. Company or Trust.
7. Thereafter, your solicitor serves a tenant's notice of claim which will include the premium.
8. The landlord is likely to respond with a procedural notice requiring payment of a deposit (equal to 10% of the premium being offered) and asking the tenant to deduce title.
9. The landlord will instruct his surveyor to inspect the flat and undertake a valuation in order to determine the Premium on behalf of the freeholder.
10. Within the period specified in the tenant's notice, the landlord must serve his counter-notice.
11. If the claim is admitted, then the counter-notice must state, amongst other things: which of the proposals contained in the tenant's notice are acceptable or not and the landlord's counterproposals — particularly the premium.
12. Once the counter notice is received both sides surveyors will aim negotiate a settlement for the premium which is agreeable to both leaseholders and freeholder.
13. If any terms of acquisition (including the price) remain in dispute after two months following the date of the counter-notice, then either party can apply to the First Tier Tribunal for the matter in dispute to be determined.

HOW MUCH WILL IT COST?




The price to be paid by the participating tenants to purchase the freehold of the building is virtually the same calculation undertaken for the lease extension but for each flat in the building.

- The diminution in value of the landlord's interest in each flat (including flats owned by non-participating leaseholder)
- Compensation for loss in value of other property owned by the freeholder, including common parts and development value.
- Tenants and Landlords own legal and surveying costs.

ADDITIONAL POINTS

- The participators will need to establish how to finance the cost of acquisition.
- The participating tenants should seek advice to establish whether there are tax implications.
- The freeholder can resist a claim on the ground of redevelopment in certain circumstances.
- The participating tenants will become responsible for the management of the building and the administration of the service charge account.

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- It is important to note that an individual tenant has no right to become a participating tenant — even if he is a qualifying tenant. It is a matter for the tenants to resolve between themselves. You can always ask to be allowed to join in, but you will have no remedy if refused. If a group does form without you — and does not need you — you may well find yourself left out.

This guide is a general statement on the Collective Enfranchisement Process. This is a complex process and it is not possible to cover every scenario in a two-page information sheet. Each claim needs to be considered in light of its own facts. It is recommended therefore that specific advice should always be obtained on the particular facts of each case.

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