



Lease extensions – a practical guide

Introduction

The Leasehold Reform, Housing and Urban Development Act 1993 (the Act) gave tenants of certain types of flats the right to request an extension of their lease for an additional 90 years on top of the remaining term left under the existing lease. This is an extremely important piece of legislation as it makes it possible for a qualifying tenant to obtain a lease extension at a price to be agreed with the landlord or, if no agreement can be reached, at a price to be determined by the Leasehold Valuation Tribunal (the LVT for short).

Extending the lease of your property could potentially add significant value, especially if the existing lease only has a short time left to expire. Also, properties with short leases (generally those with less than 60 years left to run) can be difficult to obtain finance against, as mortgage providers tend to be reluctant to allow short leasehold property to be used as security.

Another benefit of extending your lease under the Act is that once the extension has been granted, the ground rent for the whole of the remaining term of the newly extended lease will be cut from whatever it was before the extension to a single peppercorn once a year, which in real life means rent free. Whether your landlord demands payment of the peppercorn is a matter for them!

The potential financial benefits could therefore be significant and the cost of extending your lease may not be as high as you might imagine.

There follows a basic guide to how the mechanism for extending a qualifying lease operates.

Qualification – who can apply?

As a tenant, you will be entitled to require your landlord to extend your lease if:

- the lease was *originally* granted for at least twenty one years, (it does not matter if there is currently less than twenty one years left to run); and

- the lease relates to residential property, as opposed to commercial property (it does not matter if you have not been in occupation). There are a limited number of categories of residential property that do not qualify for extensions but the vast majority of long leaseholds do qualify; and
- you have owned the flat for at least two years (or you bought it from somebody who had owned it for at least two years and who had made an application for a lease extension and assigned that application to you). It is also possible for the personal representative of a deceased tenant to qualify in certain circumstances.

Who do you claim the lease from?

In most cases this will be straightforward, and the ‘competent’ landlord will be your immediate landlord. However, in cases where your immediate landlord is in turn a leaseholder whose lease has less than 90 years left to run, the correct landlord will be the first one up the chain that does have a sufficiently long lease to grant the 90 year extension. This is often the freeholder – the person or entity that ultimately owns the overall title to the property.

In the prime central London areas the competent landlord will often be one of the large estates such as the Grosvenor, Cadogan and Portman estates. These estates deal with many lease extension applications every year and have highly experienced legal and valuation advisers dealing with the process on their behalf. If you are contemplating making an application it is in your interests to ensure that you in turn instruct a solicitor and valuer that are experienced in the necessary formalities of the process and also know the local area well.

How much will the extension cost?

What you pay for your lease extension (the premium) will depend on how many years the lease has left to run at the time that you make your application and on the value of the extension, valued using certain calculations set out in the Act and also according to legal principles decided by the courts in previous cases.

The valuation calculation itself is fairly complicated and you will need to instruct an expert valuer to advise you this. A list of valuers able to assist with the valuation aspect can be found on the RICS (Royal Institute of Chartered Surveyors) website or you can contact Child & Child who will be happy to recommend a suitable person to help.

The valuer that you choose will apply the relevant calculations to the information provided in relation to your lease. This will include the length of the term left to run, the annual ground rent you are currently paying, the value of the property with its lease now and the projected value of the property with the 90 year extension in place. The valuer will then give you a range of figures within which they think the premium will fall. This range will cover the best case from the tenant's and landlord's perspective. The valuer will advise you on the best figure to insert into your initiating claim, which cannot be unrealistically low as a notice can be deemed invalid if the suggested premium is clearly unreasonable.

One very important point to bear in mind is that if your lease has more than 80 years left to run it will be considerably cheaper to extend than if you start the process after the lease falls below 80 years. This is because in valuing the premium for a lease over 80 years the law states that the tenant does not have to pay the 'marriage value' of the lease. This is the aggregate value of the landlord's and tenant's interests in the property before and after the grant of the new lease and the Act provides that 50% of the marriage value must be paid to the landlord by the tenant *where the lease has less than 80 years to run*. It is therefore very important if you are thinking of extending your lease and you are approaching the 80 year threshold to seek advice as soon as possible, as the marriage value can be substantial.

The legal and surveyors' costs associated with the extension will be payable in addition to the premium, more details of which are provided below.

The process

There is a four, possibly five stage process involved in extending your lease:

1. Valuation and notice of claim

Once your valuer has given you advice on what he or she thinks that the premium should be, you will need to serve an initial notice of claim under s.42 of the Act. The notice will provide details of the lease and the proposed premium that you are offering to pay for the extension and must be served on the landlord and any intermediate landlords.

The notice is very important and it is important that it is drafted carefully and thoroughly checked as if it is defective then it can lead to the process being aborted. Again, this is especially important if you are near the 80 year threshold. You should

ask a specialist lease extension solicitor to prepare and serve the notice to ensure that all the requirements are met.

2. Landlord's response

Once the landlord receives the initial notice they have a set time in which to respond, usually 2 months. The landlord responds by way of a counter-notice either accepting the tenant's proposals for the terms of the new lease (which is rare) or offering counter proposals detailing the premium that the landlord's valuer thinks should be paid for the extension.

3. Negotiation

Once the counter-notice is served by the landlord there is then a two month period in which the parties' surveyors can try to reach agreement on how much the premium should be and also on any other contentious terms of the lease.

In the vast majority of cases it is possible for the valuers to come to an agreement without the need to take further legal proceedings. However, if after the two months there has been no agreement then either party can apply to the LVT for it to determine what the premium and terms of the new lease should be, in accordance with the principles laid down in the Act and the supporting case law.

4. The LVT application

If it is needed, the application to the LVT must be made within 6 months of the landlord's counter-notice. The application is ordinarily made by the tenant's solicitor but the landlord can also make the application if they prefer.

Once the application has been accepted by the LVT it will issue directions for the management of the claim, ultimately to bring the matter to a hearing within about 3 months of the application being made.

At the hearing, the LVT panel will hear argument from representatives and valuers for both sides and will usually then attend the property to inspect the premises before making a decision. Once a decision has been made it is binding on the parties, although there is a right of appeal in some cases.

5. Finalising the new lease

Once the premium and terms of the lease have been agreed or determined by the LVT the solicitors for the landlord and tenant will need to finalise the new lease and ensure that it is registered with the Land Registry. The 90 years extension will be added to the existing term remaining on the lease, so for example a 50 year lease will become a 140 year lease.

There are strict time limits for completing the new lease once the terms have been agreed and which must be adhered to avoid having to start the whole process over again.

One further point to bear in mind is that once your initial notice of claim has been served the landlord is entitled at any time to require the payment of a deposit on account of the premium that will ultimately be payable. This may be up to 10% of the premium proposed in the notice of claim

The professional fees

The rules state that the tenant must pay the reasonable legal and valuation costs of the landlord, in addition to their own professional costs. There are safeguards to ensure that the landlord's costs are not disproportionate and if they are seemingly excessive then the LVT can be asked to review them.

The landlord is entitled to recover the costs of preparing the valuation and counter-notice, preparing the new lease and dealing with the completion of the new lease once the terms have been settled. They are not entitled to recover the costs of negotiating the terms of the new lease or of attending the LVT, if required.

If it is necessary to attend the LVT the usual rule is that each party bears its own legal costs.

Summary

Provided that you qualify, your landlord is not entitled to refuse to extend your lease. The lease extension legislation is therefore a very powerful tool for tenants wishing to improve the value of their leasehold property by lengthening the lease term. In general terms, the longer the lease a property has left to run, the more valuable it will be should you wish to sell or remortgage. Also, if your lease is very short and you do not intend to sell it is important to ensure that your lease does not expire as you will be left without a home!

It is important to obtain expert valuation and legal advice at an early stage to ensure that all of the strict requirements of the rules are met. Mistakes can be very costly - if a problem is encountered and the process needs to be started again, a new application is not allowed to be made until at least 12 months after the discontinuance of the original application. It is therefore worth investing in professional advisors who can ensure that the process is carried out right first time.

The information in this article is intended for general guidance only. It provides useful information in a concise form and is not a substitute for obtaining legal advice. If you would like advice specific to your circumstances please contact us.