

# THE LEASEHOLD ADVICE CENTRE

[www.LeaseholdAdviceCentre.Co.Uk](http://www.LeaseholdAdviceCentre.Co.Uk)

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Buy The Freehold - Collective Enfranchisement

## General Information:

The 1993 Leasehold Reform Act (as amended) provides the right for the qualifying majority of leaseholders to compel the Landlord to sell the Freehold to them. Once the Freehold is in the hands of the Lessees they own, run & have control of the building themselves. We provide a very full & substantive service for clients and do not simply provide a 'DIY' type paper pack where leaseholders end up doing a lot of work themselves. We would also make the point that in our opinion the various procedures, especially preparation & service of Notices should only be carried out by experienced professionals who specialise in the field as it is not uncommon for claims to fail & for leaseholders to be liable for costs where the procedures laid out in the legislation have not been complied with adequately..

You should arrange your finances before you commence any procedures and should be aware that if you withdraw, you will still have to pay your own and the landlord's costs and funds should be established for this purpose. It is recommended that leaseholders have a formal valuation carried out so they are aware of what the likely value will be although this is not a legal requirement.

Once all the appropriate sections of the law are in place, the right to enfranchise may only be exercised through a specific 'Right to Enfranchise (RTE) Company' which becomes the owner of the freehold & all qualifying leaseholders are entitled to be members of the RTE Company & it is those members who run & have control of the RTE Company, i.e. effectively controlling the management, running, repairs, maintenance etc. etc. of the building as a whole. Until the commencement of the relevant section of the Act the purchase must be carried out through a Nominee Purchaser who is the person specified in the Initial Notice to the freeholder who will acquire the freehold and become the new landlord. Due to what is known as 'Transitional Arrangements' this can presently be either a lessee, a group of lessees or indeed a management type company owned by the (or a number of) lessees.

## *Eligibility - The Building Must Qualify*

You should check that the building complies and that there are enough qualifying leaseholders to be able to proceed. Details about 'leaseholder qualification' are set out below. In order for the building to qualify it **must**:

- Not have more than 25% of the internal floor area of the property as being non-residential, and
- At least two-thirds of the flats must be let to 'qualifying leaseholders'

Basically, the right to purchase the freehold may only be exercised by a Right to Enfranchise (RTE) Company; the members of the RTE Company must comprise enough of the qualifying leaseholders as own at least half of the total number of flats in the building. Where there are only two flats in the building both leaseholders must participate.

The minimum number of leaseholders that are needed for a successful action **must**:

- Not be less than half of the total number of flats in the building. For example, if there are 14 flats in the building at least 7 of the qualifying leaseholders must participate.
- **BUT** - where there are only two flats in the building, both leaseholders must participate.

There is **no right of collective enfranchisement** (but there is a right to renew the lease) where:

- The building is a conversion into four or fewer flats and not a purpose-built block **AND\* ALSO**
- the same person has owned the freehold since before the conversion of the building into flats **AND\* ALSO**
- he or an adult member of his family has lived there for the past twelve months **OR**
- the freehold includes any track of an operational railway, including a bridge or tunnel or a retaining wall to a railway track

*\* For the sake of clarification therefore where a converted block has four or less flats, the present Landlord would have to have owned it prior to the building having been converted **and, in addition to which**, he or an adult member of his family must have lived in one of the flats for at least the last 12 months in order for the lessees not to have the right to acquire the Freehold. However, if it is simply a converted block & the same Landlord has not owned it prior to the conversion being carried out **and in addition**, an adult member of his family has not lived in one of the flats for the last 12 months **then there is a right for the lessees to Collectively Enfranchise**, subject of course to any other requirements being met. However a person is an adult member of another's family if that person is— (a) the other's wife or husband; or (b) a son or daughter or a son-in-law or daughter-in-law of the other, or of the other's wife or husband, who has attained the age of 18; or (c) the father or mother of the other, or of the other's wife or husband; and in paragraph (b) any reference to a person's son or daughter includes a reference to any stepson or stepdaughter of that person, and "son-in-law" and "daughter-in-law" shall be construed accordingly.*

Some properties are completely excluded from the rights of lease extension and collective enfranchisement such as:

- buildings within a cathedral precinct
- National Trust properties
- Crown properties\*

\* Although the Crown is not bound by the legislation the Minister has made a statement to the House of Commons that the Crown will be prepared to comply with the principles of it.

### *Eligibility - 'Qualifying' as a Leaseholder*

To be a Qualifying leaseholder you must own a 'long lease', and not be a business or commercial tenant. You do not have to satisfy a 'residency test' nor do you have to have owned the lease for any minimum period of time. A 'long lease', by definition, is:

- A lease of a term of years absolute in excess of 21 years when originally granted – *The present unexpired term is not relevant.*
- A shorter lease which contains a clause providing a right of perpetual renewal
- A lease terminable on death or marriage or an unknown date (including the so-called "Prince of Wales" clauses)
- A leaseholder having held over at the expiry of a long lease, and the landlord has not served a notice terminating the tenancy
- A shared ownership lease where the leaseholders' share is 100%

### *Other Important Information*

We naturally are unable to guarantee any application as neither being successful nor the amount of the eventual premium that may be determined by the Tribunal. You will be liable for the 'reasonable' costs of the Landlord relative to the Notice of Claim & the preparation / completion of the new lease together of course with the fees of any Valuer, solicitors etc. who you choose to instruct to assist. Please ensure you carefully read our

## *Our Charges & Services*

The fees\*\* quoted are to be calculated on a 'per flat' basis, being the total number of flats in the building & all are subject to VAT at the prevailing rate.

We would provide, on CD Rom, a copy of the legislation, which would also have a fully detailed & descriptive manual detailing in simple easy to understand terms exactly what the process is from beginning to end. We would request from the Lessees the basic information needed for us to prepare the necessary paperwork. In addition to preparation we will also serve **ALL** the various Notices required.

We will deal with the formation of the RTE / Management Company as required (including so far as possible completing the forms for you) . Our fees\*\* depend upon the number of flats in the building. We do not charge an 'hourly rate' & all fees are clearly specified in writing, are entirely 'fixed' with no extras or additions in any way. Upon instructions, we will send you a form to provide us with the basis information required. Initially, we will automatically check your entitlement / qualification strictly based on the information you have at that time supplied to us without charge.

Please ensure you carefully read our [Terms & Conditions](#) to which this website & our services are subject

Contact Us

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*The Leasehold Advice Centre –  
Putting you & your lease first*

