

Collective Enfranchisement

Flat owners acting in concert can forcibly acquire the freehold to their building subject to meeting certain qualification criteria and paying a premium, which is calculated in accordance with a statutory formula.

They may be motivated by a desire to acquire management control, enable development to be undertaken, extend their lease or to buy out their ground rent for example.

Other rights to consider

Flat owners, again acting in concert, can take over the management function that normally rests with their landlord by exercising the “right to manage” (RTM). No premium is payable.

Individually they can extend their leases to protect the capital value of their investment. Again certain criteria need to be satisfied in order to qualify.

Benefits of collective enfranchisement

- Management - the management function insofar as it previously rested with the freeholder (or other intermediate landlord) will usually be acquired enabling the participants to select their own managing agent and insurance provider, for example. The current freeholder would have no more say in the management of the building. In comparison, the RTM does not remove the freeholder completely because, firstly he has voting rights as a member of the RTM Company and secondly he would be entitled to be consulted with regard to certain decisions that the RTM Company would need to make, such as

applications by flat owners for consent to make alterations.

- Criteria - there is no requirement to reside at the property or to satisfy a minimum ownership period as opposed to the right to an extended lease which requires two years ownership.
- Participants – Owners of at least 50% of the flats in the building must participate. They do not have to invite any other qualifying flat owners in the building to join with them. They can pick and choose. With the RTM all qualifying flat owners must be invited to participate.
- Non-participants - If there are flat owners who do not want to participate then they would need to pay a premium to the participants (as the new landlords) if they later seek to extend their lease. This premium should be greater than the amount paid to the freeholder by the participants (Hope Value - see below) in respect of the non-participant's flat.
- Participants' leases – participants can grant themselves extended leases and potentially make other changes to their existing leases. It may not be possible to achieve the same changes via the individual lease extension process. This cannot be achieved via the RTM.
- Re-sale of individual flats – this should be enhanced by the inclusion of a “share of freehold” and the effective removal of the obligation to pay ground rent.

Disadvantages

- Timing - If your aim is to wrest control of the management of your block from the current freeholder as cheaply and quickly as possible, then the RTM process may be more appropriate.
- Premium - A premium is payable. It is magnified in certain circumstances, such as where:

- i. The term of one or more leases is below 80 years. In that case marriage value is payable in respect of those leases.

If a participant's lease term is about to drop below 80 years then they must act quickly. If it has already dropped below 80 years, then this component of the premium is likely to increase as the lease gets shorter, although market conditions may compensate for this. Specialist valuation advice must be obtained.

- ii. Where the building contains un-let parts i.e. flats or commercial premises where possession is held via the freehold title. Usually it will be within the freeholder's discretion whether it retains possession of such parts. If it does not then the participants must pay compensation based on the market value of such parts.

No premium is payable to exercise the RTM as no property interest is acquired.

The premium payable to extend leases individually will be less proportionately although the aggregate of the associated costs incurred may exceed those incurred in an enfranchisement claim.

- Control - This and the right to manage are collective actions which will require a serious amount of effort and co-operation between the participants, whereas extending a lease is within the sole control of the relevant flat owner.
- Contracts in respect of the building do not automatically cease on the date the freehold is acquired. This can cause complications.

Costs

- The freeholder (and any intermediate landlord) is entitled to be reimbursed by the participants for their reasonable legal and valuation fees in so far as they fall under certain permitted heads of expenditure.

Criteria

- The building that the participants seek to enfranchise must be a self-contained building or, if it forms part of another building, be capable of being re-developed independently amongst other things.
- It must contain at least 2 flats.
- At least two thirds of the flats must be let to qualifying flat owners. Where three or more flats are held by one party they will not form part of the number of qualifying flat owners for the purpose of calculating whether the building qualifies broadly speaking.
- Non-residential parts, such as a shop on the ground floor must not exceed 25% of the total internal floor area of the building.
- At least half of the flats in the building (not half of the qualifying flat owners) must participate.

Exclusions

Some properties are not subject to the right to enfranchise such as:

- Those held by the National Trust, buildings within a Cathedral Precinct and Crown Properties (although the latter are prepared to proceed as if the Act does apply).
- Where the resident landlord exemption applies or the building includes any track of an operational railway (bridge, tunnel or retaining walls to a railway track).

This is only a summary. There are complex and grey areas of the legislation. While the concept of the right is straight forward there are a number of traps for the unwary reflected by the high volume of cases around entitlement and validity of claims

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