

A Guide to

Buying the Freehold of Your Flat

Leonard
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- Understand the legal process.
- Understand the required experts.
- Understand the costs you will need to cover.

Section

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This Guide has been designed to assist you in understanding the basic principles and general issues surrounding buying the freehold of your flat (collective enfranchisement). This Guide is only intended to be a general overview of the law in relation to collective enfranchisement. Legal advice should always be obtained from Leonard Gray in application to a particular case.

The Concept

This Section of the Guide sets out a number of points you will need to carefully consider if you are planning to join the other flat owners to purchase the freehold interest in your building.

1. What Does “Collective Enfranchisement” Mean?

If the owners of more than 50% of the flats in a building want to buy the freehold interest in that building, they can do so by using the procedure specified in the Leasehold Reform, Housing and Urban Development Act 1993.

There may be numerous reasons why the owners would want to do this. Key advantages include:

- The ability to assert control over the management of the building and the cost of repairing and/or maintaining it
- The freedom to extend the Leases by 999 years each with a nominal ground rent
- The beneficial impact, potentially, upon the value of the flats

2. Qualification

Not all flat owners will necessarily have an automatic right to purchase the freehold. There are certain exceptions, although these are relatively limited.

All flat owners, for example, must have a long lease (minimum term of 21 years) in order to qualify.



Other, key points to consider include whether the landlord is resident in the building and/or the extent of any commercial or business premises forming part of the building. These too may have an impact on the flat owners' rights.

The next Section of this Guide summarises the initial steps your professional advisers will need to go through with you.

Getting Started

This Section of the Guide considers the preliminary stages of your claim.

1. Organising the Group

Depending on the number of individual owners involved, it may be sensible to form a working group or association to help manage the process. The members of that group (some, of whom, may have agreed to participate after being canvassed) might then wish to enter into a written agreement with each other to clarify their rights and responsibilities (e.g. in relation to the payment of their and the landlord's legal costs).

Smaller groups of owners may prefer to dispense with such an agreement.

Either way, it is often recommended for the owners to establish a fund for covering the initial costs involved in the valuation and legal process, which can be significant (see below).

2. Choosing the Purchaser

In the majority of cases, the owners will create a new company specifically set up for the purposes of acquiring the freehold. Company formation agents can assist with this process, subject to a fee.

The flat owners' solicitor will often oversee the work, ensuring that the new company is set up correctly and assisting with any relevant application forms.

It is commonplace for the new company to be wholly owned and controlled by the owners, with each of them having an equal share in it.

The company must be formed prior to the initial notice of claim being sent to the landlord (see below).



3. Valuation

An initial valuation of the building by a specialist surveyor is strongly recommended (we have expert contacts to whom we can refer you for this purpose).

The surveyor's job will be to estimate the premium the owners should be expected to pay to the landlord for the freehold and to provide 'best and worst' valuation advice. This will assist the owners as they try to negotiate a price with the landlord.

Alternatively, the owners might instruct the surveyor to negotiate with the landlord/its representatives directly.

In giving their valuation advice, the surveyor will apply a complex formula set out in the 1993 Act referred to above.

The next Section of this Guide covers the appointment of your solicitor and the preparation of the notice of claim.

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The Initial Notice

This Section of the Guide covers the preparation of the notice of claim and further, recommended information gathering.

1. Additional Preliminary Information

The owners have a legal right under the 1993 Act to request confirmation from the landlord of all legal interests in their building. There may, for example, be other freeholders or intermediate landlords not immediately known to the flat owners. Those persons must all receive written notice of the owners' claim (see below).

There is no legal obligation, on the flat owners' part, to send such a request. However, if they do, the landlord must reply to it within 28 days.

Other checks against records held by the Land Registry are also recommended before the owners' notice of claim is lodged with the landlord.

2. The Notice

Once the owners are ready to table an offer to purchase, based on the valuation advice their surveyor has provided (see above) and have all other, pertinent information to hand, the initial notice of the claim to buy the freehold can be served on the landlord(s).

The notice is the trigger for the start of the legal/statutory process set out in the 1993 Act. It is very important to ensure that the document is prepared correctly. Legal advice is essential. Any pertinent errors or missing information will render the notice invalid and is likely to lead to greater expense than initially budgeted for.

Assuming that the notice is valid, the landlord must respond within a set period.



The next Section of this Guide looks at the landlord's response to the notice of claim and steps that follow.

The Landlord's Counter-Notice

This Section of the Guide considers the requirements for the landlord to issue a counter-notice and the legal steps that follow thereafter.

1. The Counter-Notice

The flat owners' notice of claim should specify a date, by which, the landlord must send to them a counter-notice. This must fall at least two months after the landlord has been served the owners' notice.

In the interim, the landlord may ask the flat owners to produce evidence of the legal ownership (i.e. "title") to their flats. It must do so within 21 days of being given the owners' notice. The owners, themselves, have 21 days to respond to any such request.

The landlord may also, at its discretion, request a deposit from the flat owners of £500 or 10% of the purchase price, whichever is greater.

2. Contents of the Landlord's Counter-Notice

The counter-notice must either accept or deny the flat owners' claim (giving proper reasons if the claim is not accepted).

Alternatively, the landlord may do neither, claiming, instead, a court order refusing the owners' demand for the freehold, on the basis that the landlord plans to redevelop the building. The landlord must have evidence that its intentions, in this respect, are genuine and not merely fanciful.

If the landlord accepts the owners' claim, it must provide confirmation of whether the price the owners propose to pay for the building is agreed. If it is not, a counter-proposal must be put forward.



3. Subsequent Steps

Once the flat owners' initial notice and the landlord's counter-notice have been produced (within the required time limits), both parties will have a clear understanding of how far apart their respective valuations of the building are.

It is at this point that the owners and the landlord, either personally or through their surveyors, seek to negotiate a price.

If a price cannot be agreed, it can be determined by a Tribunal. A time limit applies and it is, again, strongly recommended that the flat owners instruct a solicitor to prepare the relevant application form(s).

Once a price is agreed by the flat owners and the landlord or, alternatively, determined by the Tribunal, the parties have only a certain period of time to conclude the legal formalities of the transaction through their solicitors. An application to the court for a "vesting order" can be made by the owners if the landlord fails to complete the sale by the relevant deadline.

The next Section of this Guide summarises some important points and highlights how we can help you.

Summary

This Section of the Guide provides some final pointers.

1. The Main Points

The process for acquiring the freehold interest in your building is complex and riddled with potential pitfalls. Hopefully, this Guide has drawn some of the key points to your attention.

However, to summarise, you should remember the following:

- The procedure can be costly. You must bear responsibility not only for your own legal and valuation costs but also the landlord's (up to a point). Remember to budget properly.
- Make sure you obtain detailed advice from a solicitor and specialist surveyor at all stages in the process.
- Organise your 'group' of owners as early as possible and make sure you are clear in terms of which individuals are taking responsibility for what.
- Be clear in terms of which 'vehicle' you are going to use to purchase the freehold. In many cases, owners choose to form a company wholly owned and controlled by them jointly.
- Make sure you have all requisite information for including in your notice of claim. Conducting investigations beforehand is strongly recommended, in order to avoid costly errors being made.
- Keep a close eye on all statutory deadlines. They must be strictly observed and cannot be avoided or postponed.



2. Where We Come In

At Leonard Gray, we have been advising and assisting clients with all manner of enfranchisement claims, freehold purchases and lease extensions over many years and have a wealth of expertise in these areas. Our job is to make sure that you do not fall foul of any legal requirements and to make the process as stress-free as possible.

We have a number of specialist, 'go-to' surveyors with a track record for producing high quality valuation advice at a reasonable price.

For a free costs estimate, please contact John Appleby or a member of his team.

The next Section of the Guide will look at how to make an appointment.

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Making an Appointment

If you would like to discuss the issues raised in this Guide further or to book an appointment then please contact **John Appleby**.

T: 01245 504 904

E: jappleby@leonardgray.co.uk

A: Leonard Gray LLP 72 -74 Duke Street Chelmsford Essex CM1 1JY

We are based in Chelmsford town centre, a two minute walk from Chelmsford Rail Station with car parking and disabled access at the rear of our office for the use of clients.

Open Monday to Friday, 9:00am to 5:30pm. Alternative times by arrangement.

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- **A Guide to Shareholders' Agreements**

