

INFORMATION SHEET

**Lease Extension
of a Flat**



There are two ways in which a lease can be extended: via the statutory route (formal) and the non-statutory (informal) route. This document provides further information on both, and the procedure which follows them.

The first point of call is to seek the advice of an independent surveyor. A surveyor will be able to advise you on the estimated premium (price) payable for the lease extension (additional lease term). A surveyor would also advise you on the commercial viability of any informal agreement which you may have reached with your landlord.

It is not within our expertise as solicitors to advise you upon the premium.

In both routes it is usual for you to pay the legal and surveyor costs of the landlord as well as your own and this should be factored into your budgeting.

Statutory Route for the Lease Extension of a Flat

Under the Leasehold Reform Housing and Urban Development Act 1993 ('the Act') a leaseholder has the right under law to extend their lease by adding a further 90 years to the unexpired lease term and reducing the ground rent to a peppercorn, provided that they have been the registered proprietor for a minimum of two years. This means the date registration was effected at HM Land Registry and not the date on which the purchase of the property was completed.

First Step

As indicated above, you will need to have a valuation carried out by a surveyor who specialises in this field. We can provide a list of surveyors who our firm has previously worked with who will be able to assist you with this.

Once a valuation has been carried out by a surveyor this will indicate a figure which is to be put forward in the initial notice to the landlord (also known as the Section 42 Notice). The valuation report usually provides you with a range of the premium which you can expect to pay for the lease extension.

Drafting and Serving Notice

Once a valuation has been carried out and it has been confirmed that you meet the criteria to extend your lease under the Act, the next step will be for Mullis & Peake LLP Solicitors to draft the initial (Section 42) Notice. This will be served upon your landlord informing them that you would like to extend your lease under the Act, the premium you propose paying and any other proposed terms.

The Notice is an extremely important document which needs to contain specific information about you and your property.

The lowest figure put forward by your surveyor in their report for the premium will be inserted in to the Notice. Once the Notice is drafted we will then send this to you for you to review, sign and return to us.

We will then carry out final checks on your landlord's title to ensure nothing has changed before serving the Notice. The Notice will also be served on any other party to your lease such as a management company.

Upon the Notice being served we will make an application to HM Land Registry for an entry to be placed against the landlord's title evidencing that you are exercising your right under the Act and to protect your position. This will put any potential buyers of the landlord's title on notice.

Deposit, Inspection and Costs

Once the section 42 Notice has been served you will become liable for your landlord's legal and surveyor costs even if you then chose to withdraw from the transaction.

The landlord is also entitled to request that a deposit of 10% of the proposed premium from your section 42 Notice be paid to them within 14 days of the request. If the deposit is not paid within this time then your Notice may be deemed withdrawn and you will still be liable for costs. You will also be time barred from making a further application for a year.

It is likely that your landlord will instruct their own surveyor to carry out a valuation for them in order for them to check the premium properly payable and either to accept your offer or serve a Counter Notice with their suggested premium and terms. The surveyor may want access to the flat to carry out an inspection and you will need to permit this so please be prepared for it.

Counter Notice

From the date of the Notice being served by Mullis & Peake your landlord will have a period of two months to serve a Counter Notice.

The Counter Notice will state if they accept that you are permitted to extend under the Act and also which parts of the Notice they do and do not agree with.

More importantly the Counter Notice will state the premium which they expect you to pay for the lease extension which is usually a higher figure than that proposed in the Notice.

Negotiations

From the date of the Counter Notice you will have a strict deadline of six months under the Act in order to negotiate and agree the terms, to include the premium payable. Negotiations in relation to the premium are carried out by the parties' surveyors.

During this time we will be in contact with the landlord's solicitors in order to start negotiating the form and wording of the lease.

No Agreement

Where a settlement is not reached within six months from the date of the Counter Notice an application to the Property Tribunal will need to be made. This must be made within the six month window (not earlier than two months after the Counter Notice is received) in order to protect the Section 42 Notice and for them to determine the premium payable. If an application is not made within this time then the initial Notice will be deemed to be withdrawn and again, you will be time barred from serving a further notice for one year.

Upon making an application to the Tribunal, we can request that the proceedings be stayed for a further three months to allow for additional negotiations to take place. However the landlord's solicitors will need to agree to this also.

Once proceedings have been issued, the Tribunal will then set a timetable for exchange of information and draft leases to be agreed. If a settlement is still not reached then the Tribunal will set a date for a hearing.

It is rare for matters to go to a Tribunal hearing. Most are settled beforehand.

Upon all terms being agreed, we will complete the lease extension and proceed to register it at HM Land Registry.

Our professional fees are £1250 - £1500 plus VAT and disbursements up to the point of a Tribunal application. You will also pay the cost of your own surveyor and be responsible for the legal and surveyor costs of your landlord.

An Informal Lease Extension of a Flat

An informal lease extension is where the terms of a new lease are agreed with the landlord without the need for serving notice under the Act. This can be used where, for example you have not been the registered proprietor for two years and do not qualify to exercise the statutory route.

Under the informal route the parties are free to agree any terms in relation to the following:

Term: How long the lease is to be extended by

Premium: The premium payable for the lease extension

Form of Lease: Any additional clauses or amendments to your current lease

Costs: The costs of the landlord in relation to the informal lease extension

There is no set time frame for informal leases and sometimes due to this, and because the parties are free to agree any terms in relation to the new lease, this can mean that the process is as long as that of the statutory process above. Further, the lack of set time frame means that there is no obligation on the landlord to act quickly, or at all.

In an informal lease extension, expert advice should be sought from a surveyor who specialises in lease extensions with regards to the premium payable and any ground rent payable.

If your property is subject to mortgage finance then the consent of your lender will also need to be sought. Your lender may charge a small administrative fee for considering the matter and they will require you to enter into a Deed of Substituted Security (which essentially attaches the mortgage to the new lease rather than the old, shorter lease).

On agreement of terms

Once terms are agreed between you and your landlord, your landlord will usually instruct solicitors who will ask for an undertaking for their costs. We will then ask you to put us in funds for this amount so that we can provide them with this undertaking. This may include their surveyor costs if these have not been paid by you already. Once an undertaking is given the costs will be payable even if you later chose to withdraw from the transaction.

The landlord's solicitors will then provide us with a draft lease based on the terms agreed. We will review this document and propose any necessary amendments.

If you have a mortgage over the property we will also write to the lender to obtain their consent.

Once the draft lease is agreed this will be sent to you along with the Deed of Substituted Security from your lender (if applicable) for your signature.

Once we are in receipt of the signed documents from you we will propose a date for completion and request funds from you.

On completion we will then make an application to HM Land Registry to register the lease extension.

Our professional fees are £850 - £1000 plus VAT and disbursements to act on your behalf in relation to an informal lease extension. If you have a mortgage over the property then the consent of your lender will need to be sought and we charge £150 plus VAT to obtain this. If a management company is party to your lease then they will also need to sign the document. We charge £150 plus VAT to arrange for the management company to sign the document.

Contact

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