Overview

Leasehold enfranchisement entitles a tenant to obtain a greater legal interest in the building in which they already own a flat.

This can be done by:

1. purchasing the freehold interest collectively with other tenants, known as collective enfranchisement; or
2. individually, by purchasing an extension to their existing lease term.

For more detail on lease extensions, see the **Lease Extension** guide.

The law around leasehold enfranchisement continues to evolve towards a fairer balance between the rights of landlords and the rights of tenants.

In practice, enfranchisement and lease term extensions are voluntarily negotiated or dealt with through the prescribed statutory process.

Voluntary negotiations allow flexibility between the parties and are generally adopted with smaller buildings.

The statutory process is more rigid but allows for prescribed timelines and recourse when those timelines are not followed.

The scope of this commentary is to provide a practical guide to the statutory processes available in England & Wales for a tenant to exercise their rights of enfranchisement.

History

Enfranchisement has historical roots in providing better housing for those on low incomes. Since the early 1800s, there has been much political debate about the disparity between the rights of landlords and those of their tenants. When a long lease ended, a tenant had no legal rights to continue occupying the property or retain any capital value in it. The inevitable result was that tenants were left vulnerable to the unreasonable demands of their landlords, who effectively had free rein to impose any conditions they wished. It also made it virtually impossible to sell property with a short lease term left to run.

While the Law of Property Act 1925 introduced limited enfranchisement rights, it was not until the Leasehold Reform Act 1967 that enforceable statutory enfranchisement rights came into existence, albeit for tenants of houses only.

Twenty years later, with tenant complaints continuing, the Landlord and Tenant Act 1985 and Landlord and Tenant Act 1987 were introduced. Criticism continued, which led to

the introduction of the far more progressive Leasehold Reform, Housing and Urban Development Act 1993.

The 1993 Act gave qualifying tenants the statutory right to have the terms of their leases extended and the right to purchase their landlord's freehold interest.

While tenants find the legislative process cumbersome and expensive, exercising the right has become increasingly popular, especially in the light of amending legislation in the form of the Housing Act 1996, the Commonhold and Leasehold Reform Act 2002, the Leasehold Reform (Amendment) Act 2014 (repealed), and the Housing (Wales) Act 2014.

This area of law is constantly evolving, with leaseholds remaining under close government scrutiny.

Ground rent – Leasehold Reform (Ground Rent) Act 2022

For leases granted before 30 June 2022, ground rent is generally payable yearly in advance.

Residential leases granted for a term of at least 21 years in return for monetary consideration, known as a premium, are regulated by the Leasehold Reform (Ground Rent) Act 2022.

From 30 June 2022, a new regulated residential long lease in England and Wales cannot charge a ground rent of more than a peppercorn per annum.

In addition, the Act bans landlords from charging administration fees for collecting a peppercorn rent: s 18.

The Act sets out special provisions for shared ownership leases, where landlords cannot charge more than a peppercorn for the tenant's share of the property: s 5.

Existing residential leases where there is a deemed surrender and re-grant due to a material variation will be caught by the Act.

Regulation of ground rents in retirement accommodation came into effect on 1 April 2023.

Leases not caught by the Act, referred to as excepted leases, are:

1. existing leases entered into before 30 June 2022;
2. leases granted after the Act has come into force pursuant to a contract entered into before 30 June 2022;
3. business leases; and
4. community housing leases.

Lease renewals and extensions

A statutory extended lease under the Leasehold Reform Act 1967 for houses, and the Leasehold Reform, Housing and Urban Development Act 1993 for flats fall outside the new legislation and can continue to prescribe a ground rent. However, in practice, statutory lease renewals typically result in the ground rent being reduced to a peppercorn.

For existing leaseholders and landlords, who choose to extend their lease voluntarily outside those statutory extension regimes, the ground rent will now be reduced to zero on the newly extended term.

Any landlord or agent who contravenes the Act can be fined up to £30,000.

In addition to the abolition of ground rents in new leases, under the Leasehold Reform (Ground Rent) Act 2022, the government intends to implement a package of leasehold reforms, including substantial changes in the processes for lease extensions, collective enfranchisement, and changes in the calculation of premiums.

Legislation

Legislation referred to within this commentary includes:

1. Leasehold Reform Act 1967;
2. Landlord and Tenant Act 1985;
3. Landlord and Tenant Act 1987;
4. Leasehold Reform, Housing and Urban Development Act 1993;
5. Commonhold and Leasehold Reform Act 2002;
6. Leasehold Reform (Amendment) Act 2014 (repealed); and
7. Housing (Wales) Act 2014.

Rights of enfranchisement

All enfranchisement rights are statutory and divided into those that are exercisable by tenants collectively and those that are exercisable individually.

However, in exercising any such rights, whether collective or individual, all tenants and the subject buildings must meet statutory qualifying criteria.

Collective rights

Briefly, collective rights are those entitling a group of qualifying tenants to:

1. Purchase the landlord's freehold interest and certain intermediate interests of the building where their flats are located. The purchase price is calculated by statutory formula: s 1 of the Leasehold Reform, Housing and Urban Development Act 1993.
2. Be offered the right to purchase the freehold or any intermediate interests before the landlord can sell to a third party. This is known as a right of first refusal. Technically, it is not a right of enfranchisement, as the landlord cannot be forced to sell the freehold to the tenants: Part I of the Landlord and Tenant Act 1987.
3. Purchase the freehold of their building, where their landlord has persistently failed to comply with their obligations under the lease terms. This relates mainly to repair and maintenance. There is every likelihood that the landlord's default will continue because, for example, the landlord is absent or untraceable: Part III of the Landlord and Tenant Act 1987.
4. Take over the management of their building through a right to manage company. The landlord has a right to membership in that company. Strictly speaking, the tenants do not acquire any additional legal interest, but they do acquire a right to control the management of their building: Part II, Chapter 1 of the Commonhold and Leasehold Reform Act 2002.

Individual rights

Individual enfranchisement rights entitle a tenant to:

1. Purchase the freehold interest of a house in which they have an existing long lease. The statutory formula calculates the purchase price as set out in s 1 of the Leasehold Reform Act 1967.
2. Extend the current term of a lease to a house by 50 years. No premium is payable; however, the ground rent is reviewable after 25 years: s 1.
3. Extend the current lease term of a flat by 90 years. There is a premium payable, and it is calculated by statutory formula. The ground rent is reduced to a peppercorn rent, which is nominal. See Leasehold Reform, Housing and Urban Development Act 1993 and Ground rent-Leasehold Reform (Ground Rent) Act 2022.

The collective rights and the individual right to purchase the freehold interest in a house are explored in more detail in this commentary.

See the **Lease Extension** guide for information about the individual right to extend a lease term.

Getting the matter underway

General considerations

Verifying identity and source of funds

When existing clients are known to the practitioner, verifying their identity may seem unnecessary. It is, however, mandatory. The government, the Law Society, and UK

Finance require legal practitioners to obtain separate evidence of identity and address from each client at the beginning of each transaction to combat unlawful money transactions. The simplest way to fulfil the requirements is to obtain and keep identity records on each matter file, even for existing clients.

Asking clients to confirm their identity does not mean they are suspected of any wrongdoing. Following P&P Property Ltd v Owen White and Catlin LLP and Dreamvar v Mishcon de Reya [2018] EWCA Civ 1082 it has become even more important to confirm a client's identity in a bid to prevent fraud.

Satisfactory identity and address information can be established by sighting one item from List A and one from List B below and retaining a copy of each.

List A – Identity	List B – Address
– a valid full passport; – a valid UK photocard driving licence; or – a valid armed forces identity card with the signatory's photograph.	– a cheque guarantee card, credit card bearing the Mastercard or Visa logo, American Express or Diners Club card; a debit or multifunction card bearing the Switch or Delta logo issued in the United Kingdom **with** an original account statement less than three months old; – a firearm and shotgun certificate; – a receipted utility bill less than three months old; – a council tax bill less than three months old; – a council rent book showing the rent paid for the last three months; or – a mortgage statement for the mortgage accounting year just ended.

If they are not available, alternatives to identify the client satisfactorily may be sought. The UK Government issues guidance on How to prove and verify someone's identity.

Reliance on having known the client for more than 12 months as the sole identification method is not recommended.

Ideally a practitioner would see their client in person with the original documents to certify a true copy for their file and to check for a true likeness against any photo ID provided.

In person meetings, whether held remotely or in the same place, allow the practitioner to better gauge the client's level of experience and understanding of the matter. This is particularly important if there are disability issues or English is not the client's first language. An in person meeting also allows the practitioner to ascertain if the client appears to be under duress.

In addition, it may be prudent to carry out an online identity check, commonly known as an anti-money laundering check. Various search companies, such as InfoTrack, offer verification services.

Records of decisions and the reasoning for them are kept on file.

Acting for clients who cannot attend the office

It is becoming increasingly common for a legal practitioner to act for a client on the other side of the country, or the world, or it may be impossible for the client to come into the office. In these circumstances, conducting the client interview via audio visual means is an option.

The client's identity documents can be certified by a local professional or a notary who can confirm in writing that the photographic identification is a true likeness of the person presenting the identification.

Some practitioners use facial recognition and ID checking services such as Thirdfort. Alternatively, a client may email a photograph of themselves holding their ID document to ensure that identification requirements are satisfied when they are unable to attend in person.

Source of funds

Money laundering is the process of concealing the true origin of money, usually because it has come from criminal activity.

Practitioners are obliged to confirm that the funds for the legal work and the transaction are coming from a legitimate source.

Any suspicious activity must be reported to the firm's money laundering reporting officer who will either monitor the situation or report the activity to the National Crime Agency in accordance with firm policy.

See the **Anti-money Laundering Guidance** commentary and the **Practice Management** publication for detailed information.

Additional searches when acting for companies

When taking instructions to assist a company, as well as identifying the instructing individual officeholders, a company search is required. This will confirm such company details as the registered office, company registration number, the company officers, and what level of authority they have under the memorandum and articles of association for that company. Details can be downloaded from Companies House and kept on file: see Search the register.

Practitioners have a duty to inform Companies House of any discrepancies in the register.

The other side's legal practitioner

Fraudsters are capable of passing themselves off as professionals or members of the public. Therefore, unless already known to the firm, it is prudent to carry out one or more of the following steps:

1. On receipt of communications from the other side, check the details on the letterhead and ensure it complies with the requirements of the relevant professional regulator. All practices must disclose who their professional regulator is and the firm's unique identity number. This information can then be checked against the relevant directory.
2. Conduct an internet search of the firm to obtain collaborative verification.
3. Use a lawyer verification service such as InfoTrack, Lawyer Checker, or lender conveyancing hub Lender Exchange.

Any concerns need to be raised and discussed with the firm's money laundering reporting officer who can then perform any further investigations required following the firm's anti-money laundering procedures.

Potential fraudulent emails can be checked using the Solicitors Regulation Authority Scam alert search page.

The retainer

Risk and matter management starts with a retainer which:

1. records the client's instructions;
2. defines the scope of work for the lawyer to complete; and
3. either sets the fee for the service or sets the method of their calculation.

When it comes to claims against solicitors:

1. good instructions = good defence;
2. bad instructions = bad defence;
3. no instructions = no defence.

Client Care and Terms of Business

Providing the client with the Client Care and Terms of Business document is an important first step as it will record the client's instructions and define the scope of work to be undertaken. It establishes the degree of urgency to complete the work. It discloses how fees will be calculated, the anticipated third party costs and expenses, when they are payable, and the client's right to have them assessed.

Multiple clients

Multiple clients require extra care.

Instructions from a married couple need to be considered individually and jointly. Care needs to be exercised to avoid actual or potential conflicts of interest.

The same applies when instructed to form a limited company with more than one director.

Conflict of interests check

A conflict of interest between the practitioner and client is a breach of the practitioner's duty to the client. A conflict may arise where the personal interests of the practitioner conflict with the interests of the client, known as an own interest conflict, or where the interests of one or more clients conflict with each other, known as a client conflict.

An example of an own interest conflict would be a practitioner borrowing money from a client. In the event of an own interest conflict arising, the practitioner may not continue to act.

An example of a client conflict would be a practitioner acting for two clients in one transaction. What is in the interests of one client may not be in the interests of the other. Before engaging a client and sending them a retainer, a conflict of interest check will help to ensure the firm may act.

Where there is a client conflict or the potential for one, a solicitor can act only if the matter falls within the limited exceptions set out by the Solicitors Regulation Authority. See their Guidance: Conflicts of interest page.

A practitioner may only act for both parties if:

1. the clients have a substantially common interest in the matter; or
2. the clients are competing for the same objective, written informed consent has been given, safeguards are in place, and it is reasonable to act for both.

Other professionals have similar codes. For instance, licensed conveyancers must comply with the Council for Licensed Conveyancers Conflicts of Interest Code, and legal executives must adhere to s 7 of the CILEx Code of Conduct.

Generally speaking, the parties' interests are served if the transaction proceeds to its natural conclusion and any potential conflict never arises. However, circumstances can change, bringing the parties' interests into conflict. Failure to recognise when a potential conflict has become an actual one exposes the legal practitioner to action by both the client and the regulatory authorities.

Conflicts with two or more instructing clients

A practitioner might be instructed to act for two or more clients. For example, they might be instructed to draft an agreement that distributes assets within a family, acting for two or more siblings or their spouses.

In the case of siblings, it may well be acceptable to act for both, and it is likely that their instructions will not conflict because they are both members of the same family and will have a common objective. However, it is helpful to advise them at the outset that if their instructions start to diverge, both will be required to attend an appointment to clarify the different instructions or obtain independent advice.

Where there is potential for conflict, but the clients wish to proceed regardless, consider asking them to sign a document expressing their understanding of the potential for conflict and waiving their rights in this regard.

Acting for both siblings' spouses is more risk-laden because there is no common objective.

Acting for shareholders in a company may pose a risk of a potential conflict as they are likely to have different objectives and ideas about how the company is managed.

Conflicts and unrepresented parties

It needs to be clear to any unrepresented party that the practitioner is not representing or advising them. This can be difficult as points often need to be clarified for the other party. Practitioners are obliged to advise other parties to obtain independent legal advice, though it is ultimately their decision.

Relationship with the client

The relationship is fiduciary. The lawyer acts in the client's best interests with good faith, subject only to their overriding duties to the court and the law.

It is also a privileged relationship. Any confidential information to which the lawyer becomes privy cannot be disclosed, either voluntarily or under legal compulsion, unless the client consents or under strict exemptions.

The potential for disagreement in this unique relationship is avoided by practitioners ensuring they are competent to work in the area of law for which they are retained while adhering to their professional obligations and responsibilities.

The Solicitors Regulation Authority outlines the following principles for solicitors to act:

1. in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice.

2. in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.

3. with independence.

4. with honesty.

5. with integrity.

6. in a way that encourages equality, diversity and inclusion.

7. in the best interests of each client.

The Council for Licensed Conveyancers and the Chartered Institute of Legal Executives have similar requirements.

Interaction with clients can be streamlined by using a service such as LawConnect, available to lawyers through the LEAP Desktop toolbar and to clients through the LawConnect mobile app, which facilitates secure communication and collaboration.

Risk assessments

In conducting a risk assessment of a matter, consider:

1. whether the practitioner has the expertise to advise on the matter;
2. whether the matter requires advice from another jurisdiction;
3. whether the instructing individuals have the authority to do so;
4. whether third parties such as valuers and accountants need to be involved, and whether the practitioner has the appropriate contacts for this;
5. whether the work can be completed in good time with the resources available or if not, whether there are alternatives;
6. whether the fees for the work will justify the level of risk that will be accepted in undertaking the work – it is important a practitioner feels able to say no to a potential client if they cannot undertake the work in question;
7. how the firm's fees will be paid, which may include considering whether the client might be eligible for legal aid or other funding – the motivation to pay often disappears once the work has been completed.

Confidential information

In addition to conflicts of interest, consider whether it is likely that the acquisition of confidential information about one client will benefit another client. The practitioner has a duty to keep such information confidential, and any disclosure would breach a practitioner's professional obligations.

Information provided by a client may be confidential information about the other party. The consequences and practitioner's responses in this event are summarised by the Law Society in Imerman: disclosure and self-help in financial proceedings.

HM Land Registry client identification safe harbour standard

The safe harbour standard, when followed, constitutes what is regarded by HM Land Registry as a discharge of the duty to verify the identity of a party to a registrable transaction.

Schedule 8 of the Land Registration Act 2002 provides that compensation is payable in the event of a mistake on the register and the right for HM Land Registry to recover that compensation from conveyancers in certain situations.

Provided the safe harbour standard has been adopted, the Land Registry will not pursue any claim for losses from a fraudulent or negligent transaction against a practitioner on the ground that the identity checks were inadequate, unless that practitioner has been fraudulent or negligent.

The requirements of the safe harbour standard are:

1. Obtain the evidence. Hold a form of evidence that can be checked against cryptographic security features, including biometric facial recognition.
2. Check the evidence. Use an appropriate identity check provider such as Thirdfort to read the chip within the evidence provided and verify that the documentary and cryptographic security features are genuine.
3. Match the evidence to the identity. Use an appropriate identity check provider such as Thirdfort to match the person presenting the evidence to the evidence itself via biometric facial recognition.
4. Obtain evidence to ensure that the transferor, borrower, or lessor is the same person as the owner. Only the practitioner acting for the transferor, borrower, or lessor needs to meet this requirement. See **Verifying identity and source of funds**.

Remain vigilant throughout the transaction. Where there is reasonable doubt about a client's identity at any point in the transaction, the safe harbour standard will not be achieved if the doubts are not resolved fully.

Collective rights – Enfranchisement

This section deals with the statutory rights of collective enfranchisement granted to groups of qualifying tenants of flats who own long leases within qualifying premises.

There is particular reference to those tenants purchasing the freehold or an intermediate landlord's interest under the Leasehold Reform, Housing and Urban Development Act 1993.

Initial information and investigation for collective enfranchisement

Initial information, investigation, and preparation are key factors in successfully exercising a right to collective enfranchisement.

A considerable amount of information will be accumulated while dealing with a claim. Good file management and regular diary updates are pivotal in collating that information, keeping on top of the claim's progress, and complying with prescribed time limits.

As a first step, establish whether the building and the participating tenants fulfil the statutory criteria to qualify for the right. This would include being satisfied as to:

1. the identity and addresses of the freeholder and any other intermediate legal interests;
2. the type of building and the number of flats with long leases;
3. whether the building is residential, or a combination of both residential and commercial and, if the latter, in what proportions;
4. the number of qualifying tenants and their identities;
5. finance and a cost fund; and
6. the parties participating in the process, rather than those who merely qualify for participation, together with a nominated point of contact to obtain instructions and provide information and advice.

Office copy entries of the following need to be obtained:

1. the freehold title;
2. all intermediate titles; and
3. the leasehold titles to each flat and their leases.

Due to the complexity of some of the issues involved and to carry out the required preliminary investigations and assessments, in-depth instructions are required from the participating tenants.

Each participating tenant can be asked to sign a letter of commitment as a prerequisite to entering into a participation agreement later in the process, which may deter them from dropping out of the process halfway through.

Initial investigations would include:

1. an assessment of whether the qualifying criteria have been met;
2. consideration of other options that can equally satisfy the tenants' objectives, such as extending their leases or pursuing a right to manage claim; and
3. whether there is sufficient funding and commitment by the interested tenants.

Qualifying criteria for collective enfranchisement

Qualifying tenants

A qualifying tenant is a tenant of a residential flat under a long lease, with a term certain of 21 years or more: s 5 of the Leasehold Reform, Housing and Urban Development Act 1993.

The tenant does not need to have owned the lease or occupied the flat for any prescribed period.

The Act includes a shared ownership lease despite the tenant not owning a 100% share in that flat but specifically excludes commercial leases, charitable trust leases, and subleases granted without the consent of a freeholder: s 7.

Another point to note is that no flat can have more than one qualifying tenant at any one time, therefore:

1. if a flat has two or more existing long leases, it is the tenant in possession who qualifies; and
2. where joint tenants own a flat, they are jointly defined as a qualifying tenant.

A tenant is not a qualifying tenant under s 5(5) if they own three or more flats in the building on long leases. This proviso also applies where the tenant is a company and the other leases are owned by an associated company or companies.

Conversely, if the corporate entities are not associated companies in law, they would still qualify: Westbrook Dolphin Square Ltd v Friends Life Ltd (Rev 1) [2014] EWHC 2433.

The minimum number of participating qualifying tenants is 50% of the total number of flats in the building. For example, if there are 30 flats in the building, at least 15 of the flats of qualifying tenants must participate in collective enfranchisement.

If there are only two flats in the building, both flats of qualifying tenants must participate in the action.

Qualifying premises

Qualifying premises are defined in s 3 of the Leasehold Reform, Housing and Urban Development Act 1993 as:

1. a structurally detached self-contained building and or a part of a self-contained building provided it constitutes a vertical division of that building that can be redeveloped independently of the remainder; and
2. where the services provided to the occupiers of that building are independent, or potentially independent, without significant interruption to the services of the non-qualifying part of the building; and

3. the building contains two or more flats held by qualifying tenants; and
4. the total number of flats held by qualifying tenants is not less than two-thirds of the total number of flats contained on the premises; and
5. not more than 25% of the internal floor area of the building, excluding any common parts, is used for commercial purposes such as shops or offices; and
6. not defined as excluded premises.

See **Excluded premises** for more information.

Section 101 defines a flat as a separate set of premises, whether or not on the same floor, that forms part of the qualifying premises and is used for a dwelling.

Excluded premises

Premises excluded or exempt from enfranchisement legislation are dealt with by ss 4 and 10, being:

Resident freeholder – there is no right of collective enfranchisement where the building:

1. is a conversion into four or fewer flats; and
2. is not a purpose-built block; and
3. the freeholder has owned the freehold since before the conversion of the building into flats; and
4. the freeholder, or an adult member of the freeholder's family, has lived there as their main residence for a 12-month period ending with the date on which the resident freeholder claims the right of exemption.

Exempt properties – the following properties are excluded from the rights of collective enfranchisement and lease extension:

1. buildings within a cathedral precinct;
2. premises where the freehold includes any track of an operational railway, including a bridge or tunnel or retaining wall to a railway track; and
3. National Trust and Crown properties.

Parties to collective enfranchisement

The nominee purchaser

Once the qualifying criteria are satisfied and the required number of qualifying tenants will participate in exercising the right, the next stage is a combination of binding the participating tenants to the process and preparing the initial notice for service on the freeholder.

The legislation requires that a nominee purchase the freehold: s 15 of the Leasehold Reform, Housing and Urban Development Act 1993.

The nominee purchaser can be a person, a trust, or, most often, a company formed by the tenants. This company is the purchaser named in the initial notice to acquire the freehold title and become the new freeholder.

Right to enfranchise companies

The freehold acquisition is usually through a nominee company unless, perhaps, when dealing with a small block of flats.

If the tenants decide to form a company to be the nominee purchaser, it will need to be established before service of the initial notice.

The tenants will need to be advised and instructed on:

1. the incorporation and the articles of association of the company;
2. the company's purpose, voting rights, and control of the shares;
3. the appointment of directors, company officers, and accountants; and
4. the funding of the project.

Administratively, it is easier to postpone issuing shares in the purchaser company until after the enfranchisement process.

The right to manage must be exercised through a company with a prescribed constitution and articles of association.

A participating tenant sells or assigns

If a participating tenant assigns or sells their leasehold interest during the collective enfranchisement process, reference should be made to the terms of any participation agreement.

Within 14 days of completion, the assignee or buyer must provide an election to participate to the nominee purchaser.

Consent of the nominee purchaser or the other participators is not required. However, within 28 days of receipt of the assignee's notice, the nominee purchaser is required to give a copy of the assignee's election to participate and a notice of assignment of lease to the freeholder and any other intermediate landlords of the assignee participator: s 14 of the Leasehold Reform, Housing and Urban Development Act 1993.

The right to participate is lost if the assignee makes no election within the prescribed time limit. However, they can apply to join later, subject to agreement with the nominee purchaser and the remaining participating tenants.

A participating tenant dies

If a participating tenant dies during the collective enfranchisement process, the personal representatives have 56 days from the date of death to notify the nominee purchaser of the death and whether they wish to withdraw.

This notice can be given using a notice of withdrawal. There is no prescribed form for this notice. However, ss 14(8) and (9) of the Act set out the information that must be contained in the notice. A precedent Tenant's Notice of Withdrawal is available on the matter plan.

The nominee purchaser must notify the freeholder in writing within 28 days of receipt of the notice and send a copy to any intermediate landlords: s 14(7).

If no notification of withdrawal is given, the personal representatives will automatically become the participating tenants.

The freeholder

It is important to identify the freeholder and any other intermediate landlords to serve the initial notice of claim validly. Information required includes:

1. the identity and address for service of any intermediate landlord or freeholder;
2. the full names and addresses of all the leaseholders of the building and details of their leases; and
3. the details of any flats in the landlord's control and let on periodic tenancies.

Such information can be obtained from a variety of sources, including:

1. the participating tenants;
2. ground rent and service charge demands;
3. by written request for disclosure to the freeholder for information, which has to be provided within 21 days: s 1 of the Landlord and Tenant Act 1985;
4. the Land Registry;
5. an information notice sent to the immediate landlord or managing agents under ss 11 and 12 of the Leasehold Reform, Housing and Urban Development Act 1993; and
6. if the landlord is a company incorporated within England & Wales, an online search at Companies House to ensure it is not in liquidation or has been struck off the register.

Obtaining an office copy of the superior freehold title from the Land Registry will reveal not only the name and address of the superior freeholder but also details of any other interests in the freehold, including other relevant title numbers together with details of other freeholders, head-lessees, flat owners, and mortgagees. A small fee is payable for office copies of the register.

The information notice sent to the immediate landlord or managing agents requires them to release full details of their interest and any other interest of which they are aware within 28 days of receipt of the notice and also to require sighting of relevant documents for a reasonable fee. An information notice does not have to be in a prescribed form, and its service does not formally start the enfranchisement process nor commit the tenants in any way, and there is no liability for costs.

An absent freeholder

If the freeholder cannot be found, the options available in exercising enfranchisement rights depend on whether the freeholder is an individual or corporate entity.

The freeholder is an individual

If the freeholder is an absent or untraceable individual, detailed provisions are set out in ss 26 and 27 of the Leasehold Reform, Housing and Urban Development Act 1993.

There are two options to be considered:

1. Qualifying tenants may acquire the freehold under Part III of the Landlord and Tenant Act 1987.
2. Where at least two-thirds of qualifying tenants wish to proceed, a Part 8 claim under the Civil Procedure Rules 1998 for a vesting order can be made in the County Court.

The Part 8 claim can be protected by registering a notice on the relevant titles using form AN1 Application to Enter an Agreed Notice or form UN1 Application to Enter a Unilateral Notice. See **Timetable** and Practice guide 27: the leasehold reform legislation.

The tenant will need to satisfy the court that reasonable steps have been taken to locate the absent landlord and that the tenant is entitled to purchase the freehold under the Act.

The County Court may give further directions on locating the missing landlord if necessary.

Following consideration of the evidence supporting the claim, if the court decides to make a vesting order, the claim will be referred to the First-tier Tribunal (Property Chamber) to rule on the price and any other terms of transfer.

The adjudicated price will need to be paid into court. The court will execute the appropriate transfer form in favour of the nominated purchaser and release it to them or their legal practitioner for registration at the Land Registry.

The Land Registry application will be accompanied by:

1. a Land Registry form AP1 Application to Change the Register;
2. the form TR1 Transfer of Whole of Registered Title(s);

3. the court vesting order;
4. the First-tier Tribunal determination;
5. evidence of payment into court; and
6. the relevant land registry fee: see HM Land Registry: Registration Services fees.

The title will automatically be cleared of registered charges. Interests in the property pass to the sum paid into court for settlement.

The freeholder is a corporate entity

If the freeholder is a corporate entity in England or Wales that has been dissolved or struck off, the freehold title vests bona vacantia in the Crown.

This means that the Treasury Solicitor, acting for the Crown, will dispose of the freehold interest, at a fair market price plus costs, to the person or persons with the best claim to it or their nominated entity.

If claimed by the majority of qualifying tenants, they will be deemed entitled to it.

The tenants' participation agreement for collective enfranchisement

To contractually bind the participating tenants to the enfranchisement process and ensure the smooth running of the claim, tenants must enter into a formal participation agreement.

There are logistical issues in obtaining the signatures of many participants in the agreement, especially if they do not live in the building. This can be overcome by each participator signing a separate individual copy agreement which can then be returned to the practitioner acting for the collective or the elected lead participator.

Once a sufficient number of signed and dated copy agreements have been returned, the nominee purchaser can sign and date the top copy of the participation agreement on behalf of all participators.

It is important to note that as the collective participators have authorised the nominated purchaser, their signature will bind all of them, like an appointed attorney. It would be the personal responsibility of a participator to notify the collective that they no longer wish to participate.

As time is prescriptive in the legislative process, the participating tenants must clearly understand that delays or difficulties in reaching decisions can endanger the application, which can be costly.

Therefore, the participation agreement will need to cover actions before, during, and after completing the enfranchisement procedure.

These will include:

1. rights of voting;
2. negotiation and agreement of terms;
3. who or what entity is to manage the building after acquisition;
4. terms on how to deal with latecomers;
5. whether new leases will be granted to all participators on completion, and the terms of these; and
6. the individual tenant's financial contributions and their timing.

The agreement should also cover how contributions are to be apportioned, for example, equally, on the same percentage levied for service charges, or on the internal floor areas of the individual flats.

It is best that each tenant seeks their own independent legal and tax advice. The practitioner who has carriage of the enfranchisement is acting for the collective, not the individual, and will advise the group on the duties and format of the nominee purchaser and the terms of the participation agreement.

When dealing with a small block of flats, it is possible to forego the formal participation agreement and proceed with a letter of commitment instead. All the tenants would sign this document and pay their contributions up-front.

Costs for collective enfranchisement

Costs, funding, and the timing of contributions will be key factors in pursuing a claim. Costs include:

1. preliminary investigations and assessments;
2. initial valuation fees;
3. ongoing legal and other professional costs;
4. the freeholder's legal and valuation costs;
5. settlement of all arrears of ground rent and service charges up to the date of completion of the transfer of the freehold title;
6. any stamp duty land tax;
7. any other associated disbursements;
8. the estimated purchase price;
9. borrowing costs if applicable;
10. the freeholder's costs; and
11. tribunal costs.

Additional legal work will include the source and terms of the proposed lending and the security required if they intend to borrow.

Once the initial notice to enfranchise is served, the nominee purchaser will be liable for the freeholder's reasonable costs and any intermediate landlord. Such reasonable costs are limited to investigating the claim and associated issues, deducing title, valuation, and legal conveyancing costs. It does not include the freeholder's fees of negotiating with the nominee purchaser's valuer: s 33 of the Leasehold Reform, Housing and Urban Development Act 1993. If the initial notice is withdrawn, settlement of the freeholder's costs becomes a joint and several liability of the participating tenants.

If an application is made to the First-tier Tribunal (Property Chamber), although the tribunal can make an award for costs, generally, each party to that application will be liable for their costs.

The potential cost issues detailed here are not exhaustive and will depend on the circumstances of each claim.

The breakdown of costs schedule is useful to gather the relevant costs and plan the staged funding of the process. This information can be set out in the participation agreement so that the tenant participators are informed of the costs and know when they will be expected to make their contributions.

It is essential that the agreement also addresses the actions required if any of the tenant participators fails or refuses to make their contribution and the viability of default indemnity.

Valuation of collective enfranchisement

Valuation is a complex process that is calculated by using statutory formulae and criteria, but the underlying principle, according to Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993, is to arrive at an:

amount which at the valuation date the interest might be expected to realise if sold on the open market by a willing seller …

The purchase price for the freehold and how it is to be apportioned between the superior freeholder and any intermediate landlords is also set out in Schedule 6.

Fortunately for the practitioner, this exercise will be left in the hands of each party's appointed surveyor or valuer, who will usually deal with these technical aspects and the ensuing negotiations to arrive at an agreed purchase price.

It is prudent to ensure that the appointed valuer has the necessary expertise in this area. They will be tasked with the purchase price negotiations and can also be called as an expert

witness if it is necessary to apply to the First-tier Tribunal. Such valuers will generally be members of the Royal Institution of Chartered Surveyors.

During this stage of the claim, the practitioner's role is to provide information to the valuer. They will liaise with the freeholder to arrive at an agreed purchase price to compensate the freeholder and any intermediate landlords for the loss of the reversionary interest.

Schedule 6 requires that the compensation payable for the forced sale shall comprise:

1. the income received from ground rents for the remaining unexpired terms of the flat leases;
2. the open market value of the reversionary freehold on expiry of those leases, taking into account, for example, the location of the building, how many flats there are, and their value;
3. the marriage value, where applicable;
4. the value of other interests, for example, shorter term periodic tenancies, commercial properties, and garages; and
5. compensation for other losses – injurious affection.

The marriage value in collective enfranchisement is the increased freehold value after acquisition due to the participating tenants granting themselves longer leases at no premium. It is not applied where the tenants' unexpired lease terms exceed 80 years at the initial notice date.

Injurious affection is compensation to the freeholder for the loss of value of another property due to the forced sale. For example, there can be a loss of potential development value or access rights to an adjoining property. If the claim includes the interest of an intermediate landlord, that interest will also need to be valued: Part III of Schedule 6.

Ordinarily, the valuation will be based on the same principles as valuing the freehold reversionary interest.

The intermediate landlord may, for example, be a head-lessee, in which case serve the initial notice on that head-lessee and the reversionary freeholder. The intermediate landlord is entitled to compensation and to participate in the enfranchisement process.

However, as the freeholder delivers an unencumbered freehold title to the nominee purchaser on completion of the sale, any other landlord's interest must be wound up and closed, for which compensation will be payable.

Accordingly, the freeholder will be the primary negotiator for all the interested intermediate landlords. This will not affect the total sum payable by the nominee purchaser, but that price will need to be apportioned between the various landlords and the freeholder in proportion to the value of their relative interests.

The apportionment can be agreed between the parties or determined by a First-tier Tribunal (Property Chamber). See **Applications to the tribunal**.

Timetable for collective enfranchisement

Initial notice – Acting for the tenants

The service of the initial notice of claim on the freeholder, and any intermediate landlord, is the first formal step in the exercise to enfranchise, triggering the liability as to costs and the obligation to adhere to a very strict procedural timetable.

Completing the notice

There is no prescribed form of the initial notice. However, what must be contained within it is set out in s 13(3) of the Leasehold Reform, Housing and Urban Development Act 1993.

The notice specifies the date by which the freeholder is to serve the counter-notice, such date being not less than two months after the date of service of this initial notice.

Care needs to be taken in setting out the information in the notice, as paragraph 15 of Schedule 3 of the Act allows limited scope for inaccuracy in the particulars or the description of the property.

In Natt-v-Osman (2014) EWCA Civ 1520, the court decided that any mistake in a notice not caught by a statutory saving clause may invalidate the notice.

Care also needs to be taken when inserting the price. For negotiating purposes, it is permissible to insert a price in good faith on the lower end of the scale recommended by the valuer, which is supportable by reasonable argument and evidence.

Conversely, a notice will be invalid if the purchaser inserts a nominal price knowing that a realistic price is considerably higher: Cadogan Estates Ltd-v-Morris (1998) EWCA Civ 1671.

An agent can sign the initial notice on behalf of the participating tenants: s 140 of the Housing (Wales) Act 2014 applies in England and Wales. Usually, that agent will be a director of the nominee purchaser or the practitioner acting on behalf of the tenants and duly authorised by them.

All participating tenants need to sign any authority, including all joint tenants. Due diligence is required if any tenants are overseas companies.

Plan

A plan must be attached to the notice; failure to do so will render the notice invalid. It is recommended that a professional title plan provider is instructed to create the plan to ensure accuracy and compliance.

Service of the notice

The notice is served on the reversionary freeholder and any intermediate landlords at their respective addresses for service. If no address for service is known, the notice is served at the address set out in information or disclosure notices or on ground rent and service charge demands: s 99 of the Leasehold Reform, Housing and Urban Development Act 1993.

The notice is served by the same method for all recipients, either by post or by hand. If by post, actual service is deemed to be the working day after posting. Email service is not valid.

Service by recorded delivery post is not recommended. It runs the risk of the notice being returned undelivered, resulting in the loss of uniformity.

Registration at the Land Registry

The initial notice is registered at the Land Registry against the freehold and intermediate landlord titles, which restricts the freeholder's ability to dispose of the interest and protects the interests of the participating tenants.

If the freehold or any intermediate titles are unregistered, the notice needs to be registered as an estate contract at the Land Charges Registry as a Class C(iv) Land Charge.

Procedure

Once a tenant has served a s 13 notice of claim under the Leasehold Reform, Housing and Urban Development Act 1993, it can be protected as if it were an estate contract. If the reversionary titles affected are registered, this is done by applying for the entry of a notice under s 97(1) together with the requisite registration fee. See HM Land Registry: Registration Services fees.

The application can be by:

1. an agreed notice in form AN1 together with a certified copy of the notice; or
2. a unilateral notice in form UN1 together with a certified copy of the notice.

The notice will be entered in the charges register of the affected reversionary interest titles as follows:

Notice entered pursuant to section 97(1) of the Leasehold Reform, housing and Urban Development Act 1993 that a notice dated xxxxxxx has been served under section 13 of that Act by xxxxx of xxxxxx

NOTE: Copy filed.

If any of the reversionary titles affected are unregistered, the notice may be protected by a Class C(iv) entry at the Land Charges Department.

To register a Class C (iv) land charge, an application is made using form K1 to register a land charge, accompanied by the fixed fee prescribed under the HM Land Registry: Land Charges fees. The form and fee are sent to the Land Charges department as set out in the form.

A failure to register the notice would mean that a new owner will take title free of the notice.

For further information, see Practice guide 27: the leasehold reform legislation.

Timetable for all parties after service of the initial notice

The nominee purchaser's service of the initial notice triggers a strict procedural timetable: s 20. The following acts are to be taken by the reversioner and the nominee purchaser, as applicable:

1. Within 21 days of service of the initial notice, the reversioner can serve notice on the nominee purchaser to deduce title of any participating tenant. Failure by the participating tenants to comply will result in the notice being deemed withdrawn.
2. The nominee purchaser must comply within 21 days, beginning with the date of the reversioner's request notice for deduction of any participating tenant's title. Failure to do so will preclude that tenant from further participating. If that participation affects the qualifying criteria, the initial notice is also deemed to be withdrawn.
3. On giving not less than 10 days written notice to the occupier, the reversioner, intermediate landlord, and nominee purchaser all have rights of access to the qualifying premises and appurtenant premises for valuation purposes or any other purpose arising out of the claim.
4. The reversioner must serve a counter-notice to the nominee purchaser by the date specified in the initial notice.
5. If the freeholder disputes the tenants' right to enfranchise by serving a counter-notice to that effect within two months of the service of that counter-notice, the nominee purchaser applies to the County Court for a determination.
6. If the freeholder admits the claim, no earlier than two months but no later than six months beginning with the date of service of the counter-notice, the nominee purchaser may apply to the First-tier Tribunal (Property Chamber) to resolve any areas of dispute. See **Applications to the tribunal**.
7. If the freeholder opposes the claim due to proposals to redevelop the qualifying premises, provided there is no other dispute, the freeholder applies to the County Court for a determination. This application is made within two months, beginning with the date of service of the counter-notice. Failure to do so will result in the freeholder losing the right to dispute the claim based on the redevelopment proposals.
8. If the freeholder agrees with the claim in all respects, a different timetable will come into play.

Service of the initial notice on the reversionary freeholder, and any intermediate landlords, does not prevent them from disposing of their interests. However, provided the notice has

been registered against the respective titles as an estate contract, an incoming purchaser will be subject to that title.

However, freeholders and intermediate landlords are prevented from disposing of any interest they have in any adjoining or appurtenant premises.

Binding contracts for the disposal of any reversionary interests entered into before service of the initial notice or any notice by the qualifying tenant of a claim to exercise the right will be suspended until the participating tenants' claim is concluded.

A further initial notice cannot be served while a valid one is in force.

The counter-notice – Acting for the freeholder

Following service of the initial notice, the practitioner for the freeholder, and any intermediate landlords, will need to go through a similar initial investigation and assessment process, together with obtaining their valuation for determining a price and any negotiations.

Commercial factors will also need to be considered as investment potential, further borrowing, development potential, leaseback rights, and existing plans to dispose of all or part of the interest involved.

The freeholder acts on behalf of all landlords but is duty-bound to consult with them and listen to their requirements: Schedule 1 of the Leasehold Reform, Housing and Urban Development Act 1993.

Although the freeholder acts as nominee landlord for all the landlords, it would be prudent to ensure all landlords sign and date their agreement to any disposal of the freehold and particularly its price and apportionment.

The freeholder must serve the counter-notice by the date stipulated in the initial notice. There is no prescribed form of counter-notice. However, the required information is set out in s 21 of the Act and the regulations The Leasehold Reform (Collective Enfranchisement) (Counter-Notices) (England) Regulations 2002 for England and The Leasehold Reform (Collective Enfranchisement) (Counter-notices) (Wales) Regulations 2003 for Wales.

By s 24 of the Act, if the freeholder admits the claim in all respects, the parties have two months from the date of service of the counter-notice for negotiations to take place.

If any terms remain to be agreed after this period, the nominee purchaser can apply to the First-tier Tribunal (Property Chamber) for a determination. That application can be made no earlier than two months but no later than six months after the counter-notice's service date. See **Applications to the tribunal**.

If the freeholder fails to serve a counter-notice at all or within the prescribed time limits set out in s 20, the nominee purchaser can apply to the County Court to acquire the freehold on the terms set out in the initial notice within six months from the date the counter-notice was supposed to be given.

Applications to the County Court are by way of a Part 8 claim under the Civil Procedure Rules.

Leasebacks and intermediate landlords for collective enfranchisement

Leasebacks

The freehold building can contain commercial premises, residential flats leased to non-qualifying tenants, and secure tenants, which will not form part of the collective enfranchisement process.

The outgoing freeholder will be required to take a 999-year leaseback over such units and, in practice, this will mean that simultaneously with the nominee purchaser acquiring the freehold title, it will grant 999-year leases of those units back to the outgoing freeholder: Cawthorne & Ors v Hamdan [2007] EWCA Civ 6.

If the freeholder wishes to take a leaseback, they protect that right by setting out leaseback terms for consideration in the counter-notice: s 21(3) of the Leasehold Reform, Housing and Urban Development Act 1993. If they do not do this, any later attempt to serve a leaseback notice on the qualifying tenants will be invalid: Cawthorne & Ors v Hamdan [2007] EWCA Civ 6.

As the nominee purchaser will not be responsible for paying for the value of those units to the freeholder, their value will be deducted from the price payable for the freehold or an allowance made in respect of it.

If the value cannot be agreed during the negotiation period, after the initial two months following service of the counter-notice, either party can apply to the tribunal for an independent determination on the issue.

Intermediate landlords

The nominee purchaser also acquires any intermediate leasehold interest above the leases of the qualifying tenants. This would include, for example, a head lease.

The freeholder reversioner generally deals with such interests on behalf of those intermediate landlords.

Conveyancing process for collective enfranchisement

The standard collective enfranchisement process will take approximately 6 to 12 months from the service of the initial notice.

Once all terms have been agreed between the parties, the parties have 28 days after agreement to implement the conveyancing process, which is governed by Schedule 1 of The Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993.

The conveyancing process is started by the freeholder reversioner deducing the freehold title and any intermediate landlord titles, with either Land Registry office copy title entries or an unregistered epitome of title.

Within 14 days of delivery of the deduced title, the nominee purchaser raises any requisitions as to the title. The reversioner has 14 days after that to reply.

The contract for the sale, with the draft deed of transfer attached, is prepared by the freeholder's practitioner and submitted to the nominee purchaser's practitioner within 21 days of agreed terms.

The purchaser has 14 days to approve or amend the contract after that. The freeholder has a further 14 days to approve or agree to the contract and supporting transfer deed.

The parties will exchange contracts, with the purchaser being required to pay a deposit of not less than £500 or 10% of the purchase price, whichever is the greater, to be held by the seller's practitioner as stakeholder.

The contents of the conveyance are governed by Schedule 7 of the Leasehold Reform, Housing and Urban Development Act 1993, which requires that it contains certain mandatory statements.

Completion of the collective enfranchisement

The pre-completion process will follow the terms of the contract in the usual manner for a sale or purchase of land. For more detail, see the **Sale** and **Purchase of Land** guides.

Unless notified of an intention to be separately represented by any intermediate landlord, the nominee purchaser will deal directly with the freehold reversioner, who is entitled to sign the conveyance on behalf of all relevant landlords and accept the purchase price.

Although the nominee purchaser has to ascertain the redemption sums required to redeem and discharge every mortgage and financial charge, in practice, the freeholder will apportion and distribute the sale proceeds as provided by the contract terms and discharge any mortgages.

These obligations can be covered by appropriate professional undertakings between the practitioners for both the freeholder and the nominee purchaser.

As per the participation agreement, the practitioner for the tenants will need to fully account for and collect all costs and fees due to complete the purchase on the date set for completion. It is recommended that a full breakdown of costs and fees payable is provided to each participating tenant well in advance of the completion date.

Part of those costs will also involve any stamp duty land tax liability in England or land transaction tax in Wales and, on completion, settlement of the freeholder's and intermediate landlords' reasonable costs.

The nominee purchaser needs to ensure adequate buildings insurance is in place on the date risk passes to them.

As in the standard conveyancing transaction, the nominee purchaser's title must be submitted to the Land Registry for registration.

Further conveyancing may be required post-completion, with the participating tenants granting themselves new long leases at no additional premium and increasing the capital value of their respective properties.

The terms for new leases should have already been dealt with in the participation agreement.

Tenants right of first refusal

Under Part I of the Landlord and Tenant Act 1987, a freeholder wishing to sell their reversionary interest must first offer it to qualifying tenants.

Failure to do so is a criminal offence enforceable at the discretion of the relevant local authority, punishable by substantial fines.

Technically this is not a statutory right of enfranchisement, enabling the tenants to force the freeholder to sell its interest. Before dealing with a third party on sale, it is a statutory obligation on the freeholder to provide the tenants with an opportunity to purchase the freehold.

The freeholder retains complete control throughout and, before a binding contract is entered into, can withdraw the offer at any time without explanation.

Further, the freeholder determines the purchase price. There is no right to refer the question of the price to the First-tier Tribunal (Property Chamber) or the County Court.

Qualifying criteria for the tenants right of first refusal

Qualifying premises

The Landlord and Tenant Act 1987 defines premises as the whole or part of a building. This is generally meant to be a separate building or part of a building divided vertically from another part.

It is a requirement that:

1. the building contains at least two flats; and
2. no more than 50% of the premises, excluding common parts, are in commercial use; and
3. qualifying tenants hold more than 50% of the flats on the premises.

Qualifying freeholder and intermediate landlords

The obligation to offer first refusal to qualifying tenants applies to all landlords of residential buildings except for the following:

1. local councils and housing corporations;
2. registered social landlords and housing associations that are not registered;
3. charitable housing trusts; and
4. resident landlords who live in the building where:
5. the building is not a purpose-built block of flats; and
6. the landlord lives in the building as their only or principal residence and has done so for over 12 months.

Qualifying tenants

A qualifying tenant is the owner of a long lease with a term certain of 21 years or more, or most fixed or periodic tenancies.

The definition does not include:

1. shorthold or assured tenancies;
2. business tenancies;
3. agricultural tenancies;
4. employment tenancies; or
5. anyone who owns three or more flats in the building.

Disposal by the freeholder

When a freeholder decides to sell their interest in a property, they are obligated to offer it to the qualifying tenants if the qualifying criteria are satisfied.

Exceptions to the first right of refusal

There are some circumstances where the right of first refusal does not apply, such as:

1. the freeholder granting a tenancy of individual flats;
2. the freeholder securing a loan against their interest by way of a mortgage;
3. a disposal to a receiver or trustee in bankruptcy, however any subsequent disposal by the receiver, liquidator, or trustee will not be exempt, and the tenants will need to receive notice of their rights;
4. a disposal to an associated company, where the interest is transferred as an asset to another company which has been associated with the parent company for at least two years;
5. a sale arising from collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 Act;
6. a sale by way of a compulsory purchase order;
7. a sale by a charity to another charity; and
8. sales to the Crown or government departments.

Offer notice

If all the conditions are satisfied, a freeholder serves an offer notice on not less than 90% of the qualifying tenants.

Depending on the type of disposal there are five different forms of notice being:

1. simple sale by contract: s 5A of the Landlord and Tenant Act 1987;
2. sale by public auction: s 5B;
3. a grant of an option or right of pre-emption: s 5C;
4. sale not pursuant to a contract: s 5D; and
5. sale for non-monetary consideration: s 5E.

The tenant can accept the freeholder's offer in accordance with s 6.

Failure to give notice of first refusal

It can often be the case that the tenants will not know of the freehold sale until it occurs.

If the freeholder has breached the statutory requirements allowing qualifying tenants to exercise the right for first refusal, the tenants can require the new freeholder to sell the freehold interest to them at the same price and on the same terms as it was acquired: s 11A of the Landlord and Tenant Act 1987. The statutory procedure to follow will depend on the disposal that has taken place:

1. the right to take benefit of a contract: s 12A;
2. the right to compel resale: s 12B; and
3. the right to compel the grant of a new tenancy: s 12C.

New freeholder requirements

New freeholders are required by statute to notify each tenant of their name and address. Failure to do so is a criminal offence: s 3 of the Landlord and Tenant Act 1985. Failure to serve this notice will also leave the previous freeholder open to liability for breaches of the lease under s 3A.

If the right of first refusal applies, the new freeholder must advise each tenant of their rights under the Landlord and Tenant Act 1987.

Within four months of receiving the notice the tenants serve the s 11A notice if they wish to exercise their right to purchase the freehold. The freeholder must respond to that notice within one month after that.

Collective rights – Right to manage

The right to manage is a statutory right given to a group of tenants of flats with long leases to take over their building management through a right to manage company. The intermediate landlord has a right to membership in that company.

The governing legislation is the Commonhold and Leasehold Reform Act 2002.

Strictly speaking, the tenants do not acquire any additional legal interest, as the freeholder and any intermediate landlord retain their legal interest.

However, the tenants acquire a no-fault right to control the management of their building through a specifically created right to manage company. The right is available whether the landlord's management of the building has been good, bad, or indifferent.

The right to manage procedure is relatively simple. However, the key to a successful claim is to follow the rules and requirements precisely. There is no requirement to obtain the landlord's consent or any court order.

However, the right is conferred on the right to manage company, not the qualifying tenants. Therefore, the creation of the company is a compulsory requirement.

If the right to manage company subsequently acquires the freehold interest, it will cease to be a right to manage company.

What does management involve?

The right to manage company takes over management of the premises on the acquisition date.

Management duties and obligations will primarily be set out in the lease. Such duties will include repairs, maintenance, improvements, insurance, consents or licences, and enforcement of lease covenants.

The right to receive the ground rent does not pass to the right to manage company but remains with the landlord. However, the landlord can employ the company's managing agents to collect the ground rents on its behalf.

The outgoing landlord has a statutory duty to fully account for the right to manage company for collected in service charges and any sums held in a reserve account as of acquisition.

In cases of dispute, an application can be made to the First-tier Tribunal (Property Chamber) for a determination. See **Applications to the tribunal**.

As a final resort, enforcement of the obligation to transfer funds can be by application to the County Court after the service of a 14-day default notice.

The right to manage company will not have any rights as to:

1. the management of any non-residential parts of the building or any non-qualifying flats;
2. functions relating to forfeiture and possession;
3. collecting and receiving the ground rents;
4. providing quiet enjoyment; and
5. rights of support of the flats.

All these matters remain within the jurisdiction of the landlord.

If there is a dispute between the landlord and the right to manage company over grant approval and consent, the disputing party applies to the First-tier Tribunal (Property Chamber) for a determination. See **Applications to the tribunal.**

Initial information and investigations for the right to manage

Complying with the rules is fundamental to a successful claim. Collecting and processing information and a detailed investigation and preparation are key requirements. Good file management and regular diary updates are key in managing and complying with the many prescribed time limits.

Establish whether the building and the participating tenants fulfil the statutory criteria to qualify for the right. This will include:

1. whether the building qualifies;
2. whether there are sufficient qualifying tenants;
3. whether any adjoining premises need to be included in the claim;
4. the formation of a right to manage company where all participators are members;
5. the identity of any landlord and management company;
6. a date when the right to manage company will take over the management and responsibility of the building, known as the acquisition date; and
7. a strategic plan for the future management of the building to include the appointment of managing agents, if required.

The right to manage company can serve a pre-claim notice for information on any person or entity it considers pertinent to assist its claim: s 82 of the Commonhold and Leasehold Reform Act 2002.

It is recommended that several initial meetings with the tenants or their nominated spokesperson take place to go through the processes involved. As the tenants will be taking on considerable responsibility, it is important to discuss what managing the building entails, so they can fully appreciate the scope. The appointment of professional managing agents to deal with the everyday running of the building should also be explored as an alternative.

Consideration needs to be given to the costs and funding of the claim, the tenants' ability to raise these funds, and the source.

Qualifying criteria for the right to manage

Qualifying tenants

Section 75 of the Commonhold and Leasehold Reform Act 2002 defines a qualifying tenant as a flat owner who holds a residential long lease of 21 years or more.

There can only be one qualifying tenant. Therefore, if there are two leases for the same flat at any one time, the qualifying tenant will be the owner in possession.

Further, if the flat is owned jointly, the joint tenants only qualify as one qualifying tenant.

Determining who is eligible to be a qualifying tenant is done by examining the individual registered titles of the flats.

Qualifying premises

Qualifying premises are defined in s 72 of the Commonhold and Leasehold Reform Act 2002. They are similar to the criteria for collective enfranchisement:

1. a self-contained building, or part of a building with or without appurtenant property; and
2. contains two or more flats held by qualifying tenants; and
3. the total number of flats held by such qualifying tenants is not less than two-thirds of the total number of flats in the qualifying premises, with the participating tenants of those flats comprising not less than 50% of the total number of flats within the building.

If there are only two qualifying tenants, both must be members of the right to manage company. Not more than 25% of the building can be non-qualifying tenants or commercial premises.

Excluded premises

Excluded premises are covered by Schedule 6 of the Commonhold and Leasehold Reform Act 2002 and include:

1. where the total internal floor area of non-residential parts of the building exceeds 25%, excluding the common parts;
2. where there is a resident landlord, and the building is not purpose-built and contains not more than four flats; and
3. where the local housing authority is the immediate landlord of any qualifying tenant.

Special consideration will need to be given to estates or multiple buildings, especially where there are several blocks of residential flats and shared appurtenant areas. A right to manage company cannot acquire the right to manage more than one building. In Triplerose Limited v Ninety Broomfield Road [2015] EWCA Civ 282, the court held that where there is an estate comprising several buildings, a right to manage company will need to be created for each building.

Consequently, invitation notices are served on the qualifying tenants for each building. After that, a claim notice will be served on the landlord of each such building.

Parties to the right to manage

Right to manage company

While the right to manage is a statutory right given to a group of tenants, they do so by forming a right to manage company. Section 73 of the Commonhold Reform Act 2002 and s 74 of the Commonhold and Leasehold Reform Act 2002 set out its requirements, members, and regulations. The company:

1. is limited by guarantee;
2. has articles of association which govern the purpose and running of the company as prescribed by law;
3. members can only be the qualifying tenants and any landlord; and

4. cannot distribute any profits to its members.

The articles for companies incorporated in England are set out in the Schedule to The RTM Companies (Model Articles) (England) Regulations 2009.

Creating the company is a relatively simple operation. See the **Company**, **Trusts**, **Partnership** and **Joint Venture** guides to assist.

The tenants need to appreciate that while the management of the building passes to the right to manage company, the ownership and leases all remain unaltered.

The tenants can enter into a participation agreement. This is not a compulsory requirement, but it does ensure the tenants know and understand the advantages and disadvantages of their undertaking. Substantial planning by them is necessary to ensure the future and good management of the building together with sensible and achievable budgets.

The company manages the building in accordance with the terms of the leases. It has a primary duty to the landlord not to allow any depreciation in the value of the landlord's interest through any mismanagement.

Membership

Members of the right to manage company will be qualifying tenants and a landlord under a lease of whole or part of the property.

Applying for membership is dealt with in the articles of association of the right to manage company. Its directors would usually invite all qualifying tenants and landlords to become members.

On selling a flat within the building, the right to membership ceases and is transferred to the incoming buyer.

Quorate general meetings of the company are usually no less than 20% of those qualified to vote. The governance of those meetings is as set out in the right to manage company's memorandum of articles of association.

Voting

Voting rights are intricate, and reference needs to be made to the right to manage company's memorandum of articles of association. Generally, each qualifying tenant has one vote, and each participating landlord has one vote.

A member can have enhanced voting rights dependent on negotiation, but the qualifying tenants always retain overall voting control.

Absent landlord

Section 85 of the Commonhold and Leasehold Reform Act 2002 deals with a situation where the right to manage company cannot identify or trace the landlord.

If a management company runs the property under the terms of an existing management lease, the claim notice can be served on it.

Failing this, after reasonable steps have been taken to trace the landlord, an application can be made to the First-tier Tribunal (Property Chamber) for an order entitling the company to acquire the right. See **Applications to the tribunal**.

Notice of the application is given to all the qualifying tenants.

Costs and management contracts for the right to manage

The right to manage company is liable for the landlord's reasonable costs arising out of the service of the claim notice, accountancy, audit, and legal costs. However, if such costs cannot be agreed between the parties, the landlord applies to the First-tier Tribunal (Property Chamber) for a decision: s 88 of the Commonhold and Leasehold Reform Act 2002. See **Applications to the tribunal.**

The landlord will likely have pre-existing contracts, either directly or through its appointed managing agents, with third parties dealing with the administration and management of the building. These can include contracts for gardening services, lift maintenance, and cleaning of the common parts.

The incoming right to manage company needs to be made aware of these contracts, and notice of the transfer of the management of the building to it will need to be given to the contractors involved. A smooth management transition from the outgoing freeholder or landlord to the right to manage company is essential. Decisions will need to be made on whether to renew any management contracts.

Contractor notices

Section 92 of the Commonhold and Leasehold Reform Act 2002 requires the landlord, after receiving service of the claim notice from the right to manage company, to inform all relevant parties as soon as possible of the existing contracts and the claim being made.

A contractor notice must be served on all contractors

The landlord serves a contractor notice on all contractors appointed by the landlord. Where any of the services are sub-contracted, the contractor who receives the notice sends a copy to the sub-contractor.

A contractor notice includes the following:

1. the identity of the relevant contract;

2. a statement that the right to manage is to be acquired by a right to manage company;
3. the name and registered address of the right to manage company;
4. the acquisition date; and
5. a statement advising a contractor who wishes to continue to provide services to the building to contact the right to manage company.

A contractor notice must be served on the right to manage company

A contractor notice is also served on the right to manage company with the following information:

1. details of each existing contract and the name and address of the contractor; and
2. a statement advising the right to manage company to contact those contractors whose services it wishes to retain.

Timetable for the right to manage process

The key factor to a successful claim is to follow the rules and requirements precisely. A procedural timetable can be found on the matter plan.

Claim notice

Subject to fulfilling the qualifying criteria and 14 days after service of the invitation notice, the right to manage company will serve the claim notice on:

1. the freeholder of the whole or any part of the premises;
2. any intermediate landlords; and
3. any management company named in the lease or manager appointed by a court under the provisions of Part II of the Landlord and Tenant Act 1987.

A copy of the claim notice is sent to:

1. the court where a manager has been so appointed; and
2. each qualifying tenant in the building.

Post-claim information notice

Section 93 of the Commonhold and Leasehold Reform Act 2002 provides a statutory mechanism by which the right to manage company can request any information they reasonably require in connection with exercising their right to manage.

This information can be varied and wide-ranging, from insurances to management contracts to service charge accounts, and is usually prepared in conjunction with the proposed new managing agents, if any.

The post-claim information notice is served on the party in possession, usually the landlord and the managing agents. The landlord must comply with delivery of the information within 28 days of its service or no later than the acquisition date.

Right of access

After service of the claim notice, the right to manage company has access to the building and its facilities to inspect and assess any refurbishment requirements: s 83 of the Commonhold and Leasehold Reform Act 2002.

An access notice is provided to affected parties, giving them not less than 10 days notice.

The equivalent right is also available to the landlord and other parties served with the claim notice. They also require access to the flats in the building.

Landlord's counter-notice

A counter-notice must be served on the right to manage company no later than the date specified in the claim notice, being not less than one month after service of the claim notice.

If the landlord admits the claim or fails to serve a counter-notice, the right to manage company acquires the right to manage on the acquisition date set out in the claim notice.

No statutory provision exists for one landlord to act on behalf of other interested landlords, and each can act independently.

Although the right to manage process is a no-fault one, there are limited technical grounds on which the landlord can dispute the claim notice, such as failing to meet the qualifying criteria.

Completing the counter-notice, the landlord will have regard to:

1. the admission, or not, of the claim;
2. obligations to management contractors;
3. costs; and
4. plans afoot for repair and maintenance, and service charges.

If the landlord disputes the claim notice, the right to manage company has two months from the date of the counter-notice to apply to the First-tier Tribunal (Property Chamber) for a determination. See **Applications to the tribunal**.

Registration of the right to manage

The right to manage company can register the right against the landlord's title with a notice at the Land Registry. For further information, see r 79A of the Land Registration Rules 2003 and Practice guide 27: the leasehold reform legislation.

An application is made using an Application to Change the Register and accompanied by the requisite registration fee and evidence that:

1. the applicant is a right to manage company;
2. the right to manage is in relation to premises comprised in the registered estate;
3. the registered proprietor of the registered estate is the landlord under a lease of the whole or part of the registered estate; and
4. the right to manage the premises has been acquired and remains exercisable by the right to manage company.

Individual rights – Enfranchisement of a leasehold house

The Leasehold Reform Act 1967 provides an individual's enfranchisement rights relating to a house and entitles a tenant to either:

1. purchase the freehold interest of the house of which they have an existing long lease, with a term of not less than 21 years, at a price calculated by statutory formula; or
2. extend the existing lease term by 50 years, at no premium, but with a modern ground rent reviewable after 25 years.

The right to extend is rarely implemented due to its limitations. Once it has been extended, a lease can never be extended again. However, this does not prevent a tenant from exercising the right to acquire the freehold in the future.

Initial information and investigation – Freehold purchase

Initial information, investigation, and preparation are key factors in successfully exercising a right to enfranchisement. Good file management and regular diary updates will prove to be pivotal requirements in collating that information, keeping on top of the claim's progress, and complying with the many prescribed time limits.

Like all standard property purchases, the practitioner will need to investigate the freehold title and fully report to the tenant on all aspects.

Required initial information will be:

1. whether the house qualifies under the legislation and the actual extent of the property;

2. whether the tenant qualifies under the legislation;
3. whether the tenant owned the house for at least two years – there is no requirement as to residence or occupation of the property, merely ownership;
4. the identity of the freeholder;
5. if there any rights of way, restrictive covenants, or adverse restrictions of title;
6. a valuation report, and a survey; and
7. funding.

Qualifying criteria for individual enfranchisement

Qualifying tenant

To qualify for the right to buy the freehold, the following criteria must be satisfied:

1. The tenant has owned the lease for at least two years immediately preceding the service of the notice requesting the right to buy. The date of ownership starts from the date the tenant was registered as proprietor of the long leasehold title at the Land Registry.
2. There is no undertenant who has rights under the Leasehold Reform Act 1967.

Qualifying lease

To qualify for the right to buy the freehold, the following criteria must be satisfied:

1. The lease must be a long lease for a term certain of not less than 21 years, with exceptions: s 1 of the Leasehold Reform Act 1967.
2. The lease is of the whole house, not part of it and can include ancillary premises such as a garage, outhouse, garden, or yard. A house is defined by s 2(1). There has been considerable case law on this definition, but in essence, it includes any building designed or adapted for living in and which has not been divided into flats or maisonettes.
3. If the lease is a business tenancy, to which Part II of the Landlord and Tenant Act 1954 applies, the lease is for a term of more than 35 years, and the tenant has occupied the house as their main residence for at least 2 years, or periods totalling 2 years in the previous 10 years.
4. If part of the house is a flat let to someone who enjoys a collective right to buy or to a lease extension, the tenant of the house has occupied the house as their main residence for at least 2 years, or periods totalling 2 years in the previous 10 years.

Please note that the Commonhold and Leasehold Reform Act 2002 effectively abolished the statutory reference that the ground rent payable is a low rent as set out in Leasehold Reform Act 1967.

Excluded premises

Certain premises held on long leases are excluded from the right to buy the freehold and include:

1. leases where the letting of the house is ancillary to the letting of other land and premises: s 1(3)(a) of the Leasehold Reform Act 1967;
2. leases of an agricultural holding: s 1(3)(b);
3. leases granted by a charitable housing trust for its charitable functions: s 1(3);
4. leases of National Trust land: s 32;
5. some shared ownership leases: s 33A;
6. leases of Crown land: s 33; and
7. local authority or municipal land needed for development: s 28.

Parties to individual enfranchisement

The landlord and freeholder

It will be necessary to identify the freeholder and any other intermediate landlords. The tenant is likely to be able to provide relevant names and addresses. The Land Registry or other public records may assist if the tenant does not have all the information.

Schedule 1 of the Leasehold Reform Act 1967 covers the position if there is more than one landlord.

Intermediate landlords

Each intermediate landlord is entitled to have their interest valued and reasonable costs paid. They are also entitled to be separately represented if their title is in question. This will affect their entitlement to compensation for losing their interest.

The reversionary freeholder

The reversionary freeholder retains the controlling hand in dealing with the claim and negotiations.

As the tenant will acquire both the reversionary freeholder's interest and any intermediate landlords' interests, a price for each interest is agreed or determined. The price for each interest will be paid to the freehold reversioner on completion on behalf of all intermediate landlords unless such landlords require the payment to be made directly to them.

At all times, the freeholder acts in good faith and with reasonable diligence. A failure to not do so can result in that freeholder compensating any other landlord for any loss attributable to such failure.

Absent landlords

If the freeholder or any intermediate landlord cannot be traced or ascertained, the tenant will need to apply to the County Court for a vesting order. Full details of the procedure are set out in s 27 of the Leasehold Reform Act 1967.

Costs for individual enfranchisement

The tenant is liable for the freeholder's reasonable costs, whether or not the matter proceeds to completion: s 9(4) of the Leasehold Reform Act 1967.

Those costs will include investigation of the tenant's right to claim, deducing title to the tenant, valuation fees, conveyancing costs, and the reasonable costs of any other relevant landlord.

The freeholder cannot claim any costs relating to the purchase price negotiation or ancillary negotiation costs.

In a dispute, an application can be made to the First-tier Tribunal (Property Chamber) for a determination. See **Applications to the tribunal**.

Valuation for individual enfranchisement

This exercise will be left in the hands of each party's appointed surveyor or valuer, who will usually deal with the technical aspects and the ensuing negotiations to arrive at an agreed purchase price.

It is prudent to ensure that the appointed valuer has the necessary expertise in this area. They will be tasked with the purchase price negotiations. They may be called as an expert witness if it becomes necessary to apply to the First-tier Tribunal. See **Applications to the tribunal**.

Valuers would generally be members of the Royal Institution of Chartered Surveyors.

The Leasehold Reform Act 1967 sets out two methods for valuing houses:

1. The house will be valued according to the original valuation basis: the site's value. There will be no marriage value: s 9(1).
2. The house will be valued according to the special valuation basis, being the house's value, including a share of the marriage value: ss 9(1A) and (1C).

Note: Broadly, the marriage value is the increased value of the freehold after acquisition due to the participating tenant granting themselves a longer lease at no premium. It is not applied where the tenants' unexpired lease terms exceed 80 years at the initial notice date.

The choice between the two methods is based on:

1. If the existing lease meets the original low rent test and the house meets the value limits, the house will be valued according to the original valuation basis: s 9(1).
2. The house will be valued according to the special valuation basis in all other cases, including the original lease that had been extended.

Whichever valuation method is used, the freehold is valued as if it were being sold on the open market by a willing seller to a willing buyer.

If the parties cannot negotiate a price, an application can be made to the First-tier Tribunal (Property Chamber) for a determination. See **Applications to the tribunal**.

Timetable for individual enfranchisement

Initial notice – Acting for the tenant

Service of the initial notice triggers the enfranchisement process. The notice must be in the prescribed form set out in The Leasehold Reform (Enfranchisement and Extension) Regulations 1967.

While a procedure is available to apply to the court to amend the notice for any inaccuracies later, it is better to carefully complete the notice and ensure that the tenant approves and signs it before service on the freeholder. It is not necessary to include a price within the notice.

The notice is served on the freeholder and any intermediate landlord. The method of service is in person, by ordinary or registered post, and set out in s 23 of the Landlord and Tenant Act 1927.

The effect of service of the notice will be to create a statutory contract between the parties: s 8 of the Leasehold Reform Act 1967. The statutory conditions of sale are set out in The Leasehold Reform (Enfranchisement and Extension) Regulations 1967.

Service of the notice also triggers the tenant's liability to be responsible for the freeholder's reasonable costs, as discussed above.

To protect the interest of the tenants, the initial notice must be registered as a notice at the Land Registry against the freehold reversionary title and the intermediate landlord titles, as applicable. See s 5(5) of the Leasehold Reform Act 1967 and Practice guide 27: the leasehold reform legislation.

Failure to register the notice will mean that it is not binding on a purchaser for the value of the freehold.

If the tenant dies after service of the notice, the notice's benefit passes to the tenant's personal representative.

Similarly, the right to exercise the right to acquire the freehold will pass to the personal representatives provided they hold the lease and serve the notice within two years of the grant of probate to them.

Should the long lease pass to a member of the tenant's family, that family member will be treated as having been the tenant during any period when they were resident in the property as their main residence.

Freeholder's notice in reply – Acting for the freeholder

On receipt of the tenant's notice, the freeholder's practitioner will need to implement their investigative processes before responding.

This will include investigating:

1. the tenant's right to enfranchise;
2. whether to instruct a valuer or surveyor;
3. the freeholder's title;
4. whether the freeholder wishes to impose any restrictions or rights on transferring the title;
5. whether there is an existing mortgage or third party rights; and
6. whether there are any intermediate landlords.

This list is not exhaustive, and the particular circumstances of every application will determine what actions the practitioner needs to carry out.

On receipt of the tenant's notice, the freeholder can require the tenant to pay a deposit of 3 times the annual rent within 14 days: Condition 1 of the Schedule in The Leasehold Reform (Enfranchisement and Extension) Regulations 1967.

Further, the freeholder is entitled to require the tenant to provide evidence of their right to enfranchise by deducing title and a statutory declaration as to their occupation. The tenant has 21 days to respond to this request: Condition 2 of the Schedule.

Following the freeholder's investigation, they can choose to serve a notice in reply. If so, it is served on the tenant within two months of the date of the tenant's notice and must be in the prescribed form: s 22 of the Leasehold Reform Act 1967.

The notice declares whether the freeholder admits the claim or not and, if the latter, why.

If the freeholder decides not to serve a notice in reply, this will not preclude the parties from negotiating the price to be paid nor the freeholder's ability to challenge the validity of the tenant's notice.

However, a failure to serve a notice in reply on the tenant will preclude the freeholder from challenging the extent of the premises to be sold.

If the freeholder does not admit the claim, either in the notice in reply or by not serving a notice, the tenant will have to apply to the County Court to buy the freehold.

Timetable following service of notices

This will depend on whether the freeholder admits the claim or not.

If the freeholder admits the claim in the notice in reply, the procedure to follow is governed by The Leasehold Reform (Enfranchisement and Extension) Regulations 1967, with completion of the sale within four weeks after the price is agreed.

If the purchase price cannot be agreed, an application to the First-tier Tribunal (Property Chamber) will need to be made for a determination. See **Applications to the tribunal**.

If the freeholder does not admit the claim, either in the notice in reply or by not serving a notice in reply, an application by way of a Part 8 claim will have to be made to the County Court to buy the freehold.

Conveyancing process for individual enfranchisement

The tenant is primarily responsible for drafting the deed of transfer: s 9 of the Leasehold Reform Act 1967. However, in practice it is prepared by the freeholder.

Particular care needs to be taken when drafting the deed to encompass and include all rights to which the property is to benefit and all obligations to which it is subject, for example, rights of way, light, air, and all and any restrictive covenants, conditions, or stipulations.

The draft deed is then circulated for approval at least 14 days before the date set for completion. An engrossment with any required counterpart needs to be delivered within a reasonable time before the completion date to allow all parties to execute it.

Completion of the individual enfranchisement

The timetable for completion begins after the purchase price has either been agreed or determined. Broadly, completion is at least four weeks after the purchase price has been agreed or determined and in accordance with the standard conditions as set out in the statutory contract.

The property will usually be transferred free of any rent charges, ss 8 and 11 of the Leasehold Reform Act 1967, but the tenant will be required to pay rent and any other payments due under the terms of the lease up to the date of completion.

If there is a mortgage registered against the freehold title, this will be dealt with according to standard conveyancing procedures. See the **Purchase of Land** and **Mortgage** guides.

If the tenant delays completion, the freeholder can receive interest on the balance to complete instead of rent, but interest cannot be levied if the delay is due to the default of the freeholder.

If either party fails to comply with the conditions of the statutory contract, the non-defaulting party can serve a default notice on the defaulting party, and that party then has two months to comply: Condition 10 of the Schedule in The Leasehold Reform (Enfranchisement and Extension) Regulations 1967.

A failure to comply with the tenant's default notice will end the contract, and the freeholder can retain the deposit.

A failure on the part of the freeholder to comply with the default notice will bring the contract to an end, and the freeholder will have to return the deposit paid and be fully responsible for their costs. In practice, while the ability to serve a default notice is available, a tenant can bypass this right and seek a court order to force the freeholder to complete the sale.

Registration following individual enfranchisement

Once completion has taken place, the application is submitted to the Land Registry for the registration of the Transfer of Whole of Registered Title(s), using form AP1, as in a standard conveyancing purchase.

The tenant's leasehold will not automatically merge with the freehold title on registration. In most cases, the tenant would want this merger. Before a specific request is made to the Land Registry: Practice guide 27: the leasehold reform legislation, any possible tax implications require consideration and whether the tenant wishes to retain the benefit of any rights conferred by the terms of the lease.

If the leasehold title is subject to a mortgage, the titles cannot be merged without the lender's consent.

HM Land Registry digital applications

HM Land Registry encourages practitioners to lodge applications digitally, particularly form AP1 applications, using the Digital Registration Service: see How to submit a digital AP1. The service is always open with support available during normal business hours.

The service will:

1. check the data before submission reducing requisitions;

2. prompt practitioners to add the relevant documentation and evidence to their applications;
3. automatically populate some fields based on data already entered or from the Land Register;
4. allow practitioners to save a partially completed application and return to it within 90 calendar days to submit; and
5. automatically calculate fees.

To create and submit a digital AP1 application, either use:

1. the Digital Registration Service on HM Land Registry portal; or
2. a case management system connected to HM Land Registry Business Gateway platform.

Procedure

To access the Digital Registration Service, log in to the portal, select Digital Registration Service from the Information Services menu on the left-hand side of the home page, and press start.

If accessing via a case management system, follow the provider's directions.

Restriction: consent or certificate – Form RXC

Where a restriction requires a certificate or consent, HM Land Registry form RXC Restriction – Consent or Certificate can be used.

The form is suitable for use with most restrictions and contains detailed guidance notes.

Consideration needs to be given to the following when completing and lodging the form with an application for registration:

1. Panels 1 and 2 of the form require as much detail as possible to enable the Land Registry to identify the relevant restriction to which the consent refers.
2. Separate RXC forms are lodged for each title and for each restriction.
3. If lodging an application by post and form RXC is being lodged simultaneously, the original RXC, or a certified copy of it, is lodged with the application.
4. If lodging an application via the portal or Business Gateway and a copy of the RXC is being lodged with that application, or the restriction relates to a pending application, a scanned copy of form RXC is lodged. This is certified as a true copy of the original using the available certification statements.
5. Panel 4 lists all the dispositions to which the consent relates.
6. Panels 4 or 5 of the form are signed by the person who can give the consent or certificate under the terms of the restriction. Their details are provided in panel 3.

7. If a conveyancer does not give the consent or certificate, panels 4 or 5 are signed in wet ink.

Withdrawal, defaults, and disputes

Withdrawal and termination of the collective enfranchisement process

The participating tenants can withdraw the claim either:

1. voluntarily, provided there is no existing binding contract: s 28 of the Leasehold Reform, Housing and Urban Development Act 1993; or
2. by implication under s 29, when the nominated purchaser does one of the following:
3. fails to apply to the County Court within two months of the freeholder serving a counter-notice disputing the claim or makes an application to the court and then withdraws it;
4. applies to the First-tier Tribunal (Property Chamber) for a determination if terms of the acquisition cannot be agreed between the parties;
5. enters into a binding contract and then fails to apply to the County Court for a vesting order; or
6. applies to the County Court for a determination of terms where the freeholder fails to serve a counter-notice.

Voluntary withdrawal can be done by serving a written notice on the freeholder and intermediate landlord.

Voluntary or implied withdrawal will result in the tenants being liable for the freeholder's reasonable costs up to the withdrawal date. The liability will be joint or several if the withdrawal is by notice.

Withdrawal and termination of the right to manage process

If the right to manage is terminated for whatever reason, no further application for the right to manage will be considered for another four years without the prior consent of the First-tier Tribunal (Property Chamber).

The right to manage can be terminated as follows:

1. by agreement with the freeholder;
2. if the right to manage company ceases to exist or to operate by being wound up, going into receivership, voluntary insolvency, or is struck off; or
3. if a manager is appointed by order of the First-tier Tribunal.

In the first circumstance, there is no obligation for the freeholder to take back the responsibility of management. However, they would be likely to protect their investment.

In the second, the responsibility of the management of the building automatically reverts to the landlord.

An application to terminate a right to manage company can be made by any of the flat owners or the landlord if the right to manage company:

1. is in breach of an obligation under the lease;
2. demands unreasonable service charges;
3. fails to comply with an approved code of management practice; or
4. any other ground, which makes it just and convenient for the order to be made.

Withdrawal and termination of the individual enfranchisement process

Within one month of the purchase price having either been agreed or determined, the tenant can give written notice to the freeholder indicating that the tenant is unable or unwilling to buy the freehold: s 9(3) of the Leasehold Reform Act 1967.

The effect of serving a notice of withdrawal is that:

1. The tenant's claim ceases to have effect, and they will be prevented from serving a fresh notice of claim for 12 months.
2. The freeholder will be entitled to claim compensation from the tenant for being unable to deal with or dispose of the property or any relevant adjoining premises during the claim period.
3. The tenant vacates any notice or land charge registered to protect the tenant's notice.
4. The tenant is liable to pay the freeholder's costs.

If the tenant does not exercise the right to withdraw within the one month period, the tenant will be legally bound to complete the purchase according to the statutory contract.

Applications to the tribunal

If terms cannot be agreed, either party can apply to the First-tier Tribunal (Property Chamber). This must be done at least two months from but within six months of the counter-notice's service date.

For collective enfranchisement, use the form Leasehold 10: Application for Determination of the Terms of Acquisition Remaining in Dispute. For individual enfranchisement, use the form Leasehold 11: Application for Determination of Premium or Other Terms of Acquisition Remaining in Dispute. Both forms are available on the matter plan.

Applications are to be accompanied by:

1. a copy of the initial notice;
2. the full names and addresses of the freeholder and any intermediate landlords;
3. the name and address of any lender of the freeholder or intermediate landlords;
4. any supporting documents considered to be of assistance to the tribunal; and
5. the application fee.

The tribunal determination becomes final 21 days after the tribunal sends it out. Unless the tribunal makes an order for costs, each party is responsible for its costs.

See the **Library of property tribunal forms** with guidance notes on the matter plan.

The County Court, rather than the tribunal, has jurisdiction over the following proceedings related to the enfranchisement process:

1. enforcement proceedings: s 92 of the Leasehold Reform, Housing and Urban Development Act 1993;
2. applications to determine whether a claim or counter-notice is valid or has been validly served; and
3. applications for vesting orders.

In the County Court, costs are dealt with under the Civil Procedure Rules with the general principle of costs following the event.

Commonhold

In English law, the concept of a freehold flat, equivalent to the American condominium or the Australian strata title, does not exist.

The enactment of the Commonhold & Leasehold Reform Act 2002 was an attempt to introduce an alternative to the long leasehold title and to overcome two main problems experienced by tenants, namely the enforcement of covenants between tenants and the diminishing value of leasehold property as an asset.

So far, the commonhold system has not proved to be popular with developers, lenders, and flat owners alike, with as few as 20 commonhold developments being created since the Act was introduced in 2004.

However, what follows is a brief overview of the commonhold system with a caveat that, in recognition of its existing flaws, government reform will seek to re-invigorate the commonhold by addressing those flaws.

Prescribed procedure

Commonhold can be used for commercial, residential, and mixed-use premises, and the prescribed procedure is as follows:

1. Each flat, shop, or office will be a unit, and each unit holder or owner will own the freehold of their unit.
2. A commonhold association, being a company limited by guarantee, will own the freehold to the structure and common parts of the development. Each unit holder will be a member of the association with an allocated one vote. Voting rights can be weighted by agreement between the members.
3. The created association will control the management of the structure and common parts of the development in accordance with a community statement based on a statutorily prescribed form with additional rules specific to the particular development.
4. Each unit holder will be responsible for the maintenance of their unit.
5. Each unit holder will contribute towards the expenses of the commonhold association and as calculated by a commonhold assessment, with provision for a reserve fund.
6. The unit holder can assign or charge the freehold interest in each unit without obtaining consent or licence.
7. Regulations prohibit the grant of leases of residential units for more than seven years, but this does not apply to commercial units.

Unit holders

A commonhold can be created either with or without unit holders.

With unit holders:

1. Existing leasehold developments can be converted into commonholds. The applicant must own the freehold, and all existing leaseholders and any mortgagees must consent to the application to convert.
2. All existing leases will terminate on the creation of the commonhold. Leaseholders will negotiate a reasonable premium as a condition of giving consent to the creation of the commonhold or will be granted a commonhold unit in place of their lease.
3. The community statement will have effect, and the common parts will be transferred to the commonhold association immediately on completion of the registration of the commonhold at the Land Registry.

Without unit holders:

1. The developer applies to the Land Registry to register their interest as a commonhold.
2. The developer sets up the commonhold association and finalises the community statement as part of the registration process.

3. During this transitional period, the community statement will not have effect, and the commonhold association will not yet own the common parts.
4. The sale of the first unit will end the transitional period, trigger the transfer of the common parts to the commonhold association and bring the community statement into effect.
5. The developer can include local rules in the community statement for the duration of its involvement to ensure that it retains an appropriate degree of control over completion of the development.
6. The sale of the final unit will mark the end of the developer's involvement in the commonhold.

The commonhold system is based on statutory prescribed forms.

Finalising the matter

Closing the file

Once the work on the matter is complete the retainer needs to be terminated.

This is done by informing the client in writing that all work on the matter is complete and no further work will be carried out unless otherwise instructed.

Closing files and undertaking regular file reviews are key risk management measures. Regulations require law firms to maintain a file closing policy. These assist practitioners in reviewing their files regularly so any inactive files can be closed, the retainer concluded, and any unresolved issues addressed.

It is not possible to unilaterally terminate a retainer when the client has a matter listed for hearing before a court. The client needs to be formally notified of the firm's intention to cease acting and it may be necessary for the court to grant leave. These decisions are best referred to the principal.

Firms holding client money must comply with the SRA Accounts Rules 2011 or the CLC Accounts Code, depending on the firm's authorising regulator, when finalising the matter and withdrawing money for legal costs.

If the client retains rights, such as the right to appeal, it is essential to let them know of any time limits that apply to exercising those rights.

A Letter to Client Finalising the Matter is on the matter plan.

The file is closed after:

1. the client has been billed;

2. costs and disbursements have been paid;
3. excess funds have been returned to the client;
4. client documents have been returned, or the client has been informed in writing that these documents will be held on file, usually for six years.

Limitation periods might require certain files to be held for longer periods, sometimes indefinitely. The Law Society's How long should I retain my closed files in storage? offers guidance on the retention of files. Where it is recommended that files are held for longer periods it is good practice to retain those files electronically.

If the firm is retaining any original documents, they must be stored securely in safe custody rather than on file. An acknowledgement confirming the documents are registered in safe custody should be provided to the client with copies of the documents.

A File Closing Checklist can be found on the matter plan.

Further information

1. Leases: practice guides – HM Land Registry
2. Stamp duty land tax calculator – HMRC
3. Land transaction tax calculator – Welsh Revenue Authority
4. Leasehold Advisory Service – Ministry of Housing, Communities & Local Government
5. Lease extension calculator – Leasehold Advisory Service
6. The Law Society
7. The UK Finance Mortgage Lenders' Handbook for Conveyancers
8. Solicitors Regulation Authority
9. The Council For Licensed Conveyancers

Related By Lawyers publications

1. Residential Leases
2. Mortgages
3. Conveyancing