COLLECTIVE ENFRANCHISEMENT

The right to enfranchise under the Leasehold Reform Housing and Urban Development Act 1993 as amended by the Commonhold and Leasehold Reform Act 2002 relates principally to the building in which the flats are situated but the leaseholders can ask to enfranchise additional land surrounding the building owned by the freeholder provided that land is used communally by the leaseholders.

At least fifty percent of the flat owners owning long leases (over 21 years) in the building must participate for the right to be exercisable.

The Process
The basic enfranchisement procedure is as follows:-

- The Participating Leaseholders have to nominate a “nominee purchaser” to be the channel through whom all notices, correspondence, negotiations etc are conducted. This would normally be the participants acting as a group, through the medium of a limited company in which they were the sole shareholders.

- We recommend that Participating Leaseholders enter into a contractual agreement at the outset of the claim. This is called a Participation Agreement. The purpose of a Participation Agreement is to (a) specify the obligations of the nominee purchaser and the participating leaseholders; (b) to make sure that the participating leaseholders provide funds in agreed proportions at agreed times; (c) re-affirm the commitment to extend the leases of the individual flats after the freehold has been acquired, since the leases of the individual flats remain just as relevant after the freehold is acquired as they do now because they will still govern the relationship between each individual flat owner and the flat owners as a group.

The Participation Agreement would also deal with the situation where a flat owner may wish to sell his property whilst the enfranchisement process is still ongoing.

- An Initial Notice is prepared setting out the participating leaseholders claim. It will include details of the nominee purchaser, the extent of the property to be acquired, the price at which the participating leaseholders wish to acquire it etc. The notice must also be accompanied by an accurate plan and this will be obtained from the Land Registry for this purpose.
The notice is served on the freeholders and they then have a specified period, which must not be less than two months, in which to respond to the notice. They are required to respond by stating in a Counter Notice whether (a) they dispute the right to enfranchise as a matter of principle and, (b) if not, what terms of the enfranchisement they agree with or disagree with. It is commonplace for freeholders to dispute the terms of enfranchisement, particularly the price payable to enable them to preserve their negotiating position.

Once the Counter-Notice has been received there is then a further two months cooling off period within which the parties are supposed to negotiate. Sometimes, this period is useful and results in active negotiation; on other occasions, where the freeholder is uncooperative, it is not useful.

Once the cooling off period has expired, and on the assumption the parties have not agreed terms, it is then open to either party to apply to the Leasehold Valuation Tribunal to decide the terms. In any event an application must be made to the LVT within six months of the date of the counter notice unless by then all terms have been agreed by the parties. The LVT will list the application for hearing and issue directions to both parties as to what evidence it requires them to before it. Negotiations can continue in tandem with this process.

If a settlement can still not be achieved, then the matter will go before the LVT and we will give you further details of what is involved at that stage.

There is a right of appeal against an LVT decision to the Lands Tribunal but nowadays the appellant has to obtain permission from either the LVT or the Lands Tribunal to appeal.

Work Involved
In summary, the work we usually need to undertake to complete the Collective Enfranchisement and any ancillary matters that should be dealt with are as follows:-

1. Investigating the freehold title and obtaining copies of each of the flat leases and titles to be able to advise you whether you qualify and of any complexities that arise.

2. Setting up a company to act as your nominee in the process. You can either hold the freehold in your personal names or through a company. Holding the property through a company will enable you to assign your share in that company to the buyer of your flat and therefore you will not have to locate the
other freehold owners when you come to sell your flat. If you want to use a company to act as your nominee then we can set up the company for you. This will need to be done prior to serving the Initial Notice.

3. Drafting the participation agreement. This records your respective obligations (such as your contributions towards the price and costs) ties in each of the participating flat owners into the procedure to maintain your majority. It also records each participant entitlement to an extended lease once the process has been concluded.

4. Drafting the statutory “Initial Notice” for yours and your surveyors approval and circulating the Initial Notice for signature by the Participating Leaseholders.

5. Once the Initial Notice has been signed serving the Initial Notice on your Landlord.

6. Dealing with the Landlord’s Counter-Notice and the subsequent procedure.

7. Completing and registering the Freehold Title once the price and other terms of the disposal have been agreed.

8. Extending term of the participants existing leases (optional) – see below.

Before you begin the process, your group should have a valuation of the freehold carried out by a surveyor with expertise in this field in order that you have a reasonable idea of what level of payment the freeholders may achieve before you embark on the claim. One of the main bones of contention on price is the concept known as “marriage value” – i.e. broadly speaking, the value to the leaseholders of getting hold of the freehold and being able to extend their own leases for nothing. The freeholder is entitled to receive half of that marriage value on enfranchisement and the valuation of marriage value is a complex point that will often lead to long and extensive arguments. Marriage value comes into account where the leases of the flats have less than eighty years to run.
Costs
In enfranchisement claims, you will not only be liable to pay your own professional fees but also a proportion of those incurred by the freeholder, namely:

- The freeholders legal costs associated with:-
  
  (a) Checking you have the right to enfranchise and in preparing the counter-notice.
  
  (b) Producing details of the freeholders’ title and completing the Conveyancing process.

- The fee payable to the freeholders for obtaining valuation advice.

This cannot include any fees incurred by the freeholder in conducting the application before the Leasehold Valuation Tribunal. Each party must pay its own costs at this stage.

If the parties cannot agree terms and the matter has to be decided by the LVT, there would be significant additional work and in particular it would be necessary for:-

(a) your surveyor to prepare and submit a detailed experts report to the Tribunal;

(b) your surveyor to attend the Tribunal to give oral evidence and be cross-examined;

(c) for us to prepare documentary bundles in readiness for the hearing;

(d) to have a specialist barrister present the claim to the Tribunal at the hearing and cross-examine the other side’s witnesses including their surveyor.

Having said that, because of the potential outlay and risk on costs for the freeholders and leaseholders alike associated with a Leasehold Valuation determination, it is rare for these applications to actually go all the way to a contested Leasehold Valuation determination and they invariably settle sooner or later in the course of the process.

Following completion of the purchase of the Freehold, you may decide or need to extend the individual leases of the flats of the participating leaseholders. The existing leases of the flats will remain just as relevant as now even after the Freehold has been acquired because they will continue to govern the relationship between each individual and the group that owns the Freehold and ensures, for example, that the group can recover service charges from each individual. If the leases have less than
90 years to run, it will probably be essential to extend the leases before resale in order to restore their length to a length that would be satisfactory to a buyer of the flat or his mortgage lender.

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