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## SUMMARY

- A lease extension is in effect a new lease and can be agreed voluntarily by the landlord and lessee or as a statutory right for lessees.
- Decisions about lease extensions are ones for the landlord/ freeholder not agents.
- However a request for lease extension will usually result in a premium to the landlord and so be more likely to be well received.
- Agents should not become involved in specific cases - both lessees and landlords should seek advice and assistance from specialist lawyers and valuers.

## WHY ARE LEASE EXTENSIONS DESIRABLE?

Although an obvious point, it is worth remembering that an extended term represents a valuable asset to a leaseholder who can achieve a higher selling price and generally render the flat more easily saleable. There may also be an advantage to the landlord or manager. A lease extension is more correctly a new lease and thus an opportunity is created by which other terms may effectively be varied as against the existing lease (such as reserve fund contributions or advance payments). Moreover, the landlord will almost always receive a premium for agreeing the extension. Lease extensions are also used by lessees where there is no consensus on seeking to enfranchise.

Note that for a statutory new lease the law provides that only defects can be varied if the parties cannot agree variations which one or other may wish to have.

## TWO WAYS FOR LESSEES TO OBTAIN A LEASE EXTENSION

There is a statutory right for lessees to seek and be granted a lease extension. This right requires a set procedure and includes rules for valuation of the cost.

It is still perfectly possible to negotiate an extended lease without reference to the statutory machinery, in which case none of the qualification criteria or valuation formulae need apply.

## WHO CAN SEEK A LEASE EXTENSION BY STATUTE?

As long as the lessee has owned (but not necessarily lived in and ownership must be registered at the Land Registry) the flat for at least two years, he/she has a right to extend the lease for an additional 90 years at a peppercorn (zero) ground rent, subject to paying a price.

But there are exceptions. The freeholder can refuse to extend a lease if:

- The majority of the leaseholders have applied to obtain the freehold (This will defer any application for lease extension until the question of enfranchisement has been resolved).
- The lease has been properly terminated.
- The lessee has sublet on a lease of at least 21 years.
- The lease was originally granted for less than 21 years.
- The lease is a shared ownership lease and the lessee does not own 100% of the equity.
- The freeholder is a charitable housing trust, the National Trust, the Crown (although they may agree), or the property is in a cathedral precinct.
- If your freeholder wants to employ a developer to demolish and rebuild the property (in which case the lessee would be entitled to compensation).

## PROCEDURE FOR A LEASE EXTENSION IN STATUTE

The procedures are contained in the 1993 Leasehold Housing and Urban Reform Act as amended by the Commonhold and Leasehold Reform Act 2002 Part 3. They commence with a leaseholder's claim notice under S.42 and mirror the procedures for enfranchisement as far as possible.

The procedure is as follows:

- The lessee serves (via his solicitor) a prescribed form of notice on the landlord(s), stating a realistic figure which he or she is prepared to pay for the lease extension.
- The landlord replies with a Counter-Notice within two months which will state the price at which it is prepared to sell.

- There is then a period of six months for negotiations, with a referral to the Leasehold Valuation Tribunal to determine the figure if agreement on the premium can not be reached.
- There are strict time limits for compliance or deemed withdrawal.

Typically the whole lease extension process can take 6-9 months but there are strict time limits. A lease extension can be a complex process and the legal procedures are inflexible. Specialist advice from both expert surveyors and solicitors is strongly recommended.

The price payable is determined as follows:

- The date for computation of the price is fixed as the date the leaseholder gave notice of his claim to a new lease under S.42 of the 1993 Act.
- The landlord's share of marriage value is fixed at 50%.
- In any event, marriage value is to be entirely disregarded if the existing lease has more than 80 years to run.

#### CAN THE EXTENSION BE WITHHELD IF THE LESSEE APPLIES?

So long as the leaseholder qualifies, the only room for argument is on the price to be paid. If this is not agreed, the Leasehold Valuation Tribunal (LVT) determines the matters disputed. Costs are also for the Tribunal to determine. Appeals go to the Upper Chamber (Lands Tribunal), but only if permission to appeal is granted by the LVT or the Lands Tribunal.

#### THE LEGAL EFFECTS ON OTHER PARTIES

Any lease extension must be completed by registration at HM Land Registry.

Either or both the fact of any extended lease or its terms may affect the delicate balance in a block of flats. There could be knock-on consequences for other leaseholders, particularly if the building contains a complex structure of head-leases or other types of intermediate leases. The potential effects should be analysed right at the start of the process.

#### SOURCES OF ADVICE FOR LESSEES

It is not the agent's role to advise a lessee about lease extension but you may wish to point them at sources as follows.

The Leasehold Advisory Service (LEASE) has two advice guides on lease extension- Getting Started and Valuation.

Go to :

[www.lease-advice.org/publications](http://www.lease-advice.org/publications)

LEASE also has an extension calculator to give lessees an indication of cost. Go to:

[www.lease-advice.org.uk/calculator](http://www.lease-advice.org.uk/calculator)

LEASE also has lists of solicitors and valuers who specialise in this kind of work.

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