

GUIDANCE NOTES

IN RESPECT OF:

**EXTENDING YOUR LEASE UNDER THE PROVISIONS OF
THE LEASEHOLD REFORM HOUSING AND URBAN
DEVELOPMENT ACT 1993 (AS AMENDED BY THE HOUSING
ACT 1996 and THE COMMONHOLD AND LEASEHOLD
REFORM ACT 2002)**

CONTENTS

	Page no.
1. COMPANY PROFILE	3
2. CURRENT SITUATION	4
3. THE RIGHTS UNDER THE ACT	5
4. WHAT HAPPENS AFTER THE LEASE HAS BEEN EXTENDED	7
5. PRICE	7
6. FREQUENTLY ASKED QUESTIONS	10
7. ADVANTAGES AND DISADVANTAGES	10

COMPANY PROFILE

- 1.1 Established in 2004 by Andrew Pridell, Andrew Pridell Associates Limited is a Company of Chartered Surveyors and Valuers, specialising in residential valuation in particular providing advice and valuations for lease extensions and collective enfranchisements, under the leasehold reform legislation.
- 1.2 Since the enactment of the 1993 Leasehold Reform Housing and Urban Development Act (as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002) the Company has undertaken a large number of valuations, both for lessees and freeholders, under this legislation.
- 1.3 Tom Hobman AssocRICS joined the Company in 2008 and obtained a Post Graduate Diploma in Surveying at the College of Estate Management at Reading University in 2009. With 10 years' experience of working in property Tom became a director in 2014 and the principal of the company in 2019.
- 1.4 Paul Martin joined the team in 2019 bringing in a wealth of experience having worked in both local and London surveying firms.
- 1.5 The Company has completed thousands of cases. These have been predominantly in the South East of England, including London, both in the prime Central area and in the suburbs, and geographically the spread of the cases has been as far North as Pickering, East to Broadstairs and the Medway towns, and as far West as Cardiff.
- 1.6 We have appeared at numerous Tribunal hearings acting as advocate and expert, including collective enfranchisement and lease extension appeal hearings in the Upper Tribunal (Lands Chamber).
- 1.7 We act as expert witnesses and advocates in matters of general, residential property litigation.
- 1.8 The company was a founder member of ALEP — the Association of Leasehold Enfranchisement Practitioners.

CURRENT SITUATION

- 1 Flat owners (lessees) (or the law calls you 'tenants') own their flats i.e. the bricks and mortar.
- 2 The freeholder (the law calls him 'the landlord') owns the land and is responsible for insuring and maintaining the structure of the building. The lessees are responsible for maintaining the interiors of the flats.
- 3 Flats are held on contracts known as 'leases' which are for a fixed term. In a typical case, this could be for 99 years from say 1972 — therefore the leases expire in 2071.
- 4 The lessees pay to the freeholder rent for the ground and this escalates on the 33rd or 25th year anniversaries of the lease. For example:

1972 – 1997	£50 pa
1997 – 2022	£75 pa
2022 – 2047	£100 pa
2047 – 2071	£150 pa
- 5 At the expiration of the lease, the flat reverts to the freeholder ; in other words, he gets the flat back — the current lessee remains in as 'a rent paying tenant'. This is why the freeholder is referred to as "the reversioner" and the lessee is "the reversionee".

THE RIGHTS UNDER THE ACT

- 1 The 1993 Leasehold Reform Housing and Urban Development Act (as amended by the 1996 Housing Act and the Commonhold and Leasehold Reform Act 2002) gives a lessee the right to extend the lease, so long as the lessee has owned the flat for two years. The Act specifies that the extension to the lease is for 90 years added to the existing unexpired term and ground rent is expunged.
- 2 The Act lays down a set procedure summarised below :

Initial Notice served on the freeholder stating what the flat comprises, details of the lease and the price offered for the premium.

Within two months the freeholder is required to serve a Counter Notice acknowledging the lessee's right to a lease extension. Normally the freeholder, in his Counter Notice, will not agree to the figure that has been offered — the lessee will try and buy the lease extension for as little as possible, whereas the freeholder will want as much as possible!

Following the submission of the Counter Notice, the lessee has six months within which he can apply to the First Tier Tribunal (Property Chamber) who will determine the price to be paid.

This is a Panel made up of three members, usually consisting of a highly qualified Landlord and Tenant Solicitor, and two Chartered Surveyor valuers. It sits in a quasi-judicial capacity (normally at a Committee Room in the local Town Hall or the like).

The standard rules of civil judicature apply — your advocate/expert submits the evidence; the other side cross-examine — the other side submit their evidence and your advocate cross-examines and the freeholder's valuer/advocate sums up — your advocate/valuer sums up and then the Panel determine the price to be paid and usually the decision is made within two to three weeks.

The determination of the price can be challenged by appeal to the Upper Tribunal (Lands Chamber) (formerly the Lands Tribunal) but this is a very serious course to take, for not only can it take up to a year, but the Upper Tribunal has the power to award costs, and these can be pretty horrendous — certainly several thousand pounds.

Once the price has been agreed, a variation to the lease is dealt with by the solicitors extending the term and expunging the ground rent.

- 3 Within the first six months of the period within which application can be made to the First Tier Tribunal for a hearing, the first two months are set aside as a 'cooling off period' designed to get the two sides' valuers together to see if agreement can be reached on figures. 9 times out of 10 a compromise is agreed.

WHAT HAPPENS AFTER THE LEASE HAS BEEN EXTENDED

1. Once an extended lease is in place by way of a Deed of Variation, the flat is significantly increased in value and becomes saleable at the full market value.

PRICE

There is no magic formula laid down by the Act, but under Schedule 6, the constituent parts of the value are determined.

There are usually three parts :

Diminution in the value of the Freeholder's Interest :

This is what the freeholder is losing - essentially it is the capitalisation of the ground rent and the reversion.

Marriage value

This is the value created by merging the existing leasehold interest with the new extended leasehold interest.

Compensation

Compensation is payable to the freeholder if he sustains loss to any other property owned from the granting of the new lease. This category is extremely rare and in several hundred cases that I have dealt with, only one case has there been when compensation has been payable.

Looking at these elements in a little bit more detail :

Diminution in the value of the freeholder's interest

Capitalisation of the Ground Rent

This is not all the ground rents payable for the unexpired terms on the lease — it is a single figure which, on an actuarial basis, somebody would pay to receive the ground rent for the balance of the lease.

The Reversion

The value of the reversion is the value of the flat, less any uplift in the value resulting from improvements (e.g. new kitchen, new bathroom, installation of central heating etc) carried out by the present lessee or his predecessors, since the lease was granted. This total figure is then discounted back to today from the date on which the lease expires. The longer the unexpired term on the lease, the less this figure is.

Marriage Value

This is the uplift in the value of the flat, following the acquisition of the lease extension and expunging the ground rent.

This is where the greatest valuation debate lies.

You are helped in that the Commonhold and Leasehold Reform Act that did away with marriage value, where leases have in excess of 80 years unexpired.

Once below 80 years the marriage value starts increasing significantly with the most serious decline around 60 years, for then the flat becomes increasingly unmortgageable and certainly below 50 years, it is virtually impossible to mortgage.

The Commonhold and Leasehold Reform Act 2002 determines that 50% of the marriage value is payable to the freeholder, as part of the price that you will pay for the lease extension.

In addition to the price that you will pay, you also have to pay not only your professional costs, but also some of those of the freeholder. You will have to fund your valuer, for the Initial Notice must contain a figure based on a realistic proposition.

In addition, you will pay your solicitor to undertake a number of elements :

To administer the procedure i.e. serve your Initial Notice, receive the freeholder's Counter Notice and, if it becomes necessary, apply to the First Tier Tribunal for a hearing.

agree the terms of a Deed of Variation with the freeholder's solicitor.

In agreement with the freeholder's solicitor, tidy up any deficiencies in the old lease to bring it in line with modern terminology.

This new (varied) lease will have to be registered at the Land Registry.

You will also have to pay the freeholder's valuer, but only for the initial valuation and nothing beyond that.

In addition, you will have to pay some of the freeholder's legal costs, but only up to the date of the Counter Notice, with the exception of dealing with the Deed of Variation.

You are helped by the provisions of the Housing Act 1996 which extended the remit of the First Tier Tribunal to enable them to determine the reasonableness of the freeholder's costs and you will only pay what the First Tier Tribunal determine to be reasonable.

The date of the valuation is the date of the Initial Notice.

FREQUENTLY ASKED QUESTIONS

What do we do next?

You need to appoint a solicitor who is au fait with the legislation and there are very few around, and who will see the thing through.

The secret of success is getting it right and doing your homework, for if you fail to oblige the time constraints laid down in the procedure, you are barred from taking any further action under the legislation for 12 months.

How do I get the money?

If you do need to borrow the money to fund the premium and the costs, go and see your bank as soon as possible.

If the case goes right the way through to a First Tier Tribunal hearing, you will not be needing to find the money for probably between 9 — 12 months, but it is as well to alert your source of funding at the earliest opportunity.

ADVANTAGES AND DISADVANTAGES

The advantages are pretty self-evident. You will have a long lease and no ground rent payable, and therefore your flat is not only uplifted in value by double the amount of the marriage value, but it becomes saleable at the full market price.

Disadvantages

Quite simply — there are NONE!