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Disclaimer




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The law as stated during this webinar is up to date as of **09 July 2013**

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Introduction to Collective Enfranchisement



Dona Awano
Leasehold Advisory Service
24 April 2015

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Legislation



- **England**
- Leasehold Reform, Housing and Urban Development Act 1993
- Commonhold and Leasehold Reform Act 2002
- Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993
- The Leasehold Reform (Collective Enfranchisement and Lease Renewal) (Amendment) (England) Regulations 2003
- The Leasehold Reform (Collective Enfranchisement) (Counter-notices) (England) Regulations 2002
- The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013
- Leasehold Reform (Amendment) Act 2014

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Legislation



- **Wales**
- The Leasehold Reform (Collective Enfranchisement and Lease Renewal) (Amendment) (Wales) Regulations 2004
- The Leasehold Reform (Collective Enfranchisement) (Counter-notices) (Wales) Regulations 2003
- The Leasehold Valuation Tribunals (Fees) (Wales) Regulations 2004 (as amended)
- www.legislation.gov.uk

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What? Why? How?



- An absolute right to buy the freehold of buildings containing flats
 - Subject to qualification
- At a fair price
 - Determined by the First-Tier Tribunal (Property Chamber)
 - LVT in Wales
- Pros and cons
 - Consider other options
- Structured process set out in legislation

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Qualifying premises



- Sections 3 and 4
- Self-contained building or part of building
- At least two flats
- At least two-thirds of the flats let to qualifying tenants
 - Round up
- Not more than 25% non-residential
 - E.g. shops or offices
- **Exemptions**
 - Resident landlord
 - Railway
 - Buildings within a cathedral precinct
 - National Trust properties
 - Crown properties
 - Not obliged but prepared to comply

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Qualifying tenant



- Section 5
- Long leaseholder
 - Lease originally granted for more than 21 years
- Owns no more than two flats
- No residence requirement
- The minimum number of participating tenants must equal half the total number of flats in the building

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Procedure




- Checking Eligibility
 - Of the building and the tenants
- Selecting and Instructing professional advisers
 - Solicitors and surveyors
- Assessing the Purchase Price
 - Obtain a valuation
- Choosing the Nominee Purchaser
 - Form a company/draft deed of trust
- Participation agreement
- Serve initial notice on landlord(s)
- Landlord(s) respond with counter-notice
- Price agreed or determined by the Tribunal
- Conveyance

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Getting started

- Gathering interest - participating tenants **must** own at least half the flats in the building, if only two flats both must participate
- The right option?
- Participation agreement
- Exclusion



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Preliminary enquiries

- Section 11
 - 28 days to reply
- Extent of premises to be acquired
 - Appurtenant property
- **Valuation**
- The term
 - Capitalising the rent
- The reversion
 - The landlord's expectation of possession
- The marriage value
 - The uplift in the value of the flat
- Value of other interests
 - E.g. Rent Act tenancies, commercial properties, garages
- Injurious affection
 - Compensation for other losses

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Absent landlord

- Section 26
- Requires 2/3rds qualifying tenants
- Dispense with service
- Vesting order
 - Referral to Tribunal

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Initial notice




- Section 13
- **Not prescribed but MUST**
- Specify a realistic premium
 - Separate if intermediate landlord(s)
- No longer mandatory for all participants to sign
 - Leasehold Reform (Amendment) Act 2014

State mandatory leasebacks

- Nominee purchaser
 - RTE provisions never brought into force
- Specify date for counter-notice
 - Minimum 2 months

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Initial notice continued



- Full names and addresses of ALL qualifying tenants
- State particulars of their leases
- *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] A.C. 749*
- Not invalidated by inaccuracies in particulars
- *Viscount Chelsea v Morris [1997] 2 E.G.L.R. 100*

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Initial notice - service



- **Make sure you are ready to serve**
- No further notice can be served
- Deemed withdrawal provisions
- Who to serve?
 - Freeholder and copies to other landlord(s)
- Method
 - Consider personal service
- Beware of recorded delivery
- Registration
 - *Regent Wealth Ltd v Wiggins*

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Effect of service



- Prevents certain disposals
- Access for valuation etc
- Section 17
 - 10 days notice
- No limit on number of visits
 - If excessive court may refuse to enforce
- Requirement to deduce title
 - 21 days
 - **Deemed withdrawal risk**
- Notification of agreements
- Section 42 notices suspended

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Counter notice



- Section 21
- **Mandatory - not prescribed**
- Admitting right
- Denying right
 - Failure to specify which ground will invalidate the notice
- Challenging right on grounds of redevelopment
- Challenging the validity of initial notice
 - Section 23
 - *Burman v Mount Cook Land Ltd [2002] Ch. 256 CA*
- No requirement for landlord to sign

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No counter notice



- 6 months to apply to court
- Terms of acquisition proposed in initial notice
- *Willingdale v Globalgrange Ltd [2000] 2 E.G.L.R. 55*

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Proceedings where dispute



- **Challenge to initial notice**
 - 1) Landlord applies for declaration
 - 2) Await application by nominee purchaser
- Serve counter notice without prejudice
- **Negative counter-notice**
- Nominee purchaser applies for declaration
 - 2 months
- Security for costs
- **Redevelopment**

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Post-counter notice



- Changes in participants/nominee purchaser
- Sections 14-16
- Nominee purchaser may require reversioner to deduce title
 - 28 days to comply with notice

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Price and terms



- Terms?
- Premium
 - Valuation date is date of initial notice
- Agreed or determined
- Application to Tribunal
 - 4 month window

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Withdrawal



- **Express**
- **Section 28**
- Notice not prescribed
- **Deemed**
- **Section 29**
- Important to diarise key dates
- Cost consequences
- Cannot start again for 12 months
- Remove registration

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Contract



- Statutory deadlines for exchange and completion
- Contract followed by conveyance
- Reversioner must prepare draft contract within 21 days of agreement/ determination
- Nominee purchaser has 14 days to amend otherwise deemed approval
- Deposit can be required on exchange
 - £500 or 10%
- In practice contract stage can be skipped
- If no contract within 2 months application to court

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Conveyance



- Vendors lien
- Fee simple absolute
 - Subject only to those incumbrances agreed/determined
- Terms of conveyance
 - Schedule 7 1993 Act
- Leaseback
- Discharge of mortgages
- Payments into court

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Costs



- Section 33
- Investigating the claim
- Deducing title
- Making abstracts/copies
- Valuation
- Conveyance
- **Not tribunal costs**
- **Section 33(5)**
- Must be reasonable
- Tribunal can determine

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Enforcement of obligations



- Section 92
- Default procedure
- Notice
 - 14 days to comply
- Application to court

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Final considerations



- Extending the leases
- Taking on the management
- Dealing with/avoiding disputes


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Conclusion



- More complicated than it first appears
- Lots of pitfalls
- Requires co-operation and commitment
- Detailed knowledge and good organisation are vital
- Empowers leaseholders but does not mean the end to all possible disputes

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Questions?

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Upcoming LEASE training



Classroom training 13 May 2015 – London 20 May 2015 – Manchester	Webinar 12 May 2015
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Service Charges
This course provides a detailed analysis of service charges in residential leases and outlines the steps landlords, or their agents, are required to take in order to recover charges in an efficient and effective way

Interpretation of residential lease

- The basic principles
- Construing the lease
- Implied terms
- Important case law
- Rectification
