

Lease Conferences



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The law is stated as at 11th October 2016



LEASE EXTENSION- PART 1

Nicholas Kissen
19th October 2016

The topics we will cover



- Voluntary and statutory extension
- Qualification criteria
- Initial investigations
- Drafting the initial notice

Lease extensions



A long lease is essentially a 'wasting asset'

A long leaseholder with a short lease may find it difficult or even impossible to sell without a lease extension

Lease extensions



A lease extension should ideally add value to the leaseholder's property

Opportunity to make other amendments to the lease



Lease extensions

There are two ways to approach a lease extension

- Non-statutory, voluntary lease extension
- Statutory lease extension under the Leasehold Reform, Housing and Urban Development Act 1993



Non-statutory lease extensions

Consider a non-statutory lease extension first

The landlord should be advised to get an undertaking for his costs whether or not a lease extension is granted

- The leaseholder's solicitor should think carefully about the undertaking that is given
- Obtain client money first
- Limit the undertaking
- Time and amount



Non-statutory lease extensions

Typically a deed of variation will be granted

- At law this will operate as a surrender and re-grant
- This may require the consent of the leaseholder's lender
 - If there is one
 - By way of a deed of substituted security
- The leaseholder should be advised of the potential fee

Non-statutory lease extensions



Potential pros

- Done through agreement so, in theory, not adversarial
- Usually less legal work required
- The client may save on legal costs
- The client may be able to achieve a reduction in the overall cost of a lease extension
- Time may be saved

Non-statutory lease extensions



Potential cons

- Neither party can be forced to proceed
- The terms of the deal may not offer good value
- There is no recourse to a Court or Tribunal
- Costs may be non-refundable
- Capital gains tax roll-over relief not available to landlord

Statutory lease extensions



Chapter 2 of Part 1 of the 1993 Act and the Schedules to the Act

Referred to in this training as 'the Act'

The Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993

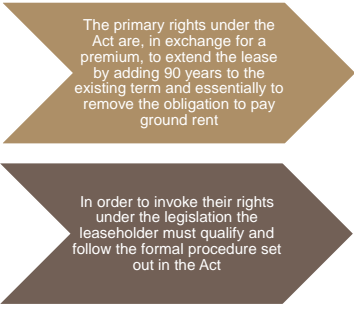
Referred to in this training as the '1993 Regulations'

Statutory lease extensions

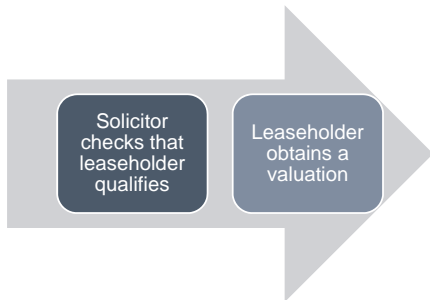


- Chapter 3 of Part 2 of the Commonhold and Leasehold Reform Act 2002
- Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
- Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004

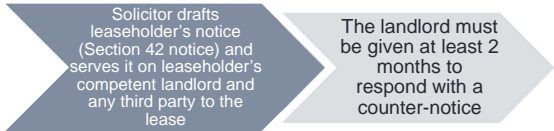
Statutory lease extensions



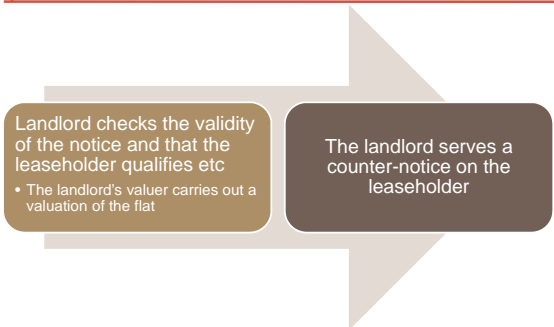
Statutory lease extensions - basic process



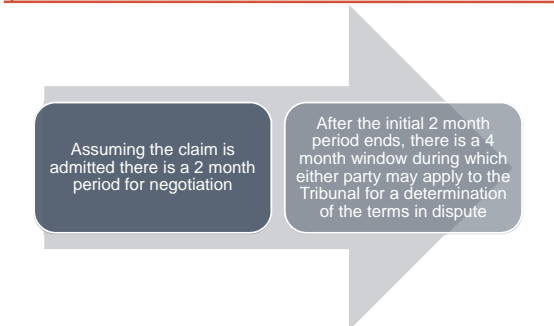
Statutory lease extensions - basic process



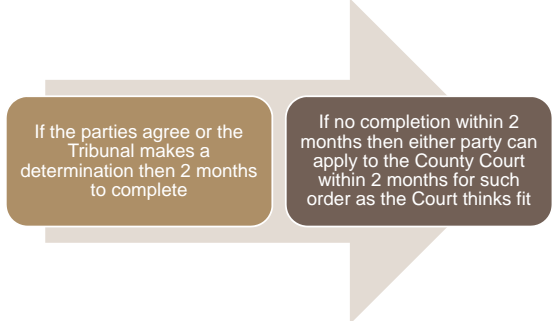
Statutory lease extensions - basic process



Statutory lease extensions - basic process



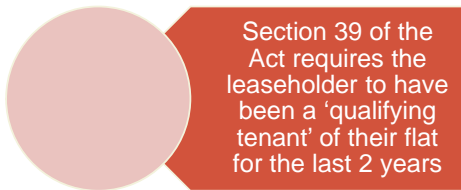
Statutory lease extensions - basic process



QUALIFICATION CRITERIA

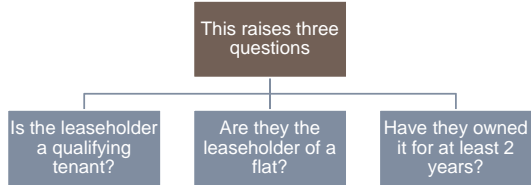


Qualification criteria





Qualification criteria





Qualifying tenant

Defined in S5 of the Act

The leaseholder is required to have a 'long lease'

- Defined in S7 of the Act
- Essentially a lease originally granted for a term exceeding 21 years
- Includes a number of other species of lease such as a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal
- It is unclear whether a shared ownership lease where the leaseholder owns less than 100% of the equity is a long lease



Qualifying tenant

There is no qualifying tenant where

- The lease is one to which part 2 of the Landlord and Tenant Act 1954 applies ie a business lease
- The immediate landlord is a charitable housing trust and is a charity within the meaning of the Charities Act 1993 and the flat forms part of the accommodation provided in pursuit of its charitable purposes
- There is an unlawful sub-lease because
 - The lease in question was granted out of a lease that was not a long lease
 - The grant was made in breach of the superior lease
 - There has been no waiver of the breach by the superior landlord



Qualifying tenant

Multiple tenancies

S5(5) of the Act does not apply to lease extensions

A leaseholder with more than two flats is entitled to extend the lease of each flat



2 years ownership

The leaseholder must have been a qualifying tenant of their flat for at least the last 2 years

Ownership is usually calculated from the date the proprietors were registered at Land Registry to the date of the notice of claim

- It is possible to include a period prior to registration where the leaseholder has entered into an agreement for lease
- S101(2)

Must be a continuous period



2 years ownership

Personal representatives of deceased qualifying tenant



Right to new lease exercisable



So long as Section 42 notice served by personal representatives by no later than two years after probate grant or letters of administration

Flat



Defined in section 101(1) of the 1993 Act

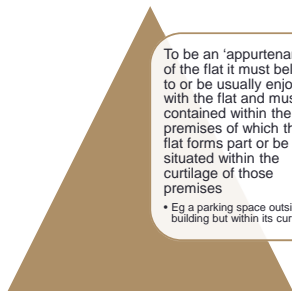
- "Flat" means a separate set of premises (whether or not on the same floor)
- Which forms part of a building, and
- Which is constructed or adapted for use for the purposes of a dwelling, and
- Either the whole or a material part of which lies above or below some other part of the building
- "Dwelling" means any building or part of a building occupied or intended to be occupied as a separate dwelling

Flat



- With lease extensions the meaning of the word "flat" is by S62(2) to include any
- Garage, outhouse, garden, yard and appurtenances
- Belonging to, or usually enjoyed with, the flat and
- **Let to the tenant with the flat on the relevant date**

Appurtenance



To be an 'appurtenance' of the flat it must belong to or be usually enjoyed with the flat and must be contained within the premises of which the flat forms part or be situated within the curtilage of those premises

- Eg a parking space outside the building but within its curtilage



Separate leases

- Under S7(6) property can also be let with the flat if
- There are two separate leases with the same landlord and the same tenant ,and
- The property comprised in one of those leases consists of either the flat or a part of it (in either case with or without any appurtenant property), and
- The property comprised in every other lease consists of either a part of the flat (with or without any appurtenant property) or appurtenant property only
- For these purposes the separate leases may be treated as if there were a single long lease
- Eg where there is a lease of the flat and a separate lease of a parking space with the same landlord and same tenant



Competent landlord

Section 42 notice served on "competent landlord"

Acts for all the other landlords

• Save for any application by one of them to act separately

Premium payable to competent landlord



Competent landlord

The landlord who has an interest of sufficient duration to grant the lease extension

Section 40 of the Act



Other landlords

Any person other than the leaseholder in whom there is vested a concurrent tenancy intermediate between the interest of the competent landlord and the leaseholder's lease



Competent landlord empowered to conduct proceedings on behalf of the other landlords



DRAFTING THE SECTION 42 NOTICE



The initial notice



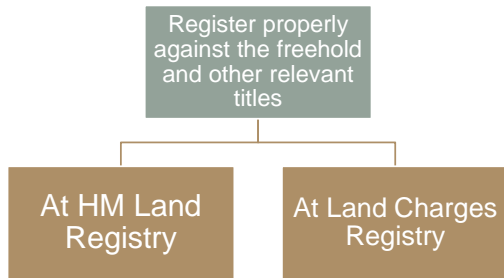


The initial notice



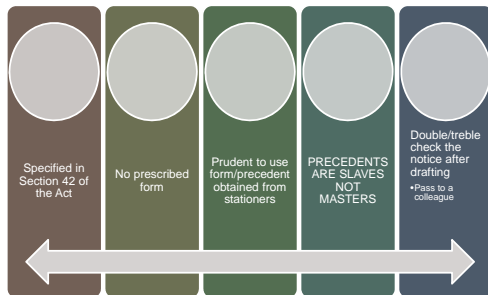


The initial notice





The initial notice - contents





The initial notice - contents

Specify the name of the leaseholder

Check Land Registry entries

Put in the full name

- Middle names included

Joint names

- Put them all in



The initial notice - contents

Specify the address of the flat for which the lease extension is claimed

Put in the full address

- Full postcode
- Street name
- Street number
- Number of flat
- Name of block



The initial notice - contents

Give particulars of the flat

- Sufficient to identify it

Not obligatory to attach a plan

Prudent to do so

- Unusual configuration of the flat?
- Eg includes two separate areas of accommodation

Plan should highlight

- Additions to the flat
- Appurtenant property
- Eg Garage



The initial notice - contents

Give particulars of the lease

Sufficient to identify it

Including

- Date it was granted
- Term for which it was granted
- Date of commencement of the term
- Perhaps details of original parties to the lease



The initial notice - contents

Ensure all relevant leases covering flat are included

- Appurtenant property under separate lease?

No need to show when

- Lease acquired by flat owner
- Transfer to flat owner registered at Land Registry



The initial notice - contents

- Premium the leaseholder proposes to pay
- Including for any other landlord
 - Intermediate interest
 - Cannot just put in "none"



The initial notice - contents

- Price proposed must be offered in good faith and a genuine proposal
- Not a nominal figure
- *Cadogan v Morris 1999 E.G.L.R. 59 CA*



The initial notice - contents

- Price proposed must be a genuine opening offer
- Does not have to fall within the range of reasonably justifiable valuations
- Lessee does not have to believe that it would be accepted
- Has to be bona fide
- *Westbrook Dolphin Square Limited v Friends Life Ltd [2014] EWHC 2433*



The initial notice - contents

Specify the terms which leaseholder proposes should be contained in the new lease

State name and address of the person (if any) appointed by the leaseholder to act for him in connection with his claim, and an address in England and Wales at which notices may be given to such a person

- Solicitor
- Surveyor



The initial notice - contents

Specify date by which the landlord must respond to the notice

Not less than two months after date the initial notice is given

NB: After the last person has been given the initial notice

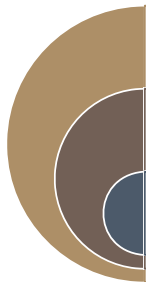
- Watch out for third parties

Allow for delays in service

Add on some extra days to the two months deadline



The initial notice - contents





The initial notice - signing it properly

- THE LAW IN ENGLAND CHANGED ON 13 MAY 2014
- AND CHANGED IN WALES ON 1 DECEMBER 2014
- BUT FIRST WE WILL TELL YOU ABOUT THE OLD LAW



The initial notice - signing it properly

- If there was more than one leaseholder then both would sign
- Only personal signatures would suffice
- Signature by solicitor, agent, relative was not valid
- Section 99(5)(a) of the Act



The initial notice - signing it properly

Even the signature of an attorney holding power under a valid power of attorney was not valid

St Ermins Property Company v Tingay [2002] 2 EGLR 53



The initial notice - signing it properly

- Corporate leaseholders
- Check the company's constitution
- HILLM and Associates Limited v 20 Pembroke Villas Freehold Limited [2010] EWCA Civ 314*
- Comply with the requirements of Section 44A of the Companies Act 2006
 - Affixing the company's common seal
 - Signature by secretary and director
 - Signature by two directors
 - One director in presence of a witness who attests the signature and expressing it to be executed by the company

And now the crucial change....



Leasehold Reform
(Amendment) Act
2014

Royal Assent • 13 March 2014

Came into force • 13 May 2014

Amends Section
99(5)(a) of the Act

And for Welsh properties



Section 140 of the
Housing (Wales)
Act 2014

The Housing
(Wales) Act 2014
(Commencement
No.1) Order 2014

Came into force on
1 December 2014

The new rules on signing initial notices



Notices must now be signed by or on behalf of each leaseholder

No need any more for personal signature

Enables solicitor/agent/attorney to sign on leaseholder's behalf

Important to ensure that proper authority has been given by the leaseholder(s) to the person signing on their behalf

Inaccuracies



The initial notice shall not be invalidated by any inaccuracy in any of the particulars required by Section 42 of the Act

The notice is not invalidated by any misdescription of any of the property to which the claim extends

GET THE NOTICE DRAFTED CORRECTLY ANYWAY
