Û **l**ê LEASE CONFERENCES For technical assistance Audio for the webinar will be through your please call Webex: computer speakers • 0800 389 9772 Option 3 Quote site reference: Audio also available by lease-advice.webex.com telephone: 0203 478 5289 Submit questions via Access code: 957 512 070 the chat box

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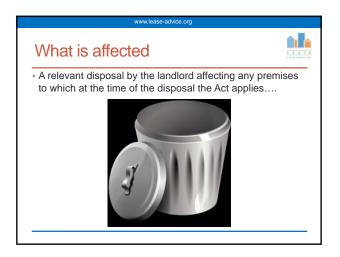
Right of First Refusal Part 1-Dealing with the difficulties

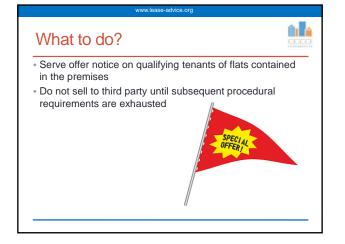
Alero Orimoloye Leasehold Advisory Service 9 May 2017

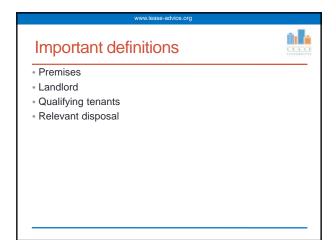
Legislation



- Report of committee of inquiry on the management of privately owned blocks of flats (October 1985)
- Landlord and Tenant Act 1987 Part I
 - "Ill-drafted, complicated and confused"
 - V-C Browne-Wilkinson in Denetower Limited v Toop [1991] 1 WLR 945
- Housing Act 1996







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 A separate set of premises whether or not on the same floor (includes maisonettes)

• Forms part of the building

Flat

- Divided horizontally from some other part of the building
- Constructed/adapted for the purpose of a dwelling

Flat • Tenancy of a single room with shared amenities such as a kitchen with others in the same building is not a flat • Premises are not a separate dwelling

Premises



- · Consist of whole or part of a building
- · Contain two or more flats held by qualifying tenants
- The number of flats held by qualifying tenants exceeds 50 per cent of the total number of flats contained in the premises
 - (Section 1(2) of the 1987 Act)

Premises - continued



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Some premises are excepted namely

- · Exempt landlord Public bodies
 - District, County, London borough councils etc
 - Commission for the New Towns/Order made under the New Towns Act 1981 National Park Authority,

 - Housing trust which is a charity
 Registered social landlord

Premises - continued

Resident Landlord

- · Premises not form part of a purpose built block of flats · Landlord in occupation as his only/principal residence
- Excludes a company
- Landlord in occupation for a period not less than 12 months ending with date of disposal

Premises - continued



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Mixed use building

- Part of the premises is occupied/intended to be occupied otherwise than for residential purposes
- The internal floor area of the part taken together exceeds 50% of the internal floor area of the premises taken as a whole
 - Disregard internal floor areas of any common parts
- Test of intention is objective
 - Existence of planning consents Structural adaptation for proposed use
 - · Previous use of the premises

Landlord

Immediate landlord of qualifying tenants of flats

- · Freeholder, intermediate landlord, sublessee Intermediate landlord is landlord
 - Disposal of intermediate lease is a relevant disposal
 Disposal of freehold not a relevant disposal

Exceptions

- Intermediate landlord's lease for a term of less than 7 years/longer but with option for superior landlord to
- terminate within first seven years
- Disposal by mortgagee
- Exercising power of sale
- The Crown
 - No Parliamentary declaration that 1987 Act binds the Crown
 - In practice will offer right to lessees





Qualifying tenant

Except

- Business tenancy
- Part II LTA 1954
- Assured tenancy
 Part I Housing Act 1988
- Three flats held by one tenant/company or associated companies
 Section 3 of the 1987 Act
- Sub tenant whose landlord is the QT

Relevant disposal

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- "Disposal by the landlord of any estate or interest, legal or equitable, in any such premises, including the disposal of any such estate or interest in any common parts..."
- (Section 4 (1) of the 1987 Act)
- Disposal includes any passing of legal or equitable interest
 - Entering into a contract
 - · An option/right of pre-emption
 - A lease
 - A transfer

Relevant disposal

Should be disposal by immediate landlord

Excludes

- CPO
- Collective enfranchisement · Gift to a family member or a charity
- · Disposals between companies associated for at least two years
- Disposal to the CrownGrant of tenancy of a single flat

Relevant disposal?



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Lease of airspace

- "Dartmouth Court Blackheath Limited v Berisworth Limited [2008] EWHC (Ch.) 350"
- "All the airspace above the roof including the space from roof level occupied by the mansard roof and above ...
- Airspace extending to the height of the chimneys which projected several feet above the roof level
- Lease of a mobile telephone mast

Relevant disposal? Lease of Common Parts



- Include the structure and exterior of the building or part of the building and any common facilities within it
 - · Eg the grant of the freehold/lease of part of the qualifying premises Roof/ outside walls

Procedure - the basics

- Landlord and Tenant Act 1987 Part I Private Treaty
- Housing Act 1996 Public Auction Procedure
- Offer notice
- Acceptance notice
- Notice of nominee purchaser
- Contract
- Completion

Important

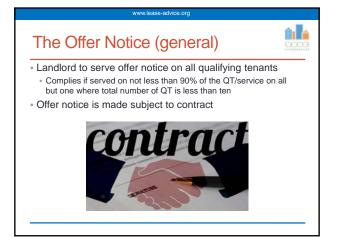
No prescribed forms but important to ensure contents are correct

The Offer Notice (general)



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- Copy of the Notice to be served on the RTM Co. (if applicable)
- No provision in the Act for the withdrawal (prior to its acceptance) by the landlord of the offer notice once served
- Landlord to serve offer notice on each building separately if transaction involves disposal of an estate/interest in more than one building
- Kay Green V Twinsectra Ltd [1996] 1WLR 1587



Offer notice - contract for disposal



Section 5A of the 1987 Act

- Property and Estate/interest
- Principal terms of the intended contract (including deposit and price)
- State notice constitutes an offer to enter into a contract on the terms set out, which may be accepted by the requisite majority of qualifying tenants

Offer notice - contract for disposal



• State a period within which the offer may be accepted, being not less than two months

 State a further period of not less than two months within which the tenants may nominate a person(s) to buy the property

Offer notice - public auction Section 5B of the 1987 Act Sale by public auction in England and Wales Property and Estate/interest Other principal terms of the disposal Reserve price need not be specified

Offer notice - public auction



- State notice constitutes an offer to enter into the contract, if any, entered into at auction, to have effect as if a nominee of the qualifying tenants, and not the buyer, had entered into it on behalf of the requisite majority of qualifying tenant
- State a period within which the offer may be accepted being not less than two months
- Period specified for acceptance of offer must end not less than two months before auction date

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- State a further period of not less than twenty eight days within which the tenants may nominate a person(s) to buy the property
- Period for nominating a purchaser must end not less than 28 days before auction date
- State disposal by sale at public auction

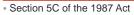
Offer notice - public auction

 State time, place of auction and name of auctioneers or give this information by further notice to requisite majority at least 28 days before the auction

Offer notice - public auction

- Serve notice not less than four months and not more than six months before the auction date
- Right is to step into the shoes of the successful bidder at the auction
- · No separate right to acquire before/after the auction

Offer notice - option/pre-emption



- Property and Estate/interest
- · Other principal terms of the disposal
- · Consideration required for granting the option/pre-emption
- Principal terms on which the option would be exercisable (including consideration payable on its exercise)

Offer notice - option/pre-emption



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- State notice constitutes an offer to grant option/preemption on the terms set out, which may be accepted by the requisite majority of qualifying tenants
- State periods of two months respectively within which the offer may be accepted and notice of nomination served

Offer notice - straight to transfer

- Section 5D of the 1987 Act

- Property
- Estate/interest
- Other principal terms of the disposal (including price) other terms?
 State notice constitutes an offer to dispose of the property on the terms set out, which may be accepted by the requisite majority of qualifying tenants

Offer notice - straight to transfer



- State a period within which the offer may be accepted, being not less than two months
- State a further period of not less than two months within which the tenants may nominate a person(s) to buy the property

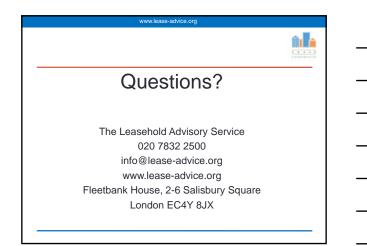
Offer notice - no money involved



- Section 5E of the 1987 Act
 - Exchange of land/gift
 - · Other than to family member/charity
 - Relevant information applying to Sections 5A to 5D Stating an election may be made under Section 8C and explain its
 - effect
 - QT not in a position to offer the landlord same consideration as the proposed purchaser, so they elect to pay an equivalent monetary consideration to the purchaser
 - · Equivalent to the monetary value received by the landlord

ÎI 🕯 Offer notice - no money involved

- State notice constitutes an offer to acquire the property on the terms set out, which may be accepted by the requisite majority of qualifying tenants
- State a period within which the offer may be accepted, being not less than two months



Upcoming Webinar 7 June 2017

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- Right of First Refusal (part 2)
 - Acceptance of Offer notice
 - Procedure from offer notice to completion · Breaches of the right of first refusal process