

Lease Conferences



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The law as stated during this webinar is up to date as of **3 November 2016**



Lease Extensions - Part 2

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The Leasehold Advisory Service
3 November 2016

The initial notice - who to serve?



Notice is given to

- The competent landlord and
- Any third party to the lease
 - Management company
 - Guarantor
- Notice not served until third parties served

The initial notice - who to serve?



- Copies of the initial notice must be given to everyone the leaseholder knows/believes to be the competent landlord or one of the other landlords
- Each recipient of the initial notice or a copy of it must give a copy to anyone they know/believe to be the competent landlord or one of the other landlords, who is not stated in the notice or known by the recipient to have received a copy
- **Consequences of failing to serve properly**

The initial notice - where to serve?



Individual

- Residential address
- Place where trading

Company

- Registered office
- Place where trading

The initial notice – where to serve?



Serve immediate landlord at address given under Section 48 of the Landlord and Tenant Act 1987

Address for service of notices

If none provided then address given under Section 47 of the Landlord and Tenant Act 1987

Address on demands for rent etc.

The initial notice – how to serve?



- In person
 - Evasive
 - Coming up to 80 years left on lease
 - Get an enquiry agent to do it?

The initial notice – how to serve?



- By post
 - Registered
 - Recorded
 - Special

The initial notice – how to serve?



- Not recommended
 - By fax
 - By e-mail

The initial notice - do not forget to register



The initial notice - do not forget to register



The initial notice - do not forget to register



Registered land

- Land Registration Act 2002
- Unilateral notice
- Form UN1
- Land Registry Practice Guide 27
 - Para.5.4.1
- Check the fee

Service of initial notice - effect



Service of initial notice - effect



Selling the flat - extending the lease



- The initial notice can be assigned
 - Section 43(3) of the Act
- Useful where
 - On the cusp of 80 years
 - Residue of lease is short
 - Buyer not wanting to wait two years from purchase

Selling the flat - extending the lease



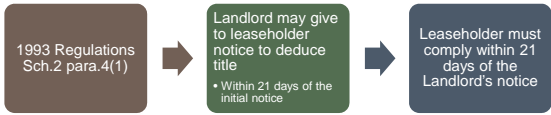
- Serve initial notice
- Draft and execute deed of assignment
- Use decent precedent
- Consider buyer's solicitor
 - Drafting initial notice
 - Serving signed notice
 - Drafting deed of assignment
- Get it right or deemed withdrawal

POST-NOTICE PROCEDURE



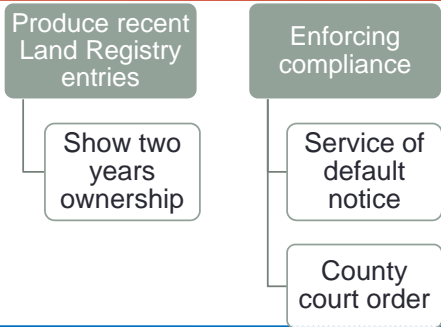


Investigating title





Investigating title





Payment of deposit

- 1993 Regulations Sch.2 para.2(1)
- Competent landlord may give to the leaseholder notice requiring payment of a deposit
 - On account of the premium
 - As soon as the initial notice is served
 - Whilst it continues in force



Payment of deposit

- Greater of
 - £250 and
 - 10% of amount proposed in the initial notice
 - All sums proposed



Payment of deposit



Payment within 14 days of notice

- Solicitor or licensed conveyancer
- Stakeholder



Same methods of enforcement as for deduction of title



Access for valuation

- Section 44 of the 1993 Act
- Entitlement to inspect flat
 - Competent landlord
 - Any other landlord
 - Any person authorised to act on their behalf
- For purposes of statutory valuation

Access for valuation



Landlord's counter-notice



- Section 45
- By the date in the initial notice
- Given by the competent landlord
 - But counter-notice must specify any other landlords on whose behalf they are acting

Landlord's counter-notice



- Serious consequences for failure to serve counter-notice in time or at all
- Leaseholder may apply for new lease on terms set out in the initial notice

Landlord's counter-notice - contents



- State that the landlord
- Admits leaseholder's right to a new lease on date of service of the initial notice (positive) or
- Does not admit leaseholder had such a right (negative)
 - Specify reasons
- Where relevant, state landlord intends to apply for an order that they intend to redevelop the property
 - Section 47(1)

Landlord's counter-notice – contents



- Counter-notice invalid if fails to comply with the contents requirements
- Specify address at which notice may be given to the Landlord
 - England and Wales
- No saving for inaccuracy

Landlord's counter-notice – positive



- Must state which proposals are accepted and which are not
- Proposals not accepted
 - Landlord must specify counter-proposal
- Must deal with amount payable to intermediate landlord
- Perhaps attach draft lease?

Landlord's counter-notice – positive



- Disputes unresolved over premium and/or other terms of the lease go to the tribunal
- Landlord or leaseholder can apply
- Application made within
 - Two months after counter-notice
 - Within six months of counter-notice
- Leaseholder sanction for non-application in time
 - Deemed withdrawal
 - Section 53(1)

Landlord's counter-notice – negative



- Application to county court
 - Declaration that leaseholder had no right to lease extension on date initial notice given
 - Section 46(1)
 - By landlord
 - Within two months of counter-notice

Landlord's counter-notice – negative



- If no application made to county court
 - Consequence as if no counter-notice given

Landlord's counter-notice – negative



- Possible court orders
- Declaration given
 - Initial notice ceases to have effect
- Application dismissed
 - Court requires landlord to serve further counter-notice

Failure to serve counter-notice



- Section 49
- Losing right to dispute proposals in the initial notice
- Application by leaseholder to the county court
 - Six months from counter-notice
 - Deemed withdrawal if deadline missed
- No discretion
 - Willingale v Globalgrange Limited [2000] 2 EGLR 55,CA

Disputes - which forum?



Non-admission

- County court
- Landlord

Opposes on re-development grounds

- County court
- Landlord

Admission but disputed proposals

- Tribunal
- Landlord or leaseholder

Applications to the Property Chamber



- Used to be the Leasehold Valuation Tribunal (“LVT”)
- Changed on 1 July 2013 in England
- Full title: *The First-tier Tribunal (Property Chamber)*
- LVT still exists in Wales

Applications beyond the Property Chamber



- Appeal to the Upper Tribunal (Lands Chamber)
 - With leave
- And then beyond
 - Court of Appeal
 - Supreme Court

Reminder of the process



- Initial notice drafted
- Initial notice served
- Landlord serves counter-notice
- Assume positive



Reminder of the process

- Alternative terms proposed including price
- And if not all disputed terms resolved...
- Application to the Tribunal
 - Not less than two months from counter-notice
 - Not more than six months from counter-notice



TERMS OF THE NEW LEASE



The basis of the new lease

- Section 57 of the Act
- Term of the new lease is fixed
 - Residue plus 90 years
- Rent of the new lease is fixed
 - Peppercorn
- Otherwise on same terms as existing lease



Changes to the lease

- Section 57(1)
- PERMITTED/REQUIRED to address
 - Omission from new lease of property included in existing lease, but not comprised in the flat
 - Alterations to flat since existing lease granted
 - Existing lease derives from separate leases



Changing lease terms

- Section 57(6) - EXCLUDE OR MODIFY
- Two grounds



Ground one

- Necessary to remedy defect in existing lease
- Construed narrowly
 - Waitt v Morris [1994] 2 EGLR 224
 - Burchell v Raj Properties Ltd [2013] 443 E.G.L.R
- Consider Council of Mortgage Lenders Handbook



Ground two

- Unreasonable in the circumstances to include, or include without modification, term in question in view of changes since date existing lease granted affecting suitability of provisions of lease on relevant date
 - Legislative changes
 - Changes in conveyancing practice



Guidance from the Lands Tribunal

- *Gordon v Church Commissioners for England LRA/110/2006*
- Starting point - terms of the existing lease
- Section 57(1) - gives a wide power to allow changes where it applies



Guidance from the Lands Tribunal

- *Gordon v Church Commissioners for England LRA/110/2006*
- Section 57(6) - Does not allow new provisions to be introduced
 - Exclude/modify
 - A "defect" must be judged objectively and amount to a defect from the perspective of both landlord and tenant
 - Changes in circumstances can include changes in conveyancing practice

Service charge provisions



- Section 57(2) of the Act
- An opportunity for the landlord to modernise the lease where inadequate or non-existent provisions for recovery of costs incurred in carrying out obligations to provide services, undertake repairs etc.

Limitations of the 1993 Act



- Cannot use the Act to modernise existing lease
- Beware the estate lease
- Tactical issues
- Consider alternative routes to changing the lease terms
 - E.g. Part IV of the Landlord and Tenant Act 1987

Obligatory provisions




- Statement that the lease is granted under section 56 of the Act
- Provision that any sub-lease is not to confer any right under Act to acquire a new lease
- Reservation to the immediate landlord of right to obtain possession in accordance with section 61

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CONVEYANCING AND COSTS


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Time frame for completion

- The formal process is set out in Paragraph 7 of Schedule 2 of the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993

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Time frame for completion

- The landlord drafts the lease within 14 days of the 'terms of acquisition' having been agreed or determined by the Tribunal and serves it on the leaseholder
- The terms of acquisition are the premium and terms of the new lease
- Not the S60 costs
- The leaseholder has 14 days to make amendments, otherwise they are deemed to have approved the lease



Time frame for completion

- The landlord has 14 days to make further amendments otherwise they are deemed to have approved the lease
- Once the lease has been approved the landlord must send engrossments to the leaseholder



Completion

- Completion takes place the first working day 21 days after notice to complete has been served, unless that date falls after the initial 2 month period has ended
- The initial 2 month period is the first 2 months after the 'terms of acquisition' have been determined or agreed
- Completion shall take place at office of landlord's solicitor or licensed conveyancer
- Cancellation of land registry/charges entries



Conveyancing example

- Terms of acquisition agreed on 1 Jan
- Landlord serves draft lease by 14 Jan
- Draft returned by 28 Jan
- Landlord approves draft (and any amendments) by 11 Feb



Conveyancing example

- On 14 Feb leaseholder serves notice to complete on 7 March however, notice to complete is not technically valid as the first two month period ended on 1 March
- Landlord and Leaseholder therefore agree in writing to complete on 7 March
- Landlord prepares engrossments in preparation for completion



Mortgages

- Where the leaseholder's flat is mortgaged under S58(4) the mortgage will automatically be registered against the new title on registration of the new lease
- There is no need to contact the mortgage lender for permission
- However, there is a duty on the leaseholder to send the new lease to the lender within 1 month of completion under S58(6)



Mortgages

- If the landlord's title is mortgaged the new lease binds the landlord's lender in any event
- Under S58 if the lease was granted before 1 November 1993 the landlord's lender is taken to have authorised the new lease

Mortgages



- If the lease was granted after 1 November 1993 the consent of the landlord's lender is required
- The landlord is under an obligation to take the steps necessary to make sure the new lease is not defeated by the mortgage
- Paragraph 11 of Schedule 11 of the 1993 Act

The County Court



- Following agreement or determination of the 'terms of acquisition' there is a 2 month period for the parties to complete
 - The 'terms of acquisition' are the premium and terms of the new lease
 - Not the S60 costs

The County Court



- Following that initial first 2 month period
 - If no new lease has been entered into then either party may apply to County Court
 - Under S48(3) of the Act
 - Within a second 2 month period
 - Thus 4 months in total from agreement or determination of the terms of acquisition

The County Court



- The Court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of the leaseholder's notice

The County Court



- Claim made under Part 8 of the CPR as no facts in dispute
- The claimant must file any written evidence (i.e. a witness statement) on which they intend to rely when submitting claim form
- The claimant's evidence must be served on the defendant with the claim form
- It is possible to issue the claim and then serve within 4 months

Costs



- S60
 - 1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely
 - a) Any investigation reasonably undertaken of the tenant's right to a new lease
 - b) Any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56
 - c) The grant of a new lease under that section
 - 2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs

Costs



- Receiving the counter-notice
- Checking Land Registry Office Copies
- The valuation
- Drafting a counter-notice
- Service of the counter-notice

Costs



- Preparing the draft lease
- Serving the draft on the leaseholder
- Checking/approving any amendments proposed by the leaseholder
- Preparing engrossments
- Sending out a completion statement
- Completion

Costs



- There is no definitive reasonable amount
- Whether costs are reasonable will depend on how complex the process was
- The leaseholder should ask for a time recording break down of the landlord's costs?



Disputing legal costs

- The leaseholder should consider whether the right grade of solicitor is doing appropriate work for the landlord and whether the time spent on each part of the process is reasonable given the experience of the fee earner
- There is likely to be an economy of scale for multiple lease extensions



Disputing legal costs

- In practice it may be helpful for the landlord to give the leaseholder a completion statement once the terms of acquisition are agreed based on the actual costs of receiving and serving the notices but also on an estimate of conveyancing costs to completion



Sale of a flat

- Under S43 of the Act the qualifying leaseholder may serve notice and transfer the benefit of the notice to a buyer
- Agreement should be reached over costs and recorded in the contract



Sale of a flat

- The transfer must take place at the same time as the transfer of the seller's interest in the flat
- The passing of the benefit should be expressed to take place at the same time as the transfer of the legal title which is perfected on registration at HMLR



Missing landlord

- Tenant must qualify for a new lease under the Act
- Application to court to dispense with service of notice of claim
- 'Reasonable efforts' to find landlord
 - Land Registry Search
 - Advertisement
- Tribunal determines premium and terms of new lease
 - Paid into court
- Vesting order by County Court



Questions?

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Next Upcoming LEASE courses



9 November 2016

Webinar:

At the end of the webinar you should be aware of and understand the importance of Court of Appeal and Upper Tribunal decisions on:

- Service charges
- Right to manage
- Collective enfranchisement
- Lease extensions of flats
- Individual enfranchisement of houses

**22 November 2016–
London**

Classroom training – Fighting fit for the Tribunal – rules, costs and consequences

This course outlines the procedure for making an application and reviews the latest case law from tribunal decisions. Key points covered include:

- The procedural rules that came into force in 2013
- Preparation for and conducting a case at the Tribunal
- Orders for costs and recent case law
