

ENFRANCHISEMENT - JARGON BUSTER

The law of leasehold enfranchisement has come to assume major importance as an area of law which affects many residential properties. Some knowledge of leasehold law is essential for those who deal and live in residential property let on long leases.

In this Jargon Buster, Yashmin Mistry, Solicitor in the Leasehold Enfranchisement Department of Brethertons LLP explains some key terms used in leasehold legislation in plain-English.

TERM:

MEANING:

**LEASEHOLD
PROPERTY**

Ownership of leasehold property means that the leaseholder has a right to use and enjoy that property for a defined period of time i.e. 99 years, 125 years or 999 years.

LEASE

A Lease is a legal term used to describe a particular type of contract. A Lease is therefore a written agreement between two or more parties setting out the terms/agreement that has been reached between those parties.

LONG LEASE

In general a lease granted for a term certain of more than 21 years. There are other definitions, these are likely to be of significance under the right-to-buy legislation.

**LEASEHOLD REFORM,
HOUSING AND URBAN
DEVELOPMENT ACT
1993**

The Act received Royal Assent on 20th July 1993. It is the radical piece of legislation that introduced the right for leaseholders to extend their leases and the right for leaseholders to purchase the freeholds of their buildings ('collective enfranchisement').

**COMMONHOLD AND
LEASEHOLD REFORM
ACT 2002**

The Leasehold Reform, Housing and Urban Development Act 1993 has been subject to amendment since its introduction. The most significant changes were contained in the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002.

**COLLECTIVE
ENFRANCHISEMENT**

The right of a group of 50% or more of leaseholders in a particular block of flats to buy the freehold of the building from their landlord. The right is a group right, as opposed to say, an individual's right to have a lease extended.

RELEVANT PREMISES

The Building, the freehold of which is to be acquired.

QUALIFYING TENANT

A leaseholder who fulfils the qualifying criteria i.e. a leaseholder of a flat under a long lease and does not own three or more flats in the building.

**PARTICIPATING
TENANT**

A Qualifying Tenant who participates in the collective enfranchisement process.

R.T.E

A Right to Enfranchise Company. The Commonhold and Leasehold Reform Act 2002 states that a claim for a right to collective enfranchisement can only be made through a RTE. These provisions relating to RTEs have been highly criticised and have yet to come into force.

NOMINEE PURCHASER

Person(s) or entity named in the initial notice who will acquire the freehold and become the new landlord of the building (this will be the RTE when and if those provisions come into force).

INITIAL NOTICE

Notice informing the Landlord of the leaseholder's claim for the purchase of the freehold. This notice must contain certain prescribed information as set out by legislation. Service of the initial notice formally commences the enfranchisement process.

RELEVANT DATE

This is the date the Initial Notice is served. It is also the valuation date i.e. the date at which the valuation is made for the purpose of calculating the price to be paid for the freehold.

MARRIAGE VALUE

Is the extra value brought about by the freehold and leasehold interests being under the same control, merged or “married” i.e. the ability of participating tenants to grant themselves long leases at no premium. These interests are often worth more together than apart.

HOPE VALUE

It is presumed the only person who will ever want to bring the freehold and leasehold interests together is the leaseholder. The leaseholder is therefore usually willing to offer a higher price than others may do and hope value is that “overbid” i.e. the additional payment that the leaseholder would make in order to ensure that they, and no-one else, would get the freehold.

COUNTER NOTICE

The landlord’s response to the initial notice served by the participating leaseholders.

LEASEBACK

The right of the freeholder to a lease-back of certain parts of the premises on completion of the purchase of the freehold by the participating tenants. In some cases the leaseback is mandatory; in other the leaseback is optional.

SPORTELLI CASE

Earl Cadogan and Cadogan Estates Ltd v Sportelli and others - the case that rocked the Leasehold Valuation Markets! The case went from the Leasehold Valuation Tribunal all the way up to the Court of Appeal. The Court of Appeal’s Judgment was handed down on 25th October 2007 and the Appeal Judges decided that:

- Hope Value should not included in the price payable for collective enfranchisement or lease extensions
- The Lands Tribunal were entitled to reject market evidence; and
- It was totally appropriate for the Lands Tribunal to offer guidance and for the Leasehold Valuation Tribunals generally to follow such guidance as there is a public interest in avoiding wasted expenditure and the risk of inconsistent results in successive appeals from its decision.

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