

IT PAYS TO GET INVOLVED

How to persuade other lessees to join in enfranchisement

THERE WILL always be those who question why they should bother enfranchising. This article provides some reasons why you should become involved.

The common reasons for enfranchisement are:-

- Declining lease length;
- The leaseholders wish to change management;
- Service charge demands are high or unreasonable.
- To prevent the speculative development;
- To correct a lease defect;
- For elderly leaseholders, to put their affairs in order.

It is not unusual in enfranchisement cases for landlords to try and redevelop – usually roofs or car parks or to remove a resident caretaker and sell his flat.

By enfranchising, any speculative redevelopment can be quashed. Also, it is better to enfranchise before the freeholder obtains planning permission. At that point the freeholder can only argue for “hope value”, rather than produce planning permission before the Leasehold Valuation Tribunal (LVT), which will increase the compensation the freeholder receives.

If the lease is defective, then it will be more difficult to sell your flat, for example,

if the lease contains a right for the landlord to repossess in the event of the tenant’s bankruptcy. Such a clause makes the lease un-mortgageable and therefore un-saleable. The legislation provides that any new lease granted will be free of this defect. By extending the lease, the lease can convert into a marketable lease for mortgagee purposes.

In any collective enfranchisement, non-participants should not underestimate the disadvantage faced. Although they retain the right to extend, they will only receive a lease extension of ninety years (90). Normally, participating tenants receive leases of nine hundred and ninety nine years (999) - a virtual freehold. Also, any defects in the lease will be cured. Non-participants may not have this opportunity. Depending on the defect, this could have a detrimental effect on the lease value. Also, if a new company is formed to buy the freehold, the non-participant will not be a member.

Why should an elderly leaseholder bother? Most parents want to leave their children with the fruit of their labours. This can be maximised by extending the

lease or joining a collective claim rather than doing nothing. Even after death, the executors can claim a lease extension, thereby generating thousands of pounds more for the deceased’s heirs.

Finally, why should tenants bother? Let me end with a true story. In 1990 a group of fifty residents were offered their freehold to purchase. At the time they declined. By 2006, the tenants realised their leases were so short it affected the value on sale. Various claims were instigated, both collective and individually. Unfortunately, some residents withdrew. To date, the average price of enfranchisement is £12,000 per flat plus costs. As not all tenants are participating, those participating have had to find more than £20,000 each to complete. Had they bought the freehold in 1991, it would have cost approximately £1,500 each, including costs.

Sometimes, it pays to get involved.

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