



HOW TO GET OFF ON THE RIGHT FOOT

Bringing a claim to acquire the freehold or to have your lease extended throws up various practical and legal problems, writes **Martin Codd** of Dawsons LLP. Here he lists some of the more common problems he has encountered during the past 20 years.



Ensure you know the area of property being acquired.

For claims involving the acquisition of a house or a collective claim to acquire the freehold to your block, it is vital

you appreciate the limitations of the legislation. For example, if your house is a mews with part of it either underneath or above your neighbour's property then you may not be entitled to acquire your freehold under the 1967 Act. If you are living in a block, then you may not be entitled to acquire the outlying garden or car park areas if your lease doesn't expressly grant you rights to use these areas.

When dealing with any unusual building and/or estate it is always advisable to arrange for your solicitor to inspect the property. The claim to acquire the freehold of a block requires the preparation of a plan. It is important that the client and/or their surveyor provides a scaled and coloured plan.

SERVE THE CORRECT PARTIES

If in doubt serve everybody! The legislation prescribes a statutory time frame (rather loose under the 1967 legislation) that only applies when you can prove that the landlord has been served with the initial notice.

I would always recommend service by a process server, although on one occasion when I instructed a process server to serve the registered office of a well known landlord in London the process server's assistant ended up serving on a portakabin at the rear of the property after being refused entry at the front! This was not good service and the tenant's

claim was abandoned.

As a result of the case of *Cadogan v Morris [1999]* all notices must be personally signed by the qualifying tenants. For a lease extension or individual claim under the 1967 Act this is not an onerous requirement. However, in relation to collective claims this can cause immense difficulties. Execution under a Power of Attorney is not allowed, nor is execution by a Receiver.

It is vital that the figure for the compensation inserted into the tenant's notice is realistic. A solicitor cannot advise on the price and the figure must be calculated using tried and tested methods by a surveyor used to this type of claim.

Upon receipt of the initial notice the landlord's advisers will request evidence of the tenant's title to determine whether or not a claim should be admitted. The landlord will also usually request a 10% deposit. Therefore if you are bringing an individual claim it is important that you have the 10% deposit available. Strangely, on collective claims that usually involve more money there is no requirement for a 10% deposit. For a lease extension you must have owned the property for two years. Note that ownership is as per the Land Registry title, not when you first acquired the property.

Solicitors have to comply with money laundering requirements, one of the main requirements being to properly identify who their clients are. In a collective claim effectively all of the participating tenants become the solicitor's client. As a result, you need to have appropriate evidence of identity. Individuals can supply their passport and an up-to-date utility bill. However, if the flat is held by an offshore company then this will make compliance much more difficult.

With a collective claim ensure everyone is kept informed. Ideally one person should be appointed as a point of contact who can channel communication to the solicitor and vice versa. If more people become involved in the decision making process then it is likely to create delays and/or increase the costs. In my view, participation agreements are a must but I know that some solicitors do not always recommend them to clients. However I have seen a number of claims that fell at the last hurdle and then there is a dispute between the remaining tenants over recovery of costs. A participation agreement will make it easier for tenants to reach agreement following any dispute.

TIME LIMITS

If a statutory notice has been served then under the 1993 Act strict time limits are running. If the terms of the transaction have not been agreed within six months from the issue of the landlord's counter-notice an application must be made to the LVT so that the matters in dispute can be determined. There is no mechanism under the legislation to extend this time limit so it is important that it is kept. Similarly, there are other time limits in the legislation, which if missed would mean the claims have to be abandoned. Most notices are rejected because the tenant or his solicitors has forgotten to insert the date when the landlord's counter-notice is to be given. Always check a date has been inserted and it allows time for the notice to be served. Finally, it is vital, particularly with a collective claim, that everyone is organised to send over the monies required to complete to the solicitor. Under the legislation, if exchange of contracts does not take place within two months from when a date has been agreed then the legislation forces you to go to Court to seek a vesting order. As ever, obtain proper advice early on to ensure that your claim is successfully brought and completed. Any member of ALEP should be able to do that for you. ■