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Home Truths

A brief guide to

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Professional help to preserve the value in your flat

Extending the lease

Introduction

As you may or should know, the legal title to your flat is leasehold. Essentially, you own the right to live in your flat but not the building itself. It's a harsh fact of property life that as the lease of your flat becomes shorter, so it becomes less valuable.

In all the hurly-burly of modern life, it's easy to overlook things like lease agreements and other important paperwork that has probably been filed away for years. But unless you are happy seeing the value of your home shrink every day, now is the time to dig out those documents and take positive action.

KWW Solicitors is here to help you take steps now to preserve the value in your home, whether the benefit is for you personally or for your children or family who stand to inherit from you.

The Basic Issue

As the remaining term of your lease becomes shorter, prospective purchasers of your flat are likely to be put off because the lease is so short and/or because they cannot find a lender prepared to lend on security of a short lease.

The Big Question: Cost

The cost is very much linked to the number of years left on your lease. The shorter the lease, the more expensive it is to extend, and if it's below 80 years your landlord is entitled to what is known as a 'marriage value' bonus.

Marriage value is the amount of extra value a lease extension would add to your property, as calculated by a surveyor. Once the lease falls below 80 years remaining, you must pay 50% of that value on top of the usual lease extension price.

Even if you have let your lease fall below 80 years, it makes sense to extend it as the cost of the lease extension will increase exponentially over time.

Know your rights

You have to satisfy only two criteria to be able to extend your lease: You need to have owned the property for more than two years and the original lease term needs have been longer than 21 years. If you are purchasing a flat it is possible for the seller to serve a formal notice on the landlord then transfer the benefit of the claim to yourself. You can then proceed with the lease extension rather than waiting two years.

By law, you are entitled to a 90-year lease extension on top of your current term but your freeholder may agree to a different term. Additionally, your ground rent is reduced to nil.

Professional help at hand

If you choose to embark on a lease extension and appoint KWW Solicitors, we will liaise with a qualified surveyor on value and then serve a statutory notice on your freeholder, setting out the amount you are willing to pay for the lease extension and giving a date by which the other party must respond by way of a counter-notice. As a leaseholder, you have to pay the freeholder's valuation and legal costs, as well as your own.

Checking and negotiating

Once the counter-notice is received, KWW Solicitors will check with the valuation surveyor that the freeholder's cost of extension is reasonable. If there is a dispute, the valuation surveyor will negotiate on your behalf. If no compromise with the freeholder is reached, the dispute is resolved at a tribunal.



BENEFITS OF EXTENDING YOUR LEASE

- Makes your flat more attractive to buyers
- Halts the depreciation process
- Adds to your flat's value
- Speeds up the sale process

Purchasing the freehold

The best way to remove any anxiety about leases is to purchase the freehold of your block of flats. This gives you the ability to extend the term of your lease to 999 years, making it more valuable and easier to sell.

Leaseholders must pay ground rent and service charges to their landlord. Service charges can be quite high and are often a sore point. Owning the freehold gives you the option to take over the management of the building. You may also take over management of the building without buying the freehold (Right To Manage).

To be able to buy the freehold you need to float the idea with other leaseholders in your block and at least 50% of the flat owners must agree to the purchase.

If there is insufficient interest and you still want to extend the length of your lease, you should be able to secure an individual lease extension (*see opposite page*).

It's essential for the participating leaseholders to sign an agreement that commits them to participation in the process. The participating leaseholders will then sign a formal document called an Initial Notice, which sets out basic details of the participants and the price they are willing to pay. This starts the formal process.

The price you pay to the freeholder will depend on a number of factors, including the market value of the flats, the number of years left on the leases and the number of flats which participate.

As with the process for a lease extension, if terms for the purchase of the freehold cannot be agreed with the freeholder, then an application may be made to the First Tier Tribunal to determine the price to be paid for the acquisition of the freehold.



The Procedures

The procedures for applying for a lease extension and to purchase the freehold under the Leasehold Reform, Housing and Urban Development Act 1993 (The 1993 Act) have some similarities and each require expert legal advice which KWW is able to offer.

For example, when instructed in relation to a new lease claim under the 1993 Act, KWW will undertake the following work on your behalf:

- Check your eligibility to claim a new lease
- Prepare and give the tenant's notice under section 42 of the 1993 Act to the landlord (which contains an offer price based on your valuation surveyor's advice)
- Protect the tenant's notice by registration against the landlord's freehold title
- If necessary, draft a deed of assignment of the new lease claim (where the property is being sold)
- Deal with the landlord's requests to deduce title, pay the statutory deposit (10% of the price offered in the tenant's notice, payment of which we will request from you) and inspect the flat
- Consider and advise upon the landlord's Counter Notice and any issues arising out of it
- Negotiate and agree the terms of acquisition (except for the price, which your valuation surveyor will deal with)
- Advise upon the reasonableness of the landlord's claim for legal costs and/or valuation fees and any ground rent and/or service charges that may be payable on completion of the new lease
- Agree the form of new lease
- Complete the new lease and arrange for payment of Stamp Duty Land Tax (if payable)
- Register the new lease at the Land Registry.



Determining the price you have to pay your landlord to extend your lease can be a complex matter and in most cases you will need to instruct a valuation surveyor specialising in this area of work to advise you. If the unexpired term of your lease is 80 years or more, the calculation is simplified in your favour.