

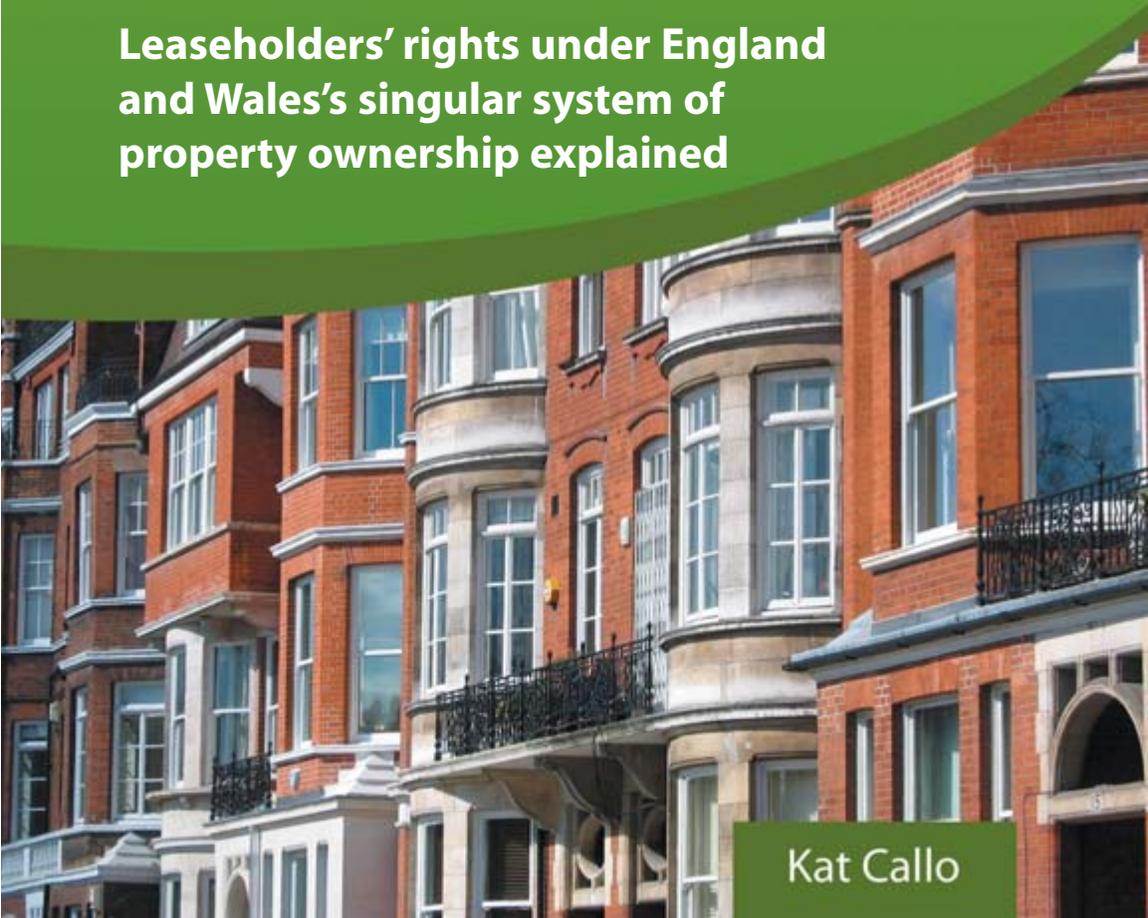
LAWPACK



PROPERTY SERIES

Making Sense of Leasehold Property

Leaseholders' rights under England
and Wales's singular system of
property ownership explained



Kat Callo

What the experts say about *Making Sense of Leasehold Property*

‘This book provides excellent advice for the growing number of people buying flats. It gives a compelling account of the leasehold system, with its curiously British characteristics that date back to the Norman Conquest.’

Henry Tricks, former residential property editor,
Financial Times

‘*Making Sense of Leasehold Property* is an invaluable source of practical help and advice for the millions of owners of leasehold properties, many of whom can benefit from an extension of their lease, purchase of the freehold, or the new right to manage legislation. Written in plain English, leasehold expert Kat Callo sets out a step-by-step guide for anyone wanting to pursue their rights as a leaseholder and enhance the value of their property. The author has practical experience of dealing with leasehold problems and highlights how to avoid the pitfalls and increase the chances of success. This book is a must for all owners of leasehold property.’

Lorna Bourke, former personal finance editor,
the *Daily Telegraph*, *The Times* and *The Independent*

What the experts say about *Making Sense of Leasehold Property*

‘Leasehold property used to be complex and obscure, but recent reforms have transformed it into a nightmare. Should you enfranchise, fight for the right to manage, or go for an extension? All leaseholders will be faced with these decisions sooner or later, and Kat Callo’s book is a valuable guide through the minefield.’

Chris Partridge, freelance residential property journalist

‘It is really useful to have such an interesting and well-researched book on the leasehold system written by such a dedicated and well-informed professional such as Kat Callo. The Federation of Private Residents’ Associations supports Kat, in that she understands and promotes leaseholders working together to achieve common benefit for all. This book will certainly increase the knowledge base in an important way amongst the leaseholders, residents’ associations and resident management companies that we represent and amongst other stakeholders in the area of leaseholder rights.’

Robert Levene, Chief Executive,
Federation of Private Residents’ Associations

‘This book is not only a useful and practical guide for leaseholders, but also contains fascinating insight from Kat Callo into understanding the leasehold system in an easily-accessible format.’

Nicolas Shulman, Founder, *News On The Block* magazine

This is an excerpt from Lawpack's book *Making Sense of Leasehold Property*.

To find out more about leaseholder's rights and how to enhance the value of your leasehold property, [click here](#).

Making Sense of Leasehold Property
by Kat Callo

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For convenience (and for no other reason), 'him', 'he' and 'his' have been used throughout and should be read to include 'her', 'she' and 'her'.

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Foreword

If you own a flat in England or Wales, the chances are that it will be leasehold. Despite this fact, the leasehold system remains a complete mystery to the vast majority of flat owners. Very few homeowners read their lease or even keep a copy, and there is little appreciation of the relative burdens and obligations of the leasehold system. To the average owner of a flat, the leasehold system remains something distant and impenetrable, akin to income tax assessment or the mysteries of VAT.

Making Sense of Leasehold Property has been a long time coming. This book provides a unique and valuable guide through the thickets of leasehold law, written in simple and practical terms by a flat owner for flat owners. This essential handbook works from the simple question, ‘What does a leaseholder need to know?’ As a flat owner, you may not want to be a leaseholder, but in England and Wales it is essentially the only game in town and you need to know the rules.

Peter Haler, Chief Executive, Leasehold Advisory Service

CHAPTER 5

Lease extensions

One of the biggest problems affecting the leaseholder is the fact that the net value of his leasehold property diminishes every year, as the term of the lease runs down. While growing numbers of leaseholders are addressing this issue by joining forces with neighbours to buy the building freehold through collective enfranchisement, another important option is to purchase a lease extension. While the process can prove unwieldy, leaseholders have a legal right to compel their landlord to sell them a 90-year lease extension. Changes in legislation in recent years have expanded this right and made the process more straightforward. This chapter describes the process of buying a lease extension and explains the circumstances in which a lease extension can represent a more logical option for leaseholders than buying the freehold.

Extending one's lease

Most leaseholders of flats in England and Wales are allowed by law to compel their landlord to sell them a 90-year lease extension, which gets added on to the number of years remaining on the existing lease, and to do so for a fair price within a statutory timeframe. The laws that provide this right for flat owners are the Leasehold Reform, Housing and Urban Development Act 1993, the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002.

Securing a lease extension increases the value of a leasehold property, since it combines the existing market value of the flat, that is, the ‘leaseholder’s interest’, described in chapter 4, ‘Calculating the freehold price’, with the freeholder’s interest. Indeed, buying a 90-year lease extension is considered by law the enfranchisement of a single flat, since the leaseholder is, in essence, buying the freehold element of the flat. Although the purchase of a lease extension does not deliver the multiple benefits of collective enfranchisement, since the leaseholder does not gain ownership and control over the building, it can be a useful tool for protecting and enhancing the value of the flat.

While the law guarantees leaseholders the right to secure a 90-year lease extension, they are, of course, also free to reach a negotiated agreement with the landlord regarding the purchase of a lease extension for 90 years, or for a shorter or longer period of time.

Qualifying for a lease extension

In order to compel a landlord to sell a 90-year lease extension, the leaseholder and the leaseholder’s building must qualify. Not all buildings and residents qualify for the legal right to a lease extension. It is important to confirm, before beginning the formal process, that the building and leaseholder both qualify.

The building qualification for a lease extension

A building will be eligible for individual lease extensions if:

1. it is a residential structure, not a commercial building;
2. it is not within the precinct boundary of a cathedral; and
3. it is not owned by a charitable housing trust, the National Trust or the Crown.

The resident qualification for a lease extension

A resident will qualify for a 90-year lease extension if:

1. he has a 'long lease', that is, the lease term was for more than 21 years at the time it was granted;
2. he has owned the lease for at least two years at the time of serving notice on the landlord for a lease extension; and
3. he is not a business or commercial tenant.

If a leaseholder is in doubt about qualification, he should contact the Leasehold Advisory Service. Contact details are provided in Appendix 1, 'Useful contacts'.

The main phases of the lease extension process

There are five phases in the formal process of demanding, through the statutory route, that a landlord sell a 90-year lease extension. These are similar to the collective enfranchisement process described in chapter 3, 'Buying the freehold', although buying a lease extension is simpler since only one flat is involved. While the official lease extension process comprises five phases, it should be noted that most residents' requests for a lease extension are concluded in a negotiated settlement with the landlord and do not go all the way to the Leasehold Valuation Tribunal (LVT). Because there are strict deadlines established by law for the landlord and for the leaseholder when a lease extension is being sought, it is essential to complete all the required preparations before starting the formal process. The five phases are described below.

The preparatory stage

Before beginning the formal process of requesting a lease extension, the leaseholder must identify the name and address of the freeholder. If the leaseholder is in doubt, a quick online search at HM Land Registry, at www.landregisteronline.gov.uk, will normally produce the information. Failing this, leaseholders have the legal right to be provided this information by the landlord and they can serve a formal notice on the landlord requiring that they be provided with this information. This right is contained in Section 41 of the Leasehold Reform, Housing and Urban

Development Act 1993, and the form that must be sent to the landlord is usually called a Section 41 Notice. A copy of this notice is contained in the 'Forms and other useful documents' section. The Section 41 Notice is also used in order to find out from the landlord whether he has been served an enfranchisement notice, also called a Section 13 Notice, by the leaseholders. A template for the Section 41 Notice is provided in Appendix 7, 'Information request prior to a lease extension'. If the landlord has been served an enfranchisement notice by the leaseholders, he is not allowed to sell or otherwise grant lease extensions for the duration of the enfranchisement process.

In preparing to request a lease extension, the resident needs to have a valuation done of the flat and the sought lease extension. Although it is not required by law to hire a chartered surveyor to do this work, it is strongly recommended to instruct a surveyor with solid expertise and experience in collective enfranchisement and lease extensions. The surveyor should inspect the property and then prepare a formal confidential valuation report, in which the leaseholder is advised of the estimated value of a 90-year lease extension and which offer price to include in the notice.

Finally, the resident should also instruct a solicitor, who needs to prepare and serve on the landlord the notice that requests the 90-year lease extension. While it is not required by law to hire a solicitor for this work, leaseholders are strongly advised to do so and to hire a solicitor with a known track record in enfranchisement and lease extensions.

Phase 1: The tenant's notice

The formal process of requesting a lease extension begins when the initial notice is served by the leaseholder on the landlord. While most leaseholders do not consider themselves 'tenants', we refer here to the 'tenant's notice' since this is the legal term used, based on the fact that leasehold is a form of tenancy. The tenant's notice is also referred to as a Section 42 Notice, which refers to the relevant section of the 1993 Act. The tenant's notice must contain the leaseholder's offer price for the lease extension and the deadline by which the landlord must reply. By law, the landlord must reply within two months of the date of the tenant's notice. The notice must also identify the property and leaseholder in question, provide details of the lease, such as the date it started and the amount of

ground rent payable, the terms to be provided in the new replacement lease, and the name and address of any appointed representative of the leaseholder. A sample tenant's notice is provided in Appendix 8, 'Lease extension notice'. The notice is normally served on the landlord by the leaseholder's solicitor.

Once the landlord has received the tenant's notice, he has the right to inspect the original lease. The landlord must send any such request within 21 days of the tenant's notice. The leaseholder must respond to any such request within 21 days. The landlord also has the right to inspect the flat, for the purpose of carrying out a valuation.

If the landlord misses the deadline stated in the tenant's notice, the leaseholder has the right to buy the lease extension at the offer price contained in the tenant's notice. To buy the lease extension in this manner, the leaseholder must apply to the County court within a maximum of six months. In applying to the County court, the leaseholder must ask for a so-called 'vesting order', by which the court declares that the landlord must sell the lease extension to the leaseholder at the offer price. It is unusual for large corporate landlords to miss the deadline for sending the counter-notice.

Phase 2: The landlord's counter-notice

Phase 2 starts with the counter-notice being served by the landlord on the leaseholder or the leaseholder's appointed representative. In the counter-notice, the landlord must:

1. acknowledge that the leaseholder has the right to a 90-year lease extension and agree with the offer price; or
2. acknowledge that the leaseholder has the right to a 90-year lease extension, but state a counter-offer price; or
3. challenge the right of the leaseholder to a 90-year lease extension.

Many freeholders select option 2, by acknowledging the right of the leaseholder to buy a lease extension, but demanding a higher price. In this case, the landlord must provide the counter-offer price in his counter-notice.

At any time after receiving the tenant's notice, the landlord is allowed to demand a deposit from the leaseholder. This can be ten per cent of the leaseholder's offer price or £250, whichever figure is higher.

Phase 3: The application to the LVT

Phase 3 of the lease extension process begins when the leaseholder or the landlord files an application with the LVT. Both parties have the right to do so, but it is normally the leaseholder that applies to the LVT. In making this application, the leaseholder is asking the LVT to decide on the price at which the landlord must sell the lease extension. If an application is to be made to the LVT, this must be done no sooner than two months and no later than six months after the date of the counter-notice. Leaseholders that do apply to the LVT usually do so through their solicitor.

The reason that the law bans an application being made to the LVT sooner than two months after the counter-notice is to provide sufficient time for both parties to hold negotiations and reach a negotiated agreement on the price. A large majority of lease extensions cases are concluded in this way, after the tenant's notice has been served and before an LVT hearing is held.

Phase 4: The LVT hearing and decision

Phase 4 begins when a hearing is held at the LVT. It usually takes three to four months from the time an application is sent to the LVT for a hearing to take place. LVT hearings for lease extensions usually take a maximum of one day. The LVT panel normally comprises three members, a lawyer, a surveyor and a layperson, although a panel can also comprise just two people. It is not required by law for the leaseholder to be represented at the LVT hearing by professional advisors, although many leaseholders choose to have a solicitor and/or surveyor speak on their behalf at the hearing. In some cases, a leaseholder might also instruct a barrister to be present at the hearing.

After the hearing, the LVT reaches its decision and sends its written determination to both parties. This document will contain the price at which the landlord must sell the lease extension to the leaseholder. The LVT determination becomes final after 28 days. If the leaseholder finds the

price too high, he is not obliged to buy the lease extension. The leaseholder may decide to walk away from the deal and to drop the request for a lease extension.

Phase 5: The completion of the purchase of a lease extension

Once the LVT has sent its written determination, the landlord must provide a draft new lease to the leaseholder within 21 days. Within two months of the LVT decision, both parties must have entered into a new lease agreement. Although the new lease is basically the same as the old lease with 90 years added on to the remaining term, it is likely to contain a few minor revisions. These are described below.

If the landlord fails to provide the new draft lease or the new final lease within the above timeframes, the leaseholder can apply within the following two months to the County court, in order to ask the court to order the landlord to meet his obligations to provide the new lease.

The timeframe of lease extensions

Although buying a lease extension is a simpler process than collectively enfranchising one's building, since only one flat is involved, the statutory timeframe is similar to that of enfranchisement. This is because the law requires that each party has sufficient time to carry out the necessary work in applying for or handling a request for a lease extension. The table below shows a best-case schedule for buying a lease extension, if the leaseholder moves as rapidly as possible from one phase to the next.

Event	Month in which the event occurs
The tenant's notice is served on the landlord by the leaseholder	Month 1
The counter-notice is served on the leaseholder by the landlord	Month 3

The leaseholder applies to the LVT	Month 5
The LVT hearing is held	Month 8
The LVT decision is issued	Month 9

As we have seen, however, many lease extension requests are concluded more quickly than the eight-month timeframe presented above because negotiated settlements are often agreed in the weeks following the serving of a tenant's notice or landlord's counter-notice.

The costs involved in buying a lease extension

The costs for a leaseholder in buying a lease extension for his flat through the statutory route are:

- the lease extension itself;
- the leaseholder's solicitor and surveyor fees; and
- the landlord's solicitor and surveyor fees.

The leaseholder must pay the landlord's so-called 'reasonable costs' in handling the tenant's notice, and in preparing and serving the counter-notice. The landlord's costs are for his own solicitor and the surveyor that carries out the landlord's valuation of the lease extension. If a leaseholder feels that the landlord has charged unreasonable costs, then he can challenge these costs by making a separate application to the LVT. Hourly fees charged by solicitors in London that specialise in enfranchisement range from approximately £150 to over £400 per hour.

When a leaseholder applies to the LVT to get a lease extension, there is no application fee.

It is important to note that if a lease extension case goes all the way to an LVT hearing, each side pays its own way for this stage of the process. Any work done by the leaseholder's solicitor and/or surveyor in preparing for or attending an LVT hearing is paid for by the leaseholder, while the landlord pays his own LVT costs. It is because landlords must pay their own LVT costs that such a large majority of lease extension cases are concluded through negotiated settlement before an LVT hearing takes place.

A small minority of lease extension cases end up in the County court. This is discussed below, including an explanation of the payment of court costs.

As noted above, once the landlord has served a counter-notice in a lease extension case, he can demand a deposit from the leaseholder. This is calculated as a percentage of the offer price that is contained in the tenant's notice. A deposit of ten per cent or £250 may be demanded, whichever is the higher figure. It is important for leaseholders to avoid the temptation to present an absurdly-low offer price in the tenant's notice, in the hope of minimising the amount of deposit, since this can result in the lease extension case ending up in the County court and the tenant's notice being declared invalid by the court. This possible sequence of events is explained later in the chapter.

When considering whether to buy a lease extension or join an enfranchisement, the resident should keep in mind that the cost of a lease extension is usually comparable to the individual participant's cost in buying his share of the freehold in a collective enfranchisement.

Extending leases before collective enfranchisement

Some residents make the mistake of believing that buying lease extensions eliminates or places at risk the possibility, later on, for residents to buy the freehold of the building through the process of collective enfranchisement. Lease extensions and enfranchisement are options in a residential building that are not mutually exclusive. One or more residents may decide to buy lease extensions and then a minimum of 50 per cent of all flats in the building may subsequently decide to enfranchise. Those residents holding the newly-extended leases may decide to participate or not to participate in the enfranchisement.

When a leaseholder needs urgently to protect the value of a flat with a very low number of years left on the lease, buying a 90-year lease extension represents a simpler, easier and lower-risk option than enfranchisement, since the leaseholder is acting as an individual and is not dependent on the success of a group of fellow residents. If and when the other residents later proceed with the enfranchisement of the building, then participants holding the leases that have been extended by 90 years simply pay a lower

price for their share of the freehold. This is because they have already, in essence, enfranchised their individual flats by buying the lease extensions. It is also for this reason that the freehold will cost less in a building where one or more residents have already bought lease extensions, since the landlord has already been obliged to sell his 'freeholder interest' in these individual flats to the relevant leaseholders. There is no marriage value to be paid for the newly-extended leases, of course, since they have more than 80 years left to run.

The success factors in lease extensions

This section identifies important issues that can arise when a leaseholder sets out to buy a lease extension through the statutory route. It also provides a guide for ensuring that the process moves forward in the smoothest, lowest-risk and most cost-effective manner.

Deemed withdrawals

The legislation that provides the right for a leaseholder to buy a 90-year lease extension and to do so at a fair price within a statutory timeframe provides the benefit of ensuring that landlords do not create unreasonable delays. However, as is the case with collective enfranchisement, leaseholders are also bound by strict legal deadlines. It is essential for leaseholders not to miss any of these deadlines, since this would equate to the leaseholder having withdrawn his tenant's notice. As we have seen with enfranchisements, such an event is called a 'deemed withdrawal'. If, for example, a leaseholder fails to apply to the LVT during the period from two to six months after the counter-notice, this is a deemed withdrawal. If there is a deemed withdrawal, the leaseholder is not allowed to begin the lease extension process again for 12 months.

Other events that count as deemed withdrawals are:

- a move by the leaseholder voluntarily to drop or withdraw his tenant's notice;
- a failure to provide the landlord with required information within 21 days after the tenant's notice has been served; and

- a failure to proceed to buy the lease extension, once the LVT has announced the sale price.

Appealing against an LVT decision

Once an LVT hearing has been held and the LVT has sent its written determination to both parties, either party can appeal against the decision. Appeals are heard in the Lands Tribunal. However, any appeal must be requested within 28 days of the LVT decision and can only be made after written permission has been obtained by the LVT or by the Lands Tribunal.

County court challenges by the landlord

Although it is not required by law for a leaseholder to instruct a chartered surveyor and a solicitor when seeking a lease extension, it is a practice that is strongly advised. Leaseholders should be careful to hire a surveyor and solicitor who have extensive experience and proven expertise in the related areas of collective enfranchisement and lease extensions. One reason for this is to minimise the chance of serving a tenant's notice on the landlord that could be declared invalid by a County court. For instance, the landlord has a right, if he believes the offer price contained in the tenant's notice to be so low as to be unrealistic, to file a claim in the County court in which he asks the court to declare the notice invalid. If the court declares a tenant's notice invalid, then the lease extension process stops and the leaseholder is not allowed to start the process again for 12 months. While this only happens in a small minority of lease extension cases, the possibility of this type of County court claim creates a strong disincentive for leaseholders to make lease extension offers that cannot be substantiated with valuation evidence.

If the landlord files this type of claim against the leaseholder in the County court, both sides pay their legal costs until the end of the process. At the end, the court may order the losing side to pay all or some of the legal and surveyor costs that were incurred in the court case by the winning side.

By law, the leaseholder is also protected against the landlord demanding an unrealistically high counter-offer price in the counter-notice. If a leaseholder files this type of claim in the County court and wins, he gets to buy the lease

extension at the asking price. However, very few leaseholders file this type of claim in the County court because of the legal and surveyor fees, the time and effort involved, and the additional possible court costs if the leaseholder's claim fails. The vast majority, including those who feel that the landlord has demanded an absurdly high price, prefer to proceed to the LVT, in the expectation that the LVT will decide on a fair price.

Group discounts for several lease extensions

In buildings where more than one leaseholder wishes to buy a 90-year lease extension, these residents can join together informally and seek a group discount from a solicitor and surveyor for the work involved.

Seeking a lease extension during an enfranchisement process

If residents have begun the formal process of collectively enfranchising their building by serving an enfranchisement notice on the landlord, then the landlord is not allowed to sell any lease extensions until the enfranchisement process has been concluded. If a landlord receives a tenant's notice requesting a 90-year lease extension, the landlord must write to the relevant leaseholder and explain that no lease extensions can be sold because an enfranchisement process has started. The landlord must also notify the enfranchisers in writing about the request for the lease extension.

Selling a flat before the completion of the lease extension process

If a leaseholder has begun a lease extension process by serving a tenant's notice on the landlord and then decides to sell his flat before the process has been completed, the leaseholder can transfer or 'assign' to a buyer the right to the lease extension. This is an important right for sellers, since anyone buying a leasehold flat does not have the right to demand a 90-year lease extension until they have owned the flat for a minimum of two years.

Changes in the new lease

When the new extended lease is being prepared, the landlord must make a few changes to the wording that was contained in the old lease. These changes include:

- an insertion stating that the new lease is provided at a so-called ‘peppercorn rent’, that is, no ground rent;
- an insertion that refers to any important modifications made to the flat or building since the lease was created, such as reference to gas, lighting or other services that no longer exist;
- the deletion of any reference to the renewal or early termination of the lease, since the 1993 Act provides a right to perpetual renewal of leases; and
- the insertion of a requirement for the leaseholder not to grant a sub-lease of the property to a sub-lessee that would last so long as to give the sub-lessee a right by law to buy a new long lease.

Deciding whether to buy a lease extension or enfranchise

When leaseholders are trying to decide whether to buy individual lease extensions or pursue collective enfranchisement, it is important to examine the most pressing issues for residents in the building. Each building has its own dynamic and individual leaseholders have their own priorities and budgets.

Residents are more likely to succeed in enfranchising if they know their neighbours, have a committed team of organisers and live in a building where leases have more than 50 years to run. Before the arrival of email, it was difficult for residents to pull together a strong lobbying group if many leaseholders lived overseas or in other parts of the United Kingdom. But now buildings that have even a large percentage of absentee leaseholders can enfranchise by making effective use of email to rally support for a planned freehold purchase and to keep all leaseholders informed.

When leaseholders have as little as 20 years left on their leases and there is little or no organisational capability displayed by residents, individual lease extensions can represent an attractive option. A lease extension may also be the most logical route if few residents in the building are interested in enfranchising. This can be the case in blocks of flats with many senior citizens that have no relatives, no plans to move and little incentive to increase the market value of their property.

Any resident buying a very short lease must be careful to find out whether the vendor has already started the lease extension process. If the vendor has begun the formal process of getting a lease extension, he should assign this lease-extension right to his buyer. Otherwise, the buyer would have to wait two years before he is able to serve a tenant's notice on the landlord for a lease extension.

In some buildings, an effort by a number of residents to get a group discount on buying lease extensions evolves into an enfranchisement initiative. This is because the cost to each participant of enfranchising is often not much more than the cost of buying a 90-year lease extension, while enfranchisement brings the added benefits of a 999-year lease extension, and full ownership and control of the building.