Collective Enfranchisement

Why should you consider buying the Freehold?

There may be a variety of reasons to acquire the freehold, in our experience the most common reasons are:

Property value – to maintain and enhance the value of your flat, as this will also enable the participating flat owners to extend their leases to a much longer term (typically 999 years) with a peppercorn ground rent & make other amendments were required which could increase the value of the property.

Maintenance & Service charges – when you have a share of freehold you may collectively be able achieve savings when repairs or maintenance are needed and having a say in obtaining quotes, choice of contractor etc.

Insurance costs – the new freehold company may be able to obtain reductions in the buildings insurance premiums which will no longer pay the former freeholder insurance commission.

Control – ultimately, acquiring the freehold gives the majority of leaseholders much more control over the block, as they decide how your property should be managed and by whom be that 'in house' or utilising a professional managing agent of their choice rather than one who is often imposed upon flat owners by external Landlords. In addition, reducing the risk of extensions / developments taking place on the property – buying your freehold removes the risk of your existing freeholder seeking planning permission on parts of the site

General Information

The 1993 Leasehold Reform Act (as amended) provides the right for the qualifying majority of leaseholders to compel the Landlord to sell the Freehold to them. Once the Freehold is within the hands of the Lessees they own, run & have control of the building themselves.

You should arrange your finances before you commence any procedures and should be aware that if you withdraw, you will still have to pay your own and the landlord's costs and funds should be established in advance for this purpose.

It is strongly recommended that leaseholders have a formal valuation carried out so they are aware of what the likely premium will be.

Once all the appropriate sections of the law are in place, the right to enfranchise may THEN be exercised through a specific `Right to Enfranchise (RTE) Company' which becomes the owner of the freehold & all qualifying leaseholders are entitled to be members of the RTE Company & it is those members who run & have control of the RTE Company.

Until the commencement of the relevant section of the Act the purchase must be carried out through a Nominee Purchaser who is the person specified in the Initial Notice to the freeholder who will acquire the freehold and become the new landlord. Due to what is known as 'Transitional Arrangements' this can presently be either a lessee, a group of lessees or indeed a management company owned by the participating flat owners.

We can act on your behalf to obtain the specialist independent Valuer's opinion as to the likely premium for collective enfranchisement.

We strongly recommend a solicitor is instructed to assist with the preparation & service of the Notice of Claim upon your Landlord or indeed the Counter Notice and manage the legal formalities.

Eligibility - The Building Must Qualify

You should check that the building complies and that there are enough qualifying leaseholders to be able to proceed. In order for the building to qualify it must:

- Not have more than 25% of the internal floor area of the property as being non-residential, and
- At least two-thirds of the flats must be let to `qualifying leaseholders'

The minimum number of leaseholders that are needed for a successful action must;

- Not be less than 50% of the total number of flats in the building.
- BUT - where there are only two flats in the building, both leaseholders must participate.
- There is no right of collective enfranchisement (but there is a right to renew the lease) where:
    - The building is a conversion into four or fewer flats and not a purpose-built block

- the same person has owned the freehold since before the conversion of the building into flats
- they or an adult member of their family has lived there for the past twelve months OR
- the freehold includes any track of an operational railway, including a bridge or tunnel or a retaining wall to a railway track

Some properties are completely excluded from the rights of collective enfranchisement such as:

- buildings within a cathedral precinct
- National Trust properties
- Crown properties*

* Although the Crown is not bound by the legislation the Minister has made a statement to the House of Commons that the Crown will be prepared to comply with the principles of it. Therefore it is possible to acquire the freehold of a Crown property.

The right of first refusal – Section 5 – ACT WITHOUT DELAY

The Landlord and Tenant Act 1987, which makes it a criminal offence for freeholders to sell the freehold to a third party without having first offered it to the qualifying flat owners. If you have received a 'Section 5' Notice from your freeholder, the qualifying majority may accept the offer but there are very stringent time restraints and a specific procedure that has to be followed. Leaseholders cannot simply write to the Landlord confirming they want to buy and even where this is done they may find the Landlord still sells elsewhere simply because they are not obliged to sell the Freehold to the Leaseholders unless the strict procedures have been followed.

If you have received a 'Section 5B' Notice, the Landlord is putting the property into auction & this is a process where the majority of qualifying leaseholders may protect their position so the auction contract has to be passed to them. Stringent time frames apply & notices are required to be served.

We can act on the leaseholders or freeholders behalf in obtaining professional valuation advice regarding the likely premium for Collective Enfranchisement. Should you require valuation advice please do not hesitate to contact us at the earliest opportunity.

Other Important Information

We are unable to guarantee any application as neither being successful nor the amount of the eventual premium that may be determined by the Tribunal. If you are the leaseholders you will be liable for the 'reasonable' costs of the Landlord relative to the Notice of Claim & the preparation / completion of the new lease together of course with the fees of any Valuer, solicitors etc. who you choose to instruct to assist.

Our fees depend upon the location of the property, the number of flats in the building and the terms of the current leases. Upon instructions, we will send you a form to provide us with the basic information required to undertake the valuation. We recommend professional legal advice is initially obtained to confirm your entitlement / qualification to purchase the freehold.

For further information please contact us on 0207 637 7554 or email us at info@devilliers-surveyors.co.uk