

Lease Extensions

What is a Lease Extension

A Lease is what is known as a depreciating asset. This means that the value of the lease goes down as the term of the lease dwindles and eventually reverts back to the Landlord. However under the Leasehold Legislation you have a legal right to extend the Lease for the unexpired term plus 90 years with no more ground rent.

Despite the name the process does not usually involve extending the existing lease; but rather the surrender of the current lease and the granting of a new lease on the same terms as the previous one.

This is achieved by the Landlord and the Tenant entering into a Deed of Surrender and Re-Grant. As the name suggests this document surrenders the existing Lease and creates a new Lease which will be registered at the Land Registry.

When should I think about extending my Lease

Everybody's circumstances will be different but there are some general things to consider depending on the length of the term remaining:

- If the Term is 90 years plus then there is not normally a need to extend the Lease although you may wish to consider it as the premium can rise quickly once the term dips below 80 years.

It is about the 80 year point that some buyers will insist on a lease being extended as they do not wish to take on the liability of extending the Lease with the extra premium that will result. This makes properties with lower terms more difficult to sell

- If the remaining term is below 80 years then you should consider extending the term as quickly as possible. You will struggle to get a buyer for the property if you wish to sell and the majority of lenders will not lend on short terms.

Unfortunately the price you pay for the lease extension increases as the term gets lower and so the lower the term the higher the premium. As a rough guide from 60 years and below the premium payable for the Lease Extension rises by about 1% of the value of the property per year. Therefore if your property is worth £300,000 this would mean that the Premium would rise by about £3,000 per year

The Premium

The Premium you will pay depends on several factors such as the remaining term length and ground rent. Beware that once the term drops below 80 years then in addition to the premium you are also required to pay 50% the marriage value. The marriage value is the extra value the lease extension will add to your property and this is the reason the premiums can quickly rise.

For a rough guide as to the level of premium you will need to pay the Leasehold Advisory Service offers a free calculator at: <http://www.lease-advice.org/calc>

Do I qualify to extend my Lease?

You are entitled to extend your Lease using the formal route provided you have owned the lease for 2 years. The requirement is only that you have owned the lease for two years, you do not have to have lived there.

If you have not owned the property for 2 years then you can always approach the landlord and see if they would be willing to extend under the informal route (see below) or wait until you have owned the property for the required period.

It is possible to commence the formal (statutory route) and then assign the benefit of the extension to a buyer. Buyers are usually quite reluctant to consider this as they will be taking over not just the lease extension but also your liability for the Landlords costs.

There are a few instances of leases that cannot be extended under the legislation such as those within a Cathedral precinct or on Crown Land; however these exceptions arise very rarely and your legal advisors will be able to assist you.

The Two methods

The informal Route

The first step is to approach your freeholder and ask if they would be willing to extend your lease and what premium they would be looking for to agree to this. Many landlords are willing to extend the term but wish to keep the ground rent or even raise it. They may also look to update outdated clauses etc. If the Landlord is willing and you accept their terms then the next step would be to appoint a solicitor to act for you. If the Landlord is not willing to extend the Lease then you can consider the Formal Route below.

You should note that in addition to the premium and your own legal costs you will usually be required to pay the Landlords legal costs as well.

If you and the other leaseholders own the freehold then assuming that the other freeholders are in agreement you would usually grant yourselves 999 years leases for no premium

The Landlord will instruct solicitors and they will prepare the Deed of Surrender and Re-Grant and send it to your solicitors for approval. Once any amendments have been made and the Deed is in the final format, a copy of the Deed will be sent to you and to the Landlord for execution. You will usually receive a completion statement showing any funds

you have paid to your solicitors and the costs to be paid. (Premium, your legal costs, landlords costs, registration fees etc.)

Once you have placed your solicitors in funds the completion will occur and your copy of the Deed will be sent to the Landlord and Vis versa. Your solicitors will then register the Lease Extension and the Deed of Substituted Security at the Land Registry.

The Registration process can take several months, however your Lease extension is official from the date of completion.

The Formal Route

In order to commence the formal route you will need to appoint a surveyor and a solicitor. The surveyor will need to carry out a valuation for the Premium and his report will usually contain a range of premiums based on the formula for calculating the same.

It is extremely important to use a surveyor to calculate the premium. If the premium is unreasonable this can render your notice invalid and you will not be able to serve another for 12 months. Additionally the surveyor is best placed to negotiate with the landlords surveyor should the premium not be initially agreed.

Your Solicitors will then use the lower suggested Premium to prepare a Tenants Notice (Section 42 notice) which will be served on the Landlord (or their landlord if there is a headlease). The notice will state that you are exercising your right to extend the Lease under The Leasehold Reform, Housing and Urban Development Act 1993 and the premium you believe payable for the 90 year extension with no ground rent. The notice gives the Landlord 2 months to respond which they will do by serving a Landlords notice stating that:

1. They do not accept that you meet the qualification criteria
2. They accept both your eligibility and the premium stated
3. They accept your eligibility but dispute the premium being suggested.
4. They accept your right but will not grant the extension as they intend to develop the land (this will apply to less than 1% of leaseholders)

The Third outcome above is the most common and the landlord's notice usually contains a higher premium. Your surveyor and the Landlords surveyor will then negotiate and once agreement is reached they will recommend the premium to you and the Landlord. If agreement cannot be reached then the matter can be referred to the First Tier Property Tribunal for adjudication. You are not responsible for your Landlords costs in respect of the application to the Tribunal but your own costs may be higher as both your solicitor and surveyor will normally attend.

When you serve the notice you become responsible for paying the Landlord legal and survey costs whether or not the matter proceeds to completion.

Once the premium and any other terms are agreed, the Landlords Solicitors will prepare the Deed of Surrender and Re-Grant and send it to your solicitors for approval. Once any amendments have been made and the Deed is in the final format, a copy of the Deed will be sent to you and to the Landlord for execution. You will usually receive a completion statement showing any funds you have paid to your solicitors and the costs to be paid. (Premium, your legal costs, landlords costs, registration fees etc.)

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If you have a Mortgage

If you have a mortgage on the property then your lender will have a restriction noted on the title requiring their consent to any dealings with the property. Closing the title would obviously be caught by this and so the lender consent is required. Your lender will require a Deed of Substituted Security to be signed by you and them to confirm their consent to the closure of the original title and moving the mortgage to the new title. Many lenders charge a fee of between £50-£100 for providing their consent.

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