

## Leasehold Insight



# Residential Lease Extensions

## What Freeholders Need to Know

When a person buys the leasehold to a property they are buying a diminishing asset. The less time there is to run on the lease, the less the property is worth on the open market. Well-informed leaseholders will, therefore, want to extend the lease to protect their investment.

The leaseholder will normally have the legal right to extend the lease once they have owned the property for two years. They can add 90 years to the existing unexpired period. Additionally, the ground rent will be reduced to a 'peppercorn.' As a freeholder you have no obligation to tell leaseholders that they have this right.

There is a set process for your leaseholder to serve notice that they wish to extend the lease. Some strict timing constraints also apply. As a freeholder, it helps to be well-informed and well-advised to protect your financial position.

### The Process

1. The first stage is for the leaseholder to issue a 'Section 42' notice that they intend to exercise their rights.
2. If the leaseholder has engaged a surveyor (which they should), the notice will include their estimate of the premium that should be payable for the lease extension.
3. In all probability, the surveyor will have provided a range of estimates for the premium and the leaseholder's representative will use the lower figure as a starting offer.
4. When the notice is served you can request that the statutory deposit is paid within 14 days. This will be either 10% of the premium quoted in the notice or £250, whichever is greater.
5. It is advisable to arrange your own survey so that you have your own estimate for a reasonable premium value.

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6. Within two months after the notice was served you can serve a counter notice containing the terms under which you will accept the extension. You can also make an informal offer, if you wish, which can sometimes speed up the process.
7. There will normally be a two month negotiating period after the counter notice is served.
8. If both parties reach agreement you agree a completion date and the land registry details are updated.

### Tribunals

If, after the two month negotiating period, either party is unhappy with progress they can apply to a tribunal who will set the premium value. Normally it will be the leaseholder that applies. They cannot apply to the tribunal before the two-month negotiation period has expired and must apply within six months of the counter notice. Otherwise, the tenant's original notice will be deemed to have been withdrawn.

### Marriage Values

If there is less than 80 years left on the lease, the leaseholder stands to benefit significantly from the extension.

The law requires that the benefit (marriage value) is shared equally between the tenant and the landlord. The calculations can become quite complex and professional advice is highly recommended.

Again, freeholders have no obligation to remind leaseholders that their unexpired lease period is approaching 80 years.



### Securing the Best Outcome for Lease Extensions

As you can see from the above, there are strict processes and timelines that have to be observed. Finding a firm who is experienced in leasehold property transactions to guide you through the process is a good investment and can save you a lot of unnecessary hassle. **Contact the property team at [PowellsLaw](#) today for help and advice.**



# Top Tips for New Commercial Landlords

Some responsibilities and rights for commercial landlords and tenants are set in law, others are a question of exactly what is in the tenancy agreement. Because lease agreements are often poorly worded or full of ambiguity it's essential for commercial landlords to manage their risk by getting professional legal advice to protect their interests.

Here are a few of the questions that typically arise, particularly for landlords new to the commercial property market.

## 1. What happens if there are existing tenants when I buy a commercial freehold?

When you buy a commercial freehold any existing tenants have the right to remain in the property on their existing terms and conditions until the end of the lease period. Make sure you fully understand the terms that apply.

## 2. What are break clauses?

On longer leases there is normally a break clause that allows the tenant to end the agreement early after a specified number of years. The process for serving notice is specified in the lease and must be followed exactly.



### 3. Can I get rid of tenants when the lease term expires?

Normally tenants will have the legal right to renew their lease on the same terms, unless you have specified in the lease that the relevant terms of Landlord and Tenant Act will not apply. There are some other specific instances where the automatic right to renew may not apply.

### 4. What does obligation to repair mean?

Your tenants will have to maintain the condition of your property up to an agreed standard. This will be specified in the tenancy agreement. If you suffer a financial loss (eg reduced rental value) because your tenant doesn't maintain the property you could make a financial claim.

### 5. What is meant by dilapidations?

In order to restore the condition of your property to the agreed level you can issue a schedule of dilapidations to your tenant. This specifies the work you expect them to carry out to bring it to the standard set out in the lease. These are typically served towards the end of a lease period.

### 6. How easy is it to recover any losses?

In practice it can be difficult, particularly if the lease agreement is poorly written, the original condition of the property is not documented in sufficient detail, or tenant's obligations are not clear.

### 7. Can my tenant make alterations to the property?

It is normal for tenants to want to make changes to a property (such as erecting internal walls) to make the accommodation more suitable for their needs. Your lease agreement should make it clear what types of alterations are allowed and the formal process for approving any changes.

### 8. Can I stop my tenant subletting all or part of the property?

This is another area where clarity in the tenancy agreement is essential. Subletting can complicate the contractual relationship but may also help you retain a good tenant. Make sure your wishes are clearly stated in the tenancy agreement.

### 9. Can I charge whatever rent I think is appropriate?

**Not necessarily.** Rents on commercial properties are supposed to reflect a fair market price. Your tenancy agreements may specify 'upwards only' rent reviews at specified periods but any increase may still have to be in line with an independent assessment.

**There is no substitute for getting good advice and for having a tightly worded tenancy agreement that meets your needs and is fully relevant to the property. The experienced commercial property team at Powells will help you protect your investment and avoid potentially costly disputes with your tenants.**



# Does it Make Much Difference if the Property I'm Buying is **Leasehold or Freehold?**

When you buy a property the most basic thing you need to understand is whether you are buying the freehold or a leasehold. With a long-term lease it might seem that there are no practical differences; but there are, and you need to be aware of them. The majority of flats and maisonettes are sold on leasehold basis.

## What will I own?

If you buy a freehold you own the house and the land it stands on outright. With a leasehold you are essentially buying the right to sole occupancy of the property for a defined period. When you want to move you sell the unexpired term of the lease to the next owner.

## Why does that matter?

With a leasehold property you will probably have to pay a ground rent and service charges for the upkeep of common areas (such as stairwells, foyers, shared access roads etc). These charges are paid to the freehold owner or managing agent and can increase over the years. You may also be prevented from doing certain things such as keeping pets, altering the property or running a business.

Some freehold properties also have restrictive covenants affecting what you can do. However, these are often historical and hard to enforce. With a lease, the rules are set out in a legally binding agreement.

## Does the term remaining on a lease matter?

It can matter enormously. The value of a property with a short period remaining on the lease will be reduced - sometimes drastically. Be very cautious if the lease period is less than or approaching 80 years. For one thing, it may make it difficult to get a mortgage. If you plan to extend the lease period make sure you agree this before you sign the lease.

After you have owned the property for two years you normally have the legal right to extend the lease by a further 90 years, although you may have to pay to do so.

## Are the risks the same?

The biggest risk (falling property prices) applies to both types of purchase. If you buy a leasehold flat, the freeholder will be responsible for insuring and maintaining the external fabric of the building. But remember, you ultimately pay for this through management fees.

As a freeholder you are responsible for all property maintenance and will need to arrange buildings insurance to satisfy your mortgage lender.

## What to know before you buy a leasehold property – the essentials

- How long is left to run on the lease?
- Is there an opportunity to buy a share of the freehold?
- Who maintains communal areas and are they doing so to an acceptable standard?
- How are ground rents and service charges calculated, how might they change in future?
- Are there restrictions on how I can use or change the property?



Whether you are buying a freehold or leasehold property there can always be unforeseen risks. That's why it's important to get professional advice from a team that will look after your interests at every stage and spot any potential problems before you are committed to the purchase.

**Contact the experienced Commercial Property Team at PowellsLaw today for help and advice.**



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