

Lease Extensions: Statutory and Voluntary process

Overview

Most leasehold properties are sold under leases with terms of either 99 years or 125 years. When the property is sold, a new lease is not usually granted, so the term left on the lease continues to reduce under the new owners.

When the remaining term drops below 80 years, most estate agents and solicitors generally consider the property to be difficult to sell. They will normally advise you to apply to extend the lease. Leases with less than 80 years remaining are not an attractive option to some mortgage providers and this can make it difficult for prospective purchasers to obtain a mortgage. Also, it may have the effect of reducing the value of the lease.

Our policy at LiveWest is to grant lease extensions to qualifying leaseholders. To be a qualifying leaseholder, you must normally have owned your long lease for the past two years. There is a statutory route to lease extension but in addition, LiveWest has (in line with guidance from our regulator) adopted a voluntary one. This guide sets out both routes and the processes involved in each.

The statutory route will involve you paying a deposit of 10% of the premium you propose to pay for your lease extension or £250, whichever is greater. This will be requested by our solicitors and will be held by them as stakeholder. If the matter does not proceed to completion, this deposit will be put towards our agreed costs and any balance will be returned to you. Your solicitor will also be asked to provide us with an undertaking to reimburse our total agreed costs in the event that the deposit paid by you does not cover the full amount.

As a general guide, we aim to complete the lease extension process within 6 months, although this can vary if the matter is not straightforward.

If you are a shared ownership leaseholder, you do not have the statutory right to extend your lease (unless you have staircased and own 100%). However, you may be able to extend your lease using the voluntary route

Statutory Route

Background

The Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the Act) grants a qualifying leaseholder of a flat the right to apply to their landlord for a lease extension. The right arises once the leaseholder has owned the flat for at least two years and, if successful, the lease will be extended by an additional 90 years.

Application process

You must make a formal application to us before your original lease ends. It is advisable to obtain advice from a solicitor and a valuer about the application and how to draft the formal

notice. In brief, the formal notice must contain certain information as set out under section 42(3) of the Act;

- Your name and address
- The name and address of your appointed representative
- Your proposed premium
- Details of any intermediate landlord or third party to the lease
- An address in England and Wales where the counter-notice is to be served • The deadline for LiveWest to respond (at least two months)
- If you wish there to be further variations to the lease, they must be set out.

The notice also needs to be signed personally by you or by a duly authorised person on your behalf. Our solicitors will then respond to your notice within the time period.

Our solicitors will request a deposit from you and our valuers will require access to your property in order to prepare their valuation report. A counter-notice will then be served on you confirming whether or not you have a right to acquire a lease extension and will either accept your proposals or will set out our counter-proposals.

Acceptance of offer

If you accept our counter-offer, you must confirm your agreement in writing.

If you do not accept our offer, both parties' surveyors may negotiate the premium payable. If after two months of our counter notice the premium (or the new lease terms) are not agreed, either you or LiveWest can refer the matter to the First Tier-Tribunal Property Chamber (which was previously the Leasehold Valuation Tribunal). When the premium payable and the terms of the new lease are agreed or determined by the Tribunal the matter can then proceed to completion. On completion you will be liable to pay our reasonable legal and valuation fees incurred in dealing with the matter, together with any service charge, ground rent or shared ownership rent arrears you owe.

Voluntary Route

Background

This route is offered by LiveWest as an alternative to the statutory procedure or, where the statutory procedure does not apply (i.e., for shared ownership leaseholders who do not own 100% of the lease). No written notice needs to be served as under the Act and LiveWest will set the terms of the new lease extension.

Application process

You will need to write to us to request an extension. As Shared Owners do not currently have the statutory right to a lease extension and therefore only have the voluntary route available

to them, we have made the decision to waive our administration fee for all shared owners and leaseholders who opt to extend their lease via the voluntary route.

In order to determine the premium payable, a valuation will be required. We can arrange this for you, subject to receiving upfront payment for this (we will obtain a quotation for this prior to making your application). We are not able to give you a likely valuation of the lease extension until we have received a copy of the report from the valuer. Alternatively, you can provide us with a valuation report prepared for the purposes of a lease extension and carried out by a RICS qualified valuer.

We will then issue you with a lease extension offer and confirmation of the premium payable for the new lease term. The new lease term offered will be for an additional 90 years.

Please also note that you will be required to pay our reasonable legal fees (including VAT and disbursements) and all other expenses associated with the transaction. A summary of the anticipated costs can be provided to you on request before you agree to proceed. We will require a signed undertaking from your solicitor to confirm that you will meet our costs, regardless of whether the transaction proceeds or not.

Accepting our offer

If you wish to accept our offer along the terms we have set out, you must send written confirmation of your acceptance of the premium and the lease extension and your willingness to pay our solicitor's fees.

We will then instruct our solicitor to proceed with drafting the new lease. You will need to provide us with details of your solicitor so that both parties can finalise the term of the lease and set a date for completion.

You must ensure that funds are in place by completion and in addition to our fees as set out above, you will need to pay your own solicitor's costs plus a Land Registry fee to deal with registration of the new lease. You will also need to settle any ground rent or service charge arrears on completion of the lease extension. In addition, you may need to pay fees to any mortgage lender where you have a mortgage secured against the property and you may need their consent also to extend the lease.

Please note, if LiveWest is not the freeholder and there is a head lease, we cannot offer a lease term which would exceed the term of the head lease. If LiveWest is not the freeholder, there may still be ground rent payable. If this applies to you, we will advise you of this before you proceed with a lease extension.