

How do I extend a freehold lease in the UK?

With very few exceptions, leaseholders of flats are eligible to extend their lease by 90 years at zero ground rent, once they have owned a property for two years. The process is governed by statute, so it's essential for leaseholders to get specialist legal and valuation advice.

The process.

There are strict legal procedures and timetables for lease extension. In simple terms, the process is:

- the leaseholder gives the landlord a notice of claim, stating an amount they are willing to pay for the new lease
- the landlord must respond within two months with a counter-notice stating whether the claim is accepted and the amount they are willing to accept for the new lease
- the parties are then free to negotiate the terms of the new lease, including a mutually acceptable price
- if a settlement can't be reached, either party may apply for the matter to be determined by a tribunal
- once the terms and price of the new lease are agreed (or determined by the tribunal) the parties have two months in which to complete. This deadline may be extended by a further two months, dependent on payment of interest and other conditions.

Timescale.

It's impossible for the process to be closed in less than four

months from service of the notice of claim. It very often takes nine to fifteen months, depending on the complexity of the case, the negotiations, and whether or not the matter has to be determined by a tribunal.

The premium is calculated as though the transaction had happened on the date of the notice of claim, but is not actually paid to the landlord until completion of the new lease. Delays, therefore, are not in the landlord's favour.

Costs.

Legislation allows the landlord to recover a 'reasonable' proportion of his legal and valuation fees from the leaseholder.

The transaction constitutes the 'acquisition of an interest in property' and is therefore subject to Stamp Duty Land Tax at the appropriate rate, payable by the leaseholder.

The valuation.

The price the leaseholder pays is compensation for this. The leaseholder also has to pay 50% of the marriage value (see below).

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The landlord's interest.

The landlord's interest comprises two main parts:

The ground rent. The ground rent under the proposed lease is £nil. If the landlord has been receiving rent under the present lease they will have suffered a loss. The higher the ground rent and the longer the term of the lease, the greater the compensation figure the leaseholder will be liable for.

The reversion. When a lease expires, the property reverts to the landlord. The effect of granting the proposed lease is to delay the landlord's reversion by a further 90 years. With a fairly complex formula for assessing the compensation payable by the leaseholder, it is strongly advised to take professional advice on this.

Marriage value.

Marriage value assesses incremental value accruing to the leaseholder as a result of the landlord's co-operation. It is a legal requirement to pass 50% of this value to the landlord. As a broad guide, the marriage value payable is highest (as a proportion of the premium) when there are 40-80 years left to run

and/or in cases where the lease has a high ground rent. None will be payable where the existing term exceeds 80 years, regardless of the level of ground rent.

2021 reforms.

After much consultation, the government announced in January 2021 that it was going to make a number of amendments to leasehold reform.

These include:

1. Ground Rents will be abolished in new leases.
2. Commonhold will be encouraged.
3. Leaseholders will have the right to extend the lease of a house or a flat by up to 990 years with the ground rent reduced to a peppercorn.
4. The price which leaseholders have to pay to extend their leases will be reduced by abolishing marriage value and setting calculation rates.
5. For claims to purchase the freehold, leaseholders will also be able to opt to avoid paying 'development value' if they agree to a restriction to future development.

Anyone looking to extend their lease or buy their freehold does

need to take these factors into consideration. The price payable is determined on a number of factors but generally as a lease becomes shorter, the premium increases.

An increase in the freehold value of the property will also increase the premium. The potential abolition of Marriage Value will significantly reduce the premium but the diminution of the lease in the interim, whilst legislation comes into effect, may counter-balance this.

Many of the major landlords are also appealing the abolition of Marriage Value. Specialist advice should be sought on a case-by-case basis. But generally, it probably makes sense to extend very short leases (sub 30-years) without waiting for a change in the legislation. For long leases (85+ years) it makes sense to wait, as Marriage Value isn't payable in any event and the future lease extension will be for a longer term.

Middleton advice.

This is a complex area, but with significant potential benefits for the leaseholder.

Thanks:

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