



G H W Crofts & Co Limited

LANDLORD & TENANT | COMMERCIAL

The Enfranchisement Process – A client's guide

The enfranchisement process can be long and complicated. This guide lays out the process in full allowing you to understand where you are in the process and what the next steps are.

Initial Steps

Initial consultation and legal advice as to eligibility of you and the lease for buying your freehold.

Obtain valuation from specialist valuer. We can recommend a valuer if required.

Information notice, if you do not know who your freeholder is, or do not have enough information to begin the process, you have the right to serve notices on any person with an interest in the property to ask for the details.

Funding Arrangements

Before you begin, you will need to know how you will pay for the freehold and the associated professional costs. If you withdraw your application, you will pay the freeholder's legal and surveyor's costs (and your own costs) up to the date of your withdrawal.

Participation Agreement

You will need a core of at least 50% of owners to proceed. Once you have the requisite majority, you may like to discuss this once more with the block as whole. The more people that join, the cheaper it will be for all. Stragglers may be more willing to join once you have the requisite number needed to proceed and they know this will happen with or without them.

We prepare participation agreements to be signed by all participating flat owners. This agreement sets out the rights and obligations of both the participants as individuals and the company. The agreement details the agreed proportions for the purchase price and establishes a decision-making process if a vote is needed on a particular issue. This creates certainty throughout the entire process and binds flat owners into proceeding where it remains the wish of the majority. This is so that no participating tenant pulls out and leaves it to others to pick up the costs at the last minute.

Company Formation

In all but the smallest blocks, you will need a company. This is formed and all participating flat owners become members. Directors are appointed. The Director role during the purchase is to feedback information to the group; we keep cost down by updating the directors who then are charged with updating the wider group and disseminating information. Post completion, the director will look after the day to day management of the company and block.

Initial Notice

Drafting and serving the Initial Notice. The Initial Notice triggers the legal process for the freehold purchase. You are liable for the freeholder's reasonable costs from the date they receive the Initial Notice. The notice lays out the details of the participants and the proposed purchase price, together with details of the freehold intended to be purchased by the participants. The freeholder is given at least 2 months to reply.

Proof of Right and Inspection

The freehold can ask you to:

Prove you have the right to purchase the freehold. We do this by sharing your title documents with the freeholder which will confirm your name and that you own a qualifying lease.

Allow Inspection of the block so that the freeholder can carry out their own valuation.

Counter Notice

Service of the Freeholder's Counter Notice. The freeholder's Counter Notice will state whether the freeholder accepts that you have the right to buy the freehold. It will also indicate if the price you put forward is agreed and, if not, will lay out the freeholder's counter proposals.

Negotiation

Valuers Negotiate the Price. Your surveyor will be instructed to negotiate with the freeholder's surveyor with a view to come to terms on the price payable for the freehold.

Resolving Disputes

Application to Tribunal. If the price is not agreed within 6 months of service of the Counter Notice, your solicitor will make an application on your behalf to the First Tier Property Tribunal, which will adjudicate where necessary.

Freehold's Cost. If you feel that the freeholder's legal; or surveyors costs are excessive or unreasonable, you can ask the Tribunal to review and assess the same.

Agreement and Completion

In the vast majority of cases, terms are agreed within the 6 months. Your solicitor will then

Agree the necessary documents circulate engrossments. The transfer of the freehold will proceed in a similar way to a standard sale/purchase transaction. Documents are agreed, circulated, signed and returned to the solicitors undated.

Completion Funds. The freeholder's solicitor prepares a completion statement detailing the funds needed to complete. This will include the purchase price, legal costs, surveyors' costs and any arrears of ground rent and service charge. The purchaser's solicitor takes those figures, adds their legal costs and other expenses (e.g land registry fees) and will give a bottom-line figure needed in order to complete. All participating flat owners put the solicitor in funds ahead of completion in line with the split agreed in the participation agreement.

Completion. The matter will complete as with any other property matter. Competition funds are sent on the day of completion and, when these are received, the documents are dated. The freeholder's solicitor hand over a transfer signed by the freeholder to the flat owner for them to register. The flat owner's solicitor lets the freehold have their client' signed and now dated part of the transfer.

Post Completion

Application to Register the Transfer. The purchaser's solicitor makes an application to register the transfer with the land registry. Although the transfer takes effect from the day it is completed, it may take several months for the land registry to complete the registration and update the freehold title. Once the transfer is registered, the land registry issue completion of registration and an up-to-date title register showing that the company now owns the freehold.