Love thy neighbour

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Anna Favre and Andrew Kafkaris explain why 'share of freehold' claims can actually prove divisive

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Cases where leaseholders of flats find themselves wilfully excluded from collective enfranchisement claims for the freehold have taken neighbourly disputes to a new level. But there are options available to those shut out of such a claim.

The Leasehold Reform, Housing and Urban Development Act 1993 gives ?qualifying tenants of flats? the right to acquire the freehold of their building as part of a collective exercise. The procedure is triggered by service of a notice on the landlord and then follows a prescribed route set out in the legislation.

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Problems arise when a sufficient number of ?qualifying tenants? ? that is, leaseholding flat owners ? have the ability to make a claim for the freehold but choose to exclude certain neighbours. The 1993 act presently offers no remedy for a qualifying tenant who wishes to participate but whose wish is rejected by the other participants in the claim.

The disappointed flat owner cannot allege that the freeholder has, in selling its interest, breached the right of first refusal under the Landlord and Tenant Act 1987 : collective enfranchisement claims are specifically exempted. Their only recourse is to make a claim for a new lease under Chapter 2 of the act, to be concluded when the collective enfranchisement claim ends.

Back-to-back collective enfranchisement claims

A future option is that they try to persuade sufficient flat owners to join them in making a further collective enfranchisement claim to take the freehold from the existing freeholder. One oddity of the act is that there is no impediment to flat owners mounting a series of back-to-back collective enfranchisement claims seeking to seize control from one another. This has become a common scenario in prime central London properties.

Sadly, legislation intended to address this injustice was never introduced. The right to enfranchise (RTE) provisions proposed under the Commonhold and Leasehold Reform Act 2002 required the RTE company to invite all qualifying tenants in the building to participate

in the claim. It is now clear that the relevant legislation will not be implemented, so the injustice continues. Inexplicably, it is mandatory to invite all leaseholders to participate in a ?right to manage? claim, but not the more absolute freehold enfranchisement claim.

So what other recourse do those shut out of the process have? Practical suggestions include:

- joining any tenants? association for your building: attending regular meetings can give you invaluable insight into potential issues that might trigger a desire to enfranchise collectively;
- talking to your neighbours and expressing an interest in being involved in any collective claim and other joint leaseholder initiatives pursued: communication is vital; and

- considering the motives behind the collective enfranchisement: if it is largely being done to gain management control of the building, then the ostracised leaseholder may benefit from a successful claim to acquire the freehold without the cost and obligations of involvement in the newly formed freehold company ? in other words, the non-participant can ride on the coat-tails of those participating in the freehold purchase and need not comply with the often onerous landlord?s covenants.

Short leases

But what happens if you have a short or onerous lease?

The act offers help in the form of the right to a lease extension. This right is conferred on individuals or companies who have owned a long lease of a flat ? that is, more than 21 years at original grant ? for at least 2 years, referred to in the 1993 act as qualifying tenants.

A qualifying tenant has the right to extend the lease by 90 years and to a peppercorn ground rent, so an onerous ground rent can be eradicated into a more marketable interest ? admittedly at a cost reflected in the premium payable to the freeholder.

Less well known is the fact that there is no limit on the number of times this right can be exercised. It is possible to extend the lease to 900 years plus if you want, and for those familiar with the valuation methodology, the cost plummets after the initial 90-year extension.

These abstract ideas should illustrate that, with good-quality advice and the right strategy, being shut out of a collective scheme may not be as bad as it first appears.

But whatever the outcome, neighbours will continue to fall out. The only solid remedy for that is to be nice to people.

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