

# New lease of life

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Iris-Ann Stapleton looks at the issues connected with extending a lease

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Leasehold enfranchisement is a specialised area in which a relatively small number of property lawyers and surveyors practise. The legal complexities mean there are pitfalls and risks. It is one of the highest areas of professional negligence within law firms. If solicitors are dipping their toe into this area without fully understanding the implications, it can prove to be a costly exercise for a leaseholder.

A lease is essentially a wasting asset. As the years go by, its value decreases, which results in mortgage lenders being deterred from financing the purchase of flats and consequently leads to a diminishing pool of potential buyers. An extension therefore injects life back into the property by adding to the lifespan of the term and so increasing value.

Understandably, most clients get fixated on the price of the lease extension and it is important that they get the help of an expert surveyor who specialises in this area. Although aware that they will need a solicitor to prepare the statutory notice, little thought is given to the practicalities and legal implications, such as service of the notice or assignment of the same should its benefit be passed to a new owner.

## Serving notice

To qualify to buy a 90-year extension, a leaseholder must be registered at the [Land Registry](#) for a minimum of 2 years. If a leaseholder is selling their flat, they may serve a section 42 notice on the landlord to start the lease extension process. The benefit of that notice can then be assigned to an incoming buyer (consequently there is no 2-year wait for that buyer to qualify). Although this may seem a relatively straightforward process, it is surprisingly often overlooked.

It is important that any transfer of a claim for an extended lease of the flat and the assignment to which it relates takes place at the same time. This is because an extension claim cannot be owned independently from the lease.

It may sound simple, but in practice, many tenants have failed to satisfy this test when trying to assign their rights and some landlords have successfully argued that the notice of claim was not properly assigned. The right to enfranchise is consequently lost, which means that the incoming buyer must wait another 2 years to qualify. After this time, and with a shorter lease, the buyer will certainly have to pay more.

If assigning the benefit of a notice for a lease extension claim, the Deed of Assignment should clearly state the parties' intentions in the recitals, and the transfer of the title to the claim should be expressed to take effect on the registration of the purchaser as proprietor of the existing lease at the Land Registry.

This ensures that the assignment of legal and beneficial interests in both the claim and the lease take effect simultaneously. Solicitors need to be familiar with this procedure.

## **Chasing a claim**

One law firm seemed to completely miss the importance of ensuring that the assignment of the section 42 notice took place on their client's purchase of a property. The client, unable to get any information out of their appointed solicitors on how to progress with the claim, dis-instructed them. The file ended up on my desk.

It was a struggle to obtain all relevant documents and correspondence. All the while, the deadline for making an application to the Tribunal by way of a protective application was fast approaching.

On notifying the landlord's solicitor that I was now instructed on behalf of the tenant, I was told:

'We have never seen a copy of the documentation assigning the benefit of the claim'

and that it would be helpful (and necessary) if I could let them have sight of it. After some to-ing and fro-ing with the client's previous solicitors and the vendor's solicitors, a most mysterious document purporting to be an assignment appeared. The document, which was critical to my client's claim, had a very odd-looking signature clause. When I queried the format with the previous solicitors, it was promptly suggested to me that a new copy could be urgently re-executed and backdated.

I pointed out that would not suffice: a deed creates legal obligations that will only take effect on or after the date of execution. To alter the date may constitute a criminal offence or a conspiracy to defraud, and any lawyer involved in this way could be in breach of their professional conduct rules. In any event, either the landlord decided to turn a blind eye or the document was not investigated with much vigour, because, happily, the landlord's solicitor decided that there was a valid claim and assignment after all and that negotiations should progress with haste. Fortunate indeed for the tenant.

### **RICS advice**

With a recent Red Book revision of [UK Appendix 10](#) (Residential Mortgage Valuation Specification), the assumption of remaining lease term made by valuers completing mortgage valuation reports (where they have not had a sight of the lease details) has risen from 70 to 85 years. The intention is to ensure that any valuation given would reflect a lease unaffected by any marriage value costs. This is likely to raise awareness of the implications of short leases with both lenders and the buying public. As more and more leases approach an unexpired term that will attract a marriage value payment on extension (80 years under the [Commonhold and Leasehold Reform Act 2002](#)), the implications on the value of what is a diminishing asset need to be understood. It is important that any parties to such transactions seek appropriate and qualified professional

advice.

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## **Further information**

- The updated UK portion of the RICS Valuation Professional Standards 2014 is available on [isurv](#) or on the [RICS website](#)
- The [Leasehold Advisory Service](#) provides free advice on the law affecting residential leasehold in England and Wales
- Related competencies include [Landlord and tenant](#)
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