

THOMAS · MORE · CHAMBERS

**LEASEHOLD  
ENFRANCHISEMENT:  
AN OVERVIEW**

**Wednesday 2<sup>nd</sup> May  
6pm to 7pm**

**PROPERTY LAW  
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# INTRODUCTION

## Structure of seminar

- Statutory framework and useful resources
- The Leasehold Reform Act 1967
- The Leasehold Reform, Housing and Urban Development Act 1993:
  - (i) Qualifying premises, leases and tenants.
  - (ii) Notices (theory and practical exercise).
  - (iii) Purchase price and completion.
- Alternatives to enfranchisement

## The statutory framework

- Very limited rights for tenants to acquire freeholds prior to the Leasehold Reform Act 1967
- The Leasehold Reform Act 1967 (“LRA 1967”): houses
- The Landlord and Tenant Act 1987 (“LTA 1987”): right of first refusal; appointment of managers (flats)
- The Leasehold Reform, Housing and Urban Development Act 1993 (“LRHUDA 1993”): collective enfranchisement
- The Commonhold and Leasehold Reform Act 2002 (“CLRA 2002”): relaxation of some of requirements under LRA 1967 and LRHUDA 1993; commonhold scheme

### Useful texts

- Hague on Leasehold Enfranchisement (Radevsky and Greenish); 4<sup>th</sup> edition (2003) and 1<sup>st</sup> supplement (2005). 5<sup>th</sup> edition expected in October 2007.
- Woodfall: Law of Landlord and Tenant (looseleaf)
- Leasehold Valuation Tribunals: A Practical Guide (Dymond & ors) (2004)

### Useful websites

- [www.lease-advice.org](http://www.lease-advice.org) The Leasehold Advisory Service. Government funded service. Website includes useful introductory summaries on various topics and links to LVT decisions.
- [www.rpts.gov.uk](http://www.rpts.gov.uk) The Residential Property Tribunal Service, which includes the Leasehold Valuation Tribunal.
- [www.landtribunal.gov.uk](http://www.landtribunal.gov.uk) Appellate body for LVT (also has first instance jurisdiction on some matters).
- [www.bailii.org](http://www.bailii.org) British and Irish Legal Information Institute. Free case transcripts.
- [www.opsi.gov.uk](http://www.opsi.gov.uk) Statutes and statutory instruments. Limited usefulness as consolidated legislation is not available.

# LEASEHOLD REFORM ACT 1967

## The right to enfranchise

- By s.1 LRA 1967, the tenant of a house held on a long lease at a low rent is entitled to acquire the freehold of the house.
- The right is not limited to acquiring the house. S.1 LRA 1967 states that the tenant is entitled to acquire the “house and premises”. “Premises” includes any garage, outhouse, garden, yard and appurtenances such as driveways, passageways and forecourts (s.2(3) LRA 1967). To qualify as appurtenances, premises must be within the curtilage of the house.

## Premises qualifying

- “House” is defined in s.2(1) LRA 1967:  
  

*“...“house” includes any building designed or adapted for living in and reasonably so called, notwithstanding that the building is not structurally detached, or was or is not solely designed or adapted for living in, or is divided horizontally into flats or maisonettes...”*
- The definition has been the subject of much judicial consideration, but ultimately each case is likely to turn on its own facts.
- A building in mixed use can in some circumstances be a house within the meaning of LRA 1967.
- The fact that a building may also be subject to collective enfranchisement rights under LRHUDA 1993 does not of itself prevent the building from being a house within the meaning of LRA 1967.
- A site inspection may be useful.

## Tenancies qualifying

### **Long lease**

- The tenancy must be a long tenancy, which is defined as a tenancy granted for a term of years certain exceeding twenty-one years: s.3(1) LRA 1967. A lease cannot as a matter of law commence before the date of its grant, so if the commencement date is specified to be earlier than the date of grant, the later of the two dates is taken.
- Providing that the term of the tenancy is over 21 years, it is immaterial that it may be possible to terminate it earlier (e.g. by notice or forfeiture).
- The position is more complicated in relation to:
  - (i) tenancies which are subject to statutory extensions (e.g. under Schedule 10 Local Government and Housing Act 1989);
  - (ii) tenancies granted to continue as periodic tenancies after the expiry of a fixed term;
  - (iii) tenancies expressed to be terminable on death or marriage;
  - (iv) tenancies granted for terms of less than 21 years but containing covenants for renewal;
  - (v) tenancies created by the grant of a lease to a secure tenant under the right to buy provisions in Part V Housing Act 1985 (“HA 1985”); and
  - (vi) shared ownership leases granted pursuant to s.143 HA 1985.
- The qualifying tenancy can be a head-tenancy or a subtenancy: s.5(4) LRA 1967. If there is more than one qualifying tenancy, the most inferior tenancy will have rights to the exclusion of the others: s.1(1ZA) LRA 1967.

- Tenancies in equity can qualify as well as tenancies at law: s.37(1)(f) LRA 1967.

### **Tenancies qualifying: low rent**

- Although LRA 1967 still refers to the need for a low rent, in practice this is no longer a qualifying condition for most leaseholders. S.IAA LRA 1967 provides that where a tenant would qualify but for the fact that the tenancy is not a tenancy at a low rent, the tenant will qualify unless the tenancy is an excluded tenancy. An excluded tenancy must be of a house in an area designated by the Secretary of State as a rural area. The relevant statutory instruments are SIs 620 to 625 of 1997. They are the Housing (Right to Acquire or Enfranchise) (Designated Rural Areas in the [(West Midlands) (South West) (North West and Merseyside) (East) (North East) (South East)] Orders (inserting the designated area as applicable). The last date for creating excluded tenancies was 26<sup>th</sup> July 2002.

### **Other considerations**

- Only a tenant who has been the tenant of the whole of the house under a long tenancy for two years at the relevant time has the right to enfranchise under LRA 1967. The relevant time is the time when he gives notice of his claim: s.1(1)(b).
- The right to enfranchise does not arise in specific circumstances set out in s.1(3) LRA 1967, namely where:
  - (i) The house let is ancillary to other land or premises.
  - (ii) The house is comprised in an agricultural holding.
  - (iii) The tenant's immediate landlord is a charitable housing trust and the house is provided as accommodation pursuant to its charitable purposes.

- Prior to 26<sup>th</sup> July 2002 the tenant had to fulfil residence requirements in order to enfranchise. The residence requirement has now been abolished, and so a tenant will generally be able to enfranchise whether or not he has ever occupied the house or any part of it. There are exceptions in relation to houses divided into flats where the tenants of the flats have rights under LRHUDA 1993, and in relation to business tenancies. Accordingly it will still be necessary to consider the residence requirements in some circumstances.
- The personal representatives of a deceased tenant who had the right to enfranchise under LRA 1967 can still exercise that right provided that the notice of claim is given within two years from the grant of probate or letters of administration. After the expiry of the two year period the personal representatives may qualify for the right to enfranchise in their own right in any event.

#### Notice of tenant's claim

- In order to exercise the right to enfranchise, the tenant must serve a notice known as a Notice of Tenant's Claim ("NTC"). Generally speaking, a qualifying tenant can serve a NTC at any time during the continuation of his long tenancy, though there are some exceptions (see schedule 3 LRA 1967).
- There is a prescribed form for the NTC: see the Leasehold Reform (Notices) Regulations 1997 SI 640 as subsequently amended, in particular by the Leasehold Reform (Notices) (Amendment) (England) Regulations 2002 SI 1715. The prescribed form is set out in the Regulations. The Regulations do allow for use of a form substantially to the same effect, but it is safest to use the prescribed form.
- Once the tenant has served a NTC, the landlord and tenant become contractually bound to grant and accept the freehold.
- The benefit of the NTC can be assigned together with the tenancy of the entire house and premises: s.5(2) LRA 1967. The notice cannot subsist apart from the tenancy. The best course is probably to incorporate an express assignment of the benefit of the notice in the assignment of the tenancy.

- The statutory contract created by service of the NTC may be terminated by mutual consent, but there can be no unilateral abandonment.
- Service of an NTC prevents the landlord from bringing proceedings to forfeit save with the leave of the court: paragraph 4(1) schedule 3 LRA 1967.

#### Landlord's notice in reply

- Paragraph 7 of schedule 3 LRA 1967 provides that the landlord shall serve a notice in reply in the prescribed form within two months of the tenant's NTC. The main requirement of the notice is to state whether or not the tenant's claim is admitted.
- Unlike the position under LRHUDA 1993, there are few adverse consequences for failure to serve a notice in reply, or service of an invalid or incomplete notice. It is possible that a tenant might have a claim for negligence or breach of statutory duty in relation to failure to serve a notice, or service of an incomplete notice: see *7 Strathray Gardens v Pointstar Shipping & Finance Ltd* [2004] EWCA Civ 1669.
- The notice in reply must be in the prescribed form (see the 1997 Regulations as for the NTC) or substantially to the same effect.
- The tenant cannot institute any court proceedings to enforce his rights until the landlord has given a notice in reply or until the two month period has elapsed without him doing so: paragraph 7(5) schedule 3 LRA 1967.

#### Terms of acquisition

- LRA 1967 and the Leasehold Reform (Enfranchisement and Extension) Regulations 1967 SI 1879 (as amended) make detailed provision for the terms and conditions of acquisition.
- The prescribed conditions of sale are set out in the schedule to the 1967 Regulations. By Regulation 2 of the 1967 Regulations, it is open to the parties to vary the prescribed conditions by agreement.

- The landlord must execute a conveyance of the freehold to the tenant.
- The property to be conveyed is the house and premises which are let to the tenant, subject to any permitted exclusion of part of the premises or inclusion of other premises (s.2 LRA 1967).

### Valuation, purchase price and costs

- The valuation date is the date of service of the NTC (ss.9 and 37(1)(d) LRA 1967).
- There are several different methods of valuation, depending on the qualifying conditions (see ss.9(1), (IA), (IAA) and (IC). The main difference is that valuation under s.9(1) excludes marriage value, whereas it is included in ss.9(IA), (IAA) and (IC) calculations.
- The freeholder's interest is to be valued as if it were being sold in the open market by a willing seller to a willing purchaser.
- Valuation is a complex subject and expert evidence from a valuation surveyor will be required.
- Where there is any marriage value resulting from the coalescence of the freehold and leasehold interests, the tenant is entitled to half of it. Where the unexpired term of the lease exceeds 80 years at the date of service of the NTC, the marriage value is deemed to be nil (s.9(IE) LRA 1967).
- The price is fixed by agreement between the parties, and in default by the LVT (with a right of appeal to the Lands Tribunal).
- The tenant must pay the landlord's costs in addition to the purchase price and his own costs (s.9(4) LRA 1967).

## Withdrawal

- The tenant is entitled, in the month after the purchase price has been ascertained, to give written notice to the landlord that he is unable or unwilling to complete the purchase at that price: s.9(3) LRA 1967. If he does so:
  - (i) the NTC ceases to have effect;
  - (ii) he is liable to compensate the landlord for any loss;
  - (iii) he is barred from serving another NTC for twelve months; and
  - (iv) he will have to pay the landlord's costs (though not any LVT or Lands Tribunal costs).

## Miscellaneous

- If the landlord is a public body they may be able to resist the right to enfranchise under s.28 LRA 1967 (land required for future development).
- The Crown is not bound by enfranchisement legislation but has undertaken (as landlord) to comply with it in specific circumstances.
- Shared ownership leases are generally excluded from the operation of LRA 1967: see s.140 Housing Act 1980 and s.33A and Schedule 4A LRA 1967.
- It is not possible to contract out of the LRA 1967: see s.23(1).
- Where the tenant is unable to locate the landlord, he can acquire the freehold by applying to the county court under s.27 LRA 1967.

# COLLECTIVE ENFRANCHISEMENT PART I: QUALIFYING PREMISES, LEASES AND TENANTS

## Overview

- LRHUDA 1993 enables tenants of flats to acquire the freehold via a nominated person. This is commonly known as “collective enfranchisement”.
- The main provisions of LRHUDA 1993 came into force on 1<sup>st</sup> November 1993. Important amendments were made by CLRA 2002, many of which came into force on 26<sup>th</sup> July 2002.
- There are a number of provisions in CLRA 2002 relating to RTE (right to enfranchise) companies which have not been brought into force. The intention behind this legislation is that the qualifying tenants would be members of the RTE company, which would be the nominated purchaser.
- The basic right is to acquire the freehold of the building in which the flats are contained: s.1 LRHUDA 1993.
- The qualifying tenants are also entitled to acquire appurtenant property, which includes any garage, outhouse, garden, yard or appurtenances belonging to or usually enjoyed with the flat: s.1(2), (3) and (7) LRHUDA 1993.
- If appurtenant property is not demised with a lease, but the tenants are entitled to use it (for example a swimming pool), the tenants’ rights can be fulfilled if they are granted permanent rights over it: s.1(4) LRHUDA 1993.
- The landlord can propose additional property to be included in the claim in his counter-notice, if the property would cease to be of useful benefit when severed from the premises being acquired (s.21(3)(c) and (4) LRHUDA 1993).

## Premises qualifying

- By s.3(1) LRHUDA 1993, in order to qualify for collective enfranchisement:

- (i) The premises must consist of a self-contained building or part of a building. The building (or part) must (a) be structurally detached, or (b) must constitute a vertical division which could be redeveloped independently of the remainder of the building, and where either services are provided independently to that part, or could be so provided without a significant interruption to the services for other occupiers: s.3(2) LRHUDA 1993.
  - (ii) The premises must contain two or more flats held by qualifying tenants. “Flat” means a separate set of premises, whether or not on the same floor, which forms part of a building, is constructed or adapted for use as a dwelling, and lies above or below some other part of the building: s.101(1) LRHUDA 1993.
  - (iii) The total number of flats held by qualifying tenants must be not less than two-thirds of the total number of flats contained in the premises. If there are only two flats, they must both be held by qualifying tenants.
- Premises are excluded from the operation of LRHUDA 1993 if more than 25% of their internal floor area is not occupied or intended to be occupied for residential purposes or comprised within the common parts: s.4(1) LRHUDA 1993.
  - There is a limited right of exclusion from the operation of LRHUDA 1993 for resident landlords: see s.10 LRHUDA 1993 (as substituted by CLRA 2002).
  - LRHUDA 1993 does not apply to premises where the freehold includes the track of an operational railway: s.4(5) LRHUDA 1993.

#### Acquisition of leasehold interests

- On exercising the right to collective enfranchisement, the qualifying tenants are:

- (i) obliged to acquire the interest of any tenant under a lease which is superior to the lease held by a qualifying tenant: s.2(2) LRHUDA 1993;
  - (ii) entitled to acquire the interest of the tenant under any lease which demises any common parts or any additional property acquired under s.1(2)(a), provided that the acquisition is reasonably necessary for the proper management or maintenance of that part: s.2(3) LRHUDA 1993.
- Secure tenants and introductory tenants are protected from the operation of the enfranchisement provisions because their landlord (usually the local authority) is excluded from the provisions allowing qualifying tenants to acquire leasehold interests: s.2(5) and (6) LRHUDA 1993.

#### Tenancies qualifying

- A person is a qualifying tenant of a flat if he is a tenant of the flat under a long lease: s.5 LRHUDA 1993.
- The main definitions of “long lease” are similar to those in the 1967 Act.
- In broad terms, a lease granted for a term of years certain exceeding 21 years is a long lease, even if it is terminable before the end of the term by notice, forfeiture etc: s.7(1) LRHUDA 1993.
- If the lease is not within this basic definition, it is worth checking whether it is within any of the more specific categories which are set out in s.7.
- The following categories of leases are excluded from the operation of LRHUDA 1993 by s.5(2) 1993:
  - (i) Business leases which fall within Part II Landlord and Tenant Act 1954.

- (ii) Leases granted by a charitable housing trust in order to provide accommodation in pursuit of its charitable purposes.
- (iii) Subleases granted in breach of the terms of the superior lease where there has been no waiver of the breach by the superior landlord.

### Tenants qualifying

- There is no requirement for a qualifying tenant to have owned a lease for a particular period of time (though there is a two year requirement for lease extensions).
- There can only be one qualifying tenant of each flat at a time. Joint tenants are regarded as jointly constituting the qualifying tenant: ss.5(4)(b) and 101(4) LRHUDA 1993.
- Where a tenant satisfies the conditions of a qualifying tenant for at least three flats in any particular premises, it shall be taken that there are no qualifying tenants of those flats (s.5(5) LRHUDA 1993).
- Until 26<sup>th</sup> July 2002 (when CLRA 2002 repealed the residence condition), at least half of the qualifying tenants by whom the notice of claim was given had to satisfy a residence condition.
- Provided that the initial notice is given by tenants of not less than one half of the flats in the premises, it is possible for qualifying tenants to be excluded from the process. At present, LRHUDA 1993 provides no remedy for those who wish to participate but are excluded by their neighbours.
- If a qualifying tenant is not one of those who has given the initial notice, he can join in the enfranchisement process later if all of the other participating tenants agree: s.14(3) LRHUDA 1993.

- There are some circumstances in which a qualifying tenant is not permitted to participate in a collective enfranchisement claim. These are set out in Part I of Schedule 3 to LRHUDA 1993.

#### Nominee purchaser

- The participating tenants must act through a nominee purchaser: s.15(1) LRHUDA 1993. The nominee purchaser can be a person or persons, or a limited company (which may be specifically formed for the purpose).
- The nominee purchaser is appointed by the participating tenants and will in the first instance be the purchaser specified in the initial notice: s.15(2) LRHUDA 1993.
- Ss.15 and 16 LRHUDA 1993 provide for the replacement of the nominee purchaser, for example on resignation or death.
- If and when the RTE company provisions are brought into force, the concept of the nominee purchaser will be replaced by the RTE company.

#### Landlords

- As with joint tenants, if the freehold interest is held jointly, all of the joint owners together constitute the reversioner within the meaning of LRHUDA 1993.
- If the claim proposes to acquire interests other than those of the freeholder, s.9(2)(a) and Part I of Schedule 1 provide for the identification of the reversioner. However the normal rule is that the freeholder will be the reversioner.

## COLLECTIVE ENFRANCHISEMENT PART II: THE NOTICES

### Introductory remarks

- The process of collective enfranchisement of the freehold to a building under LRHUDA 1993 is dominated by the service and counter-service of notices. It is vital for both parties that these notices are correctly drafted.
- The qualifying tenants' initial notice is critical as:
  - (i) It is the basis for the claim for enfranchisement which will founder if it is invalid.
  - (ii) If it is valid and the reversioner fails to serve a valid counter-notice the court has powers under s.25 of LRHUDA 1993<sup>1</sup> to order enfranchisement on the terms in the initial notice.
- The reversioner's counter-notice is equally important, above all so that the reversioner avoids the court exercising the default powers pursuant to s.25.

### Information gathering

- Ss. 11 & 12 LRHUDA 1993 give the qualifying tenants the right to obtain information they will need in order to draft their initial notice correctly.
- Information about relevant freeholds in the relevant premises is obtained by notice to a qualifying tenant's immediate landlord or any person receiving rent on the landlord's behalf (s.11(1)(a) & (b)). The qualifying tenant is entitled to ask for the name and address of:

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<sup>1</sup> S.25(1) of LRHUDA 1993 as interpreted in *Willingale v Globalgrange Ltd* [2000] 2 EGLR 55, such that the provision that the court 'may' order enfranchisement in the terms of the initial notice is read as 'must' so as not to undermine the workings of LRHUDA 1993 (per May LJ at p.57B).

- (i) Every person who owns a freehold interest in the relevant premises (which means such of the building as is owned by the freehold owner of the qualifying tenant's flat: s.11(9)).
- (ii) Every other person who (s.11(1) & (2)):
  - (a) has the freehold of property which is not in the relevant premises but is demised in the tenant's lease or which pursuant to the lease the tenant is entitled to use in common with others (s.11(2)(a));
  - (b) has any leasehold interest in the relevant premises or in the property covered by s.11(2)(a) which is superior to that of the tenant's immediate landlord (s.11(2)(b)).
- Information about relevant leaseholds is obtained again by notice, but to **any** owner of a freehold interest in the relevant premises (s.11(3)). The qualifying tenant is entitled to ask for the name and address of every person who is tenant of the whole premises (s.11(3)(a)) and in addition every person who is a tenant or licensee of:
  - (i) Any separate set or sets of premises contained in the relevant premises (s.11(3)(b));
  - Or
  - (ii) The whole or part of any common parts contained in the relevant premises (s.11(3)(c));
  - Or
  - (iii) Any property not contained in the relevant premises (s.11(3)(c))<sup>2</sup>.
- The qualifying tenant may also, by notice to the freeholder or owner of a freehold interest in the relevant premises or the tenants or licensees falling within s.11(3)(a)

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<sup>2</sup> In respect of property not contained in the relevant premises, it must either be demised by the lease held by a qualifying tenant of a flat contained in the relevant premises, or be property which any such qualifying tenant is entitled to use in common with others (s.11(3)(c)(i) & (ii)).

to (d), require them to provide information which he specifies in the notice, relating to either the recipient's interest in the relevant premises or any other property in s.11(3)(c) or information relating to any interest derived out of that interest, (s.11(4)). The information must be reasonably required by the tenant in connection with the making of a collective enfranchisement claim (s.11(4)(b)).

- In addition the s.11(4) notices shall require the recipient to provide (s.12):
  - (i) information whether the recipient has received in respect of any premises containing the tenant's flat a s.13 initial notice or copy of such a notice, where the relevant claim is still current<sup>3</sup>, including the date of the initial notice and name and address of the nominee purchaser;
  - (ii) information whether the tenant's flat is comprised in any property designated as exempt under the Inheritance Act 1984.<sup>4</sup>
- Following the service of a s.11(4) notice the qualifying tenant is also entitled to a list, inspection and (on payment of a reasonable fee), copies of certain specified documents (s.11(5)). The documents are those (s.11(6)):
  - (i) of which sight is reasonably required for the making of the claim;

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<sup>3</sup> The claim is current where (s.12(6) LRHUDA 1993):

The notice continues in force in accordance with s.13(11) LRHUDA 1993; or

A binding contract entered into in pursuance of the notice remains in force; or

A vesting order has been made pursuant to s.24(4)(a) or (b) or 25(6)(a) or (b) LRHUDA 1993 but the interests have yet to be vested.

<sup>4</sup> This refers to heritage property to which s.31 of LRHUDA 1993 applies and including that in respect of which the landlord has made an application to designate it as property worthy of protection because of its intrinsic scenic, historical or scientific importance. The date of any such application must also be given (s.12(3)(b)).

- (ii) which a willing seller of the recipient's interest would be expected to make available to the willing buyer (for example documents of title, searches etc.).
- A response to the s.11 notice is required within 28 days of service (s.11(7)), and although there is no specific sanction for default, 14 days after the tenant has served a default notice under s.92(2) LRHUDA 1993 he may apply to the Court for an order that the recipient comply, upon which he will normally be entitled to his costs. Failure to comply with the resulting order would be a contempt of court if a penal notice is endorsed on the order.
- For 6 months after the service of the s.11 notice the recipient must notify the qualifying tenant:
  - (i) Of any disposal or acquisition of a legal or equitable interest in the relevant premises, other than an interest by way of security for a loan, within 28 days of any such disposal or acquisition (s.11(8));
  - (ii) Of any initial notice or copy of such a notice in respect of the premises containing the tenant's flat where the qualifying tenant is not one of those giving that initial notice, together with the date of service of that notice and the name and address of the nominee purchaser (Hague p.402 para. 25-06 (3)).

### The Initial Notice

- In addition to the points made above as introductory remarks the following factors demonstrate the importance of the initial notice:
  - (i) The date on which the initial notice is given is the valuation date for determining the price to be paid.
  - (ii) The giving of the initial notice starts a strict timetable.

- (iii) It is when the initial notice is given that the conditions for making a valid claim for collective enfranchisement must be fulfilled.
- (iv) The date on which the notice is given is 'the relevant date' (s.1(8) LRHUDA 1993).

### **To Whom Must the Notice be Given**

- Where the freehold is all owned by one person, who is the reversioner as provided for in s.9(1) LRHUDA 1993, it must be served on that reversioner (Hague p.403 para.25-97 footnote 34).
- Where it is intended to acquire the interests of those other than the freeholder then the freeholder is the reversioner, unless one of the relevant landlords (any holder of the freehold or any freehold or leasehold interest which it is proposed to be acquired under s.1(2)(a)<sup>5</sup> or 2(1)(a) & (b)<sup>6</sup> LRHUDA 1993 respectively (s.9(2)(b)LRHUDA 1993) applies to the Court for one of the relevant landlords to be designated reversioner (see s.9(2) & Schedule I Part I LRHUDA 1993).
- Where there are multiple freeholders (as provided for in s.9(2A) LRHUDA 1993) the reversioner is the person identified in the initial notice as such (Schedule I Part IA para.5A LRHUDA 1993), who must be either a person owning a freehold interest in the premises, or if such a person cannot be found a relevant landlord (s.13(2A) LRHUDA 1993).

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<sup>5</sup> Freehold interests in appurtenant or ancillary property (property which the tenant is entitled to use in common whether contained in the relevant premises or not).

<sup>6</sup> Leasehold interests of any tenant under a superior lease to that of a qualifying tenant in the premises (which the qualifying tenants are obliged to acquire) and any tenant whose lease includes the common parts or any appurtenant or ancillary property and their acquisition is reasonably necessary for proper management or maintenance (which the qualifying tenants are entitled to acquire).

- In choosing the reversioner the qualifying tenant is able, in the first instance to choose between the various holders of freehold interests in the premises.
- If that fails there is an even wider choice as the relevant landlord can be anyone with a freehold interest in the premises or leasehold interest which it is proposed to acquire under s 1(2)(a) or 2(1)(a) & (b) LRHUDA 1993 (s.9(2A)(b) LRHUDA 1993).

### **Who must give the initial notice**

- It must be given by qualifying tenants of no less than half of the total number of flats contained in the premises (s.13(2)(b) LRHUDA 1993).
- Accordingly in a block of 45 flats (two thirds of which must be held by qualifying tenants) the tenants of 23 of those flats (one half of 45 rounded up) must give the notice.
- Where there are only two flats in a building both tenants must give the notice.
- The number of tenants need only reach the minimum on the relevant date. After that the numbers can drop below the minimum.
- Even if certain participating tenants on the relevant date are subsequently found not to have qualified the notice will not be invalidated so long as the minimum numbers are still satisfied by the remainder (Schedule 3 para.16 LRHUDA 1993<sup>7</sup>).

### **Form and contents of the initial notice**

- The requirements of the initial notice are set out in detail in s.13(3) of LRHUDA 1993, which we have appended to these notes. Unlike the position under LRA 1967,

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<sup>7</sup> By an oversight para.16 still refers to two thirds of the qualifying tenants being required to give the notice rather than half which is the present requirement following amendment of s.13(2)(b) by CLRA 2002. Nevertheless the editors of Hague submit, we think persuasively, that this would be ignored by the Court.

no form is prescribed. Given the technical nature of the initial notice it is highly recommended that a precedent from a reputable source is used.

*s.13(3)(a) The Plan*

- The notice must be accompanied by a plan showing three of the categories of property at issue:
  - (i) The premises of which the freehold is proposed to be acquired ('the specified premises': s.13(12)) which will be the building containing the flats;
  - (ii) The appurtenant and ancillary property (see s.1(2)(a) & 1(3)(a) & (b) LRHUDA 1993);
  - (iii) Any property of the freeholder over which it is proposed that rights should be granted by him in connection with the acquisition of the freehold or appurtenant/ancillary property, for example rights of way or easements.<sup>8</sup>
  
- Although the plan does not have to be professionally drawn, clarity is essential. We would therefore suggest the use of a lease plan or Land Registry filed plan.
  
- The three categories of property should each be marked in different colours.

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<sup>8</sup> In case of an omission the freeholder may have the right to require the nominee purchaser to acquire property which is not included in the initial notice. This is achieved by specifying such property by his counter-notice, where he claims pursuant to s.21 LRHUDA 1993 that it is of no practical benefit or use to him or is incapable of reasonable management or maintenance if separated from the relevant premises.

*s.13(3)(b) The Statement of Grounds*

- This requirement refers to the basis upon which the right to collective enfranchisement applies to the specified premises under s.3 of LRHUDA 1993, and the notice must therefore state the following:
  - (i) That the premises are a self-contained building or part of a building;
  - (ii) There are two or more flats held by qualifying tenants;
  - (iii) The total number of flats held by qualifying tenants;
  - (iv) That there are no less than two thirds of the total number of flats in the premises held by qualifying tenants;
  - (v) The total number of flats in the building.

*s.13(3)(c) Acquisition of the Leasehold Interest and Leaseback*

- The notice must specify any leasehold interest which it is proposed should be acquired, pursuant to sections 2(1)(a) & (b) LRHUDA 1993 (s.13(3)(c)(i) LRHUDA 1993), namely:
  - (i) The interests of any tenants under superior leases to those of any qualifying tenants, which the qualifying tenants are obliged to acquire (s.2(1)(a));
  - (ii) The interests of any tenants whose leases include the common parts or any appurtenant or ancillary property (s.2(1)(b)).
- The notice must also specify any flats or units to which mandatory leaseback provisions apply. These provisions apply to flats or units (s.13(3)(c)(ii) LRHUDA 1993):

- (i) let under secure tenancies, where there is one freeholder of the flat or unit which is in the specified premises and he is the tenant's immediate landlord, or is a public sector landlord and every intermediate landlord is also a public sector landlord (see also Schedule 9, paras 2 (1)(1A) & (2) LRHUDA 1993);
- (ii) let by housing associations on tenancies other than secure tenancies where the housing association is the freeholder and the tenant is not a qualifying tenant of the flat or unit.

*s.13(3)(d) The Proposed Purchase Prices*

- The prices of the following interests must be given:
  - (i) Any freehold interest(s) in the specified premises;
  - (ii) Any freehold interests in appurtenant or ancillary property;
  - (iii) Any leasehold interests to be acquired pursuant to s.2(1)(a) or (b) LRHUDA 1993.
- The prices should be given separately. Although a single figure was held not to invalidate the notice in *Crean Davidson Investments Ltd v Cadogan* [1998] 2 EGLR 96 CC, this was held to be wrong in *Wellcome Trust Ltd v Fenwick* [2001] (unreported), Central London County Court. *Wellcome Trust* followed *Cadogan v Morris* [1999] 1 EGLR 59, CA, a decision on s.42 LRHUDA 1993 (which deals with applying for new leases but is considered to apply equally to collective enfranchisement notices).<sup>9</sup>
- The price for the freehold interest includes the landlord's 50 per cent share of the marriage value (Schedule 6, para. 2(1)(a)). The landlord's share is then further shared

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<sup>9</sup> Although on this point it is to be noted that s.42(3)(c), the equivalent to s.13(3)(e), only requires the one premium to be specified rather than the various prices required by s.13(3)(e).

between the freeholder and the landlords in respect of any intermediate leasehold interests in proportion to the value of their respective interests (Schedule 6, para.9).

- Where there are multiple freehold interests a separate price for each must be given.
- The prices given must be 'realistic' (*Cadogan v Morris* [1999] 1 EGLR 59, CA per Stuart-Smith LJ at p.61A-B). However this has been interpreted to mean merely that the price should be given in **good faith**. In *9 Cornwall Crescent London Ltd v Royal Borough of Kensington and Chelsea* [2006] 1 WLR 1186 Auld LJ, a decision on s.21 LRHUDA counter-notices in which *Cadogan v Morris* was more generally considered, it was held that 'good faith' was the sole precondition which could be glossed onto the statutory requirements as to the price information in an initial notice (at para.44 p.1201A<sup>10</sup>).
- The prices do not have to be justified by valuation evidence (*9 Cornwall Crescent* per Auld LJ at para.44 p.1200H).
- A price needs to be unrealistic in an extreme sense in order to fall foul of the principle in *Cadogan v Morris*. A fairly wide margin will be given (*Cadogan v Morris* per Stuart-Smith LJ at p.61C<sup>11</sup>).
- It follows that valuation evidence should not be considered in detail in the County Court on a challenge to the prices given (*Cadogan v Morris* per Stuart-Smith LJ at p.61D, *9 Cornwall Crescent* per Auld LJ at para.41 p.1200C-D).
- It should be recognised that because of the possibility of the Court exercising its powers in default collectively to enfranchise the building on the basis of the initial notice it is of great importance to the qualifying tenants that:

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<sup>10</sup> Although he made it clear that his remarks were obiter and tentative at para.42

<sup>11</sup> See by way of example *Woodrolfe Park Freehold Ltd v Drake-Lewis* [2002] EWCA Civ 1586 in which due to differences in opinion on the factors making up the marriage value a tenant's proposal of £16,000 was set against a landlord's valuation of £222,750 and the tenant's proposal survived a challenge, per Mance LJ at para.20.

- (i) a realistic figure is given;
- (ii) the participating tenants err, if anything, on the low side.

*s.13(3)(e) Names and Addresses of Qualifying Tenants*

- The full names and flat addresses of all qualifying tenants (not just those participating in the notice) in the specified premises must be given.
- In relation to each qualifying tenant sufficient particulars of the date the lease was entered into, the term and the date of commencement must be given. This is usually done on an individual tenant's information sheet.

*s.13(3)(f) Name and Address of Nominee Purchaser*

- The full name of the nominee purchaser and an address for service of notices upon the nominee purchaser must be given.

*s.13(3)(g) Date for Response*

- The notice must state the date by which the reversioner must respond with a counter-notice.
- This must be at least two months after the relevant date (i.e. the date on which the initial notice is served: s.13(5) LRHUDA 1993).
- It is critical that a date is given allowing plenty of time for service to be effected. The corresponding date rule applies, thus in a case on the equivalent provision relating to a s.42 LRHUDA 1993 notice where the notice gave the date of 8<sup>th</sup> March and was only delivered on 8<sup>th</sup> January it was held invalid (*Viscount Chelsea v Hirshorn* [1998] 2 EGLR 90, CC).

### Schedule 3 para.12(2) Copies

- The notice must state if copies are being given to any other relevant landlord and if so must give their names.

### Mistakes in the initial notice

- Inaccuracy in any of the particulars required by s.13(3)(e) will not invalidate the notice (Schedule 3 para.15(1) LRHUDA 1993; see also *Cadogan v Morris* [1999] 1 EGLR. 59, CA per Stuart-Smith LJ at p.60G and *Free Grammar School of John Lyon v Secchi* [1999] 3 EGLR 49, CA, another case on s.42, per Aldous LJ at p.51A-C; see also Hague para.25-12 p.408).
- However total omission of any of the particulars required by s.13(3)(e) may well invalidate the claim, as the phrase in Schedule 3 para. 15 is:

‘inaccuracy in any of the particulars’

as opposed to:

‘any inaccuracy in the particulars’

(see Hague para.25-12 pp 408-9 and the difference in wording highlighted in *Viscount Chelsea v Morris* [1997] 2 EGLR 100 per Mr Recorder Kallipetis QC at p.102L-M & p.103B).

- For the rest it appears that the validity of the notice will be depend on the objective test in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749 and how a reasonable recipient would have understood it (*Burman v Mount Cook Land Ltd* [2002] Ch 256, CA, per Chadwick LJ). There are two stages to the test (per Chadwick LJ at para.11 & para.28 p271C-D):

(i) What does the statute require the notice to state?

- (ii) Does the notice, properly construed, state what is required?
- If a reasonable recipient would have read the notice as stating what was required, the second stage will be satisfied, in the face of apparent errors, but only if the error was obvious (*Burman v Mount Cook* per Chadwick LJ at p.267C-D para.20 & *Free Grammar School of John Lyon* per Aldous LJ at p. 51M-52B). The reasonable recipient:
  - (i) Is to be taken as familiar with LRHUDA 1993 (see reference to *Mannai Investment in Free Grammar School of John Lyon* per Aldous LJ at p.51J-L);
  - (ii) But must be left in no doubt as to what the giver of the notice wished to communicate (*Burman v Mount Cook* per Chadwick LJ at para.20 p.267C-D & para.21 p.267H).
- Bearing all these principles in mind the following will therefore invalidate the notice:
  - (i) Failure to include a plan at all (see *Mutual Place Property Management Ltd v Blaquiére* [1996] 2 EGLR. 78, CC);
  - (ii) Failure to give the correct date for response (*Free Grammar School of John Lyon v Secchi* [1999] 3 EGLR 49, CA );
  - (iii) Failure to apportion the price between the various interests (see contrary conclusion in *Crean Davidson Investments Ltd v Cadogan* [1998] 2 EGLR 96, CC, a case on a s.13 notice, disapproved in *Wellcome Trust Ltd v Fenwick* (2001, unreported) Central London County Court, and Hague at p.406 para.25-10 and note 62).

- On the other hand the following may not invalidate the notice:
  - (i) Failure to indicate on the plan a clear division between the specified premises and the garden which was also to be acquired (*Crean Davidson Ltd v Cadogan* per Judge White at p.97D-E <sup>12</sup>).
  - (ii) Failure to show clearly the neighbouring property over which rights were being sought (*ibid*).
- If a property or interest is wrongly included or excluded from the notice the court may give leave to amend and in the absence of dishonesty should give unconditional leave to amend unless the landlord can establish any relevant prejudice. See Schedule 3 para.15(2) & *Malekshad v Howard de Walden Estates Ltd (No.2)* [2004] 1 WLR 862 per Neuberger J at para. 52 p.874B (a case under the equivalent provision of the 1967 Act):
  - (i) Relevant prejudice does not include what arises from the fact that the notice will be valid, i.e. the tenant potentially acquiring a freehold (*Malekshad* per Neuberger J at para.53 p.874D-E);
  - (ii) Even if prejudice is established it may be appropriate to allow an amendment on terms (*ibid* at para.53 p.874E).
- Any amendment takes effect as if it had been included on the relevant date (Schedule 3 para. 15(3) LRHUDA 1993).

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<sup>12</sup> If not on the basis that these were 'particulars' pursuant to Schedule 3 para.15 (1), which following *Cadogan v Morris* and *Free Grammar School of John Lyon* they plainly were not, then either on the basis of the reasonable recipient was not being misled or, *quaere*, under the saving for misdescriptions.

## Signature

- The notice must be signed by each of the qualifying tenants who is giving it (s.5(4)(b) LRHUDA 1993).
- The signature of an agent, even holding a power of attorney, is insufficient (*St Ermins Property Co. Ltd v Tingay* [2002] 3 EGLR 53, a case on s.42 notices under the 1993 Act).

## Copies to relevant landlords where acquisition of leasehold interests is proposed

- Copies of the initial notice must be given to every person known or believed to be a relevant landlord (Schedule 3, para.12(1) LRHUDA 1993).
- Where a reversioner or relevant landlord is served with the initial notice or a copy of it he must then give a copy to anyone he knows or believes to be a relevant landlord, add the new person's name to the notice, and inform the qualifying tenants who served the notice (Schedule 3 para.13(1) to (3) LRHUDA 1993).
- Where a relevant landlord has responded to a s.11 notice he must be served a copy of the initial notice within two months of the relevant date **or the initial notice will cease to have effect at the end of the two months** (Schedule 3 para.14(1) LRHUDA 1993).
- Where another person is responsible for failing to pass on a notice without reasonable excuse, that person is liable for any loss caused and the notice will not lapse (Schedule 3 para.14(2) LRHUDA 1993 & *Wellcome Trust Ltd v Belhurst Ltd* [2002] EGLR 57, CA, a case on s.42).

## Effects of service of the initial notice

- The notice, which is registrable as if it were an estate contract, should be registered so as to bind any new freeholder, if the freehold were to change hands.

- The notice is effective whilst it continues in force, which it does from the relevant date (the date on which it is given s.1(8) LRHUDA 1993), until either (s.13(1)) LRHUDA 1993):
  - (i) A binding contract is entered into (pursuant to s.24(4) LRHUDA 1993);
  - Or
  - (ii) a vesting order is made (pursuant to s.25(6) LRHUDA 1993);
  - Or
  - (iii) until it is withdrawn or deemed withdrawn;
  - Or
  - (iv) until it ceases to have effect.
- There are various restrictions on dealing with the freehold which apply where the notice is registered and in force.
- Any person who owns the freehold of a whole or part of the specified premises (or appurtenant property) must not:
  - (i) make any disposal severing his interest in the premises or any property specified in the notice pursuant to s.13(3)(a)(ii) LRHUDA 1993, (s.19(1)(a)(i) LRHUDA 1993);
  - (ii) grant out of his interest any lease under which, if granted before service of the initial notice, the interest of the tenant would have been liable to acquisition under s.2(1)(a) or (b) LRHUDA 1993 (s.19(1)(a)(ii) LRHUDA 1993).
- No relevant landlord may grant a lease out of his interest in the specified premises or property in the initial notice (s.19(1)(b) LRHUDA 1993).
- Any such disposal by a freeholder or landlord will be void pursuant to s.19(1).

- However there is provision for the landlord's interests in either the specified premises, appurtenant or ancillary property, or leasehold interests of another relevant landlord specified in the notice, to be disposed of so that the new owner steps into the shoes of the landlord vis a vis the notice (s.19(3)).
- Contracts for the disposal, to any extent, by the freeholder of the whole or part of the premises or appurtenant property or by another relevant landlord of any interest of his are suspended to the extent that they relate to that disposal (s.19(4)). If a binding contract is entered into pursuant to the initial notice then the freeholder, any other relevant landlord, and all persons affected are discharged from the suspended contract (s.19(5)). These provisions do not apply to a contract which provides for the eventuality of a s.13 notice being served in relation to some or all of the property in question (s.19(6)). All the parties to the contract for the sale of property which is at risk of collective enfranchisement need do, to avoid such a suspension, is include some provision as to what would happen upon service of a s.13 notice (for example that the contract would continue).
- The following restrictions on dealing with leaseholds apply where a valid or purported (Schedule 3 para.10(1)(a) & (b) LRHUDA 1993) s.13 initial notice is given:
  - (i) The tenant cannot serve a break notice nor can the landlord serve a notice under s.4 Landlord and Tenant Act 1954 or Schedule 10, paragraph 4(1) to the Local Government and Housing Act 1989, any such notice being void and unrevivable during the currency of the claim<sup>13</sup> (Schedule 3 para.5; see also Hague p.413 para.25-17(1) LRHUDA 1993).

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<sup>13</sup> The claim is current in the following circumstances (Schedule 3 para.10(1)(d) LRHUDA 1993):

Where the notice is valid, for the period it remains in force (s.13(11) LRHUDA 1993);

Where the notice is invalid, from the time it is given until (Schedule 3 para.10(1)(d) LRHUDA 1993):

the time when the notice is set aside by the court;

or is withdrawn;

or when it would, if valid, cease to have effect or be deemed ineffective.

Where a court order removes the validity of the notice the relevant time is when the court order becomes final (Schedule 3 para.10(2) LRHUDA 1993). A court order becomes final on the expiry of the time for an

(ii) The lease of any participating tenant's flat cannot terminate by effluxion of time, pursuant to a landlord's notice to quit or by the termination of a superior lease, during the currency of the claim and for 3 months thereafter (Schedule 3, para 6 LRHUDA 1993 and see also *Malekshad v Howard de Walden Estates Ltd (No.2)* [2004] 1 WLR 862 per Neuberger J at para.44 p.883 & para.667 p.877: making the claim has the effect of prolonging the tenancy, including any property demised under that tenancy whether or not it is claimed in the notice). However if the claim fails and but for the claim the lease would have terminated, at the end of the 3 months it will so terminate.

(iii) No proceedings for forfeiture may be brought during the currency of the claim other than with leave of the court, which may only be granted if the court is satisfied that the tenant is participating in the claim solely or mainly to avoid the consequences of a breach of covenant (which will be hard to prove). If leave to forfeit is granted the tenant ceases to be a participating tenant in the claim (Schedule 3 para.7. LRHUDA 1993).

- Once a valid notice is served, no subsequent notice which specified the whole or part of the same specified premises may be served whilst the first valid initial notice continues in force (s.13(8) LRHUDA 1993). However a valid notice may be served in place of an invalid one.
- If an initial notice is withdrawn or is deemed withdrawn, the tenants must wait 12 months from the date of withdrawal or deemed withdrawal before serving a further one (s.13(9) LRHUDA 1993).

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appeal, or at the time of disposal of the appeal or any further appeal by determination, the expiry of time for further appeal, abandonment or otherwise ceasing to have effect (s.101(9) LRHUDA 1993).

### Rights of access and deduction of title

- Once an initial notice has been given to the reversioner he has a right of access for the purposes of obtaining a valuation and in relation to matters arising out of the claim: s.17 LRHUDA 1993.
- The reversioner may serve notice on the nominee purchaser within 21 days of service of the initial notice requiring him to deduce title of a qualifying tenant (essentially so as to prove that that tenant is a qualifying tenant): s.20 LRHUDA 1993. The nominee purchaser must comply within 21 days.

### Counter-notice

- Following service of the initial notice, the reversioner must serve a counter-notice: s.21 LRHUDA 1993.
- The notice must state whether the reversioner admits or does not admit the claim (and, if applicable, whether he intends to develop the whole or part of the premises).
- The counter-notice must also (i) state an address in England and Wales at which notices may be given to the reversioner, and (ii) must contain a statement as to whether or not the specified premises are within an estate management scheme.
- s.21 LRHUDA 1993 sets out other matters to be included in the counter-notice.
- Failure to state any of the particulars required is likely to invalidate the counter-notice.
- There is no prescribed form of counter-notice but use of a reputable precedent is advised.
- If the reversioner is considering a challenge to the validity of the initial notice, the best course is to serve a counter-notice without prejudice to the contention that the initial notice is invalid.

## COLLECTIVE ENFRANCHISEMENT III: PURCHASE PRICE AND COMPLETION

### Purchase price

- The valuation date is the date of service of the initial notice: schedule 6 LRHUDA 1993 as amended by CLRA 2002.
  
- The price to be paid for the freehold includes:
  - (i) Capitalised ground rents. The multiplier is calculated by the valuer or taken from valuation tables.
  
  - (ii) The value of the reversion on expiry of the leases (current value of the flats deferred to the date of expiry).
  
  - (iii) Marriage value. This is the increase in value arising from the joining of the freehold and leasehold interests. It is shared 50/50 between the landlord and the nominee purchaser. Local knowledge is important in valuing the marriage value.
  
  - (iv) Value of any other interests (e.g. commercial properties, garages).
  
  - (v) Compensation for any other losses. This might include, for example, loss of ability to develop an adjoining site.
  
- There is no statutory obligation to acquire expert valuation evidence but valuation is a complex issue and expert evidence will generally be needed.
  
- The important Lands Tribunal decision of *Cadogan & anor v Sportelli & anor* [2006] EWLands LRA/50/2005 established that the appropriate deferment rate when valuing the reversion on expiry of the leases will generally be 5% for flats and 4.75% for houses in the prime central London area.

### Applications to LVT or court

- Where a counter-notice has been served admitting the claim, but any of the terms remain in dispute at the end of a period of two months after the counter-notice was given, either the nominee purchaser or the reversioner may apply to the LVT for determination of the matters in dispute: s.24(1) LRHUDA 1993. The application must be made within six months of the date of service of the counter-notice. If no application is made, the initial notice is deemed withdrawn at the end of the six months: s.29(2) LRHUDA 1993.
- Once all the terms of acquisition are agreed, if necessary either the nominee purchaser or the reversioner can apply to the court to enforce the contract: s.24(3) LRHUDA 1993.
- Where no counter-notice is served the nominee purchaser can apply to the court for an order for enfranchisement, and the court must grant the order: s.25(1) LRHUDA 1993 and *Willingale v Globalgrange Ltd* [2000] 2 EGLR 55 CA.

### Completion or conveyance

- The conveyance of the freehold must grant to the nominee purchaser an estate in fee simple absolute in the premises being acquired.
- The procedure for completing the enfranchisement is set out in the schedule to the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993 SI 2407. By Regulation 2, the nominee purchaser, the reversioner and any relevant landlord are bound by the schedule unless they agree otherwise.

## ALTERNATIVES TO ENFRANCHISEMENT

- Enfranchisement enables the granting of new long leases without premiums.
- Enfranchisement can be a good solution where tenants have short leases and high ground rents.
- Successful post-enfranchisement management is likely to depend on good relations between the tenants.
- Post-enfranchisement management can be more onerous than anticipated.

### Lease extension

- Lease extension is available under both LRA 1967 and LRHUDA 1993. It may be a good alternative where the tenant does not wish to enfranchise for any reason.

### Right to manage

- Part 2 Landlord and Tenant Act 1987 gives the LVT the power to appoint a manager to take over management of premises containing flats where there is some fault on the part of the landlord or the managing agents. This may be a suitable alternative to enfranchisement where the tenants do not wish to take on the responsibility of ownership of the freehold and the corresponding management responsibilities.

### Commonhold

- New legislation contained within CLRA 2002 created a new system of land ownership known as commonhold.
- The essence of the commonhold system is that it allows freehold ownership of individual flats, houses or units within a building or estate, and common ownership of

the common parts. The common parts are managed by the freehold owners through a commonhold association.

- The provisions of CLRA 2002 relating to commonhold came into force on 27<sup>th</sup> September 2004.

Edward Risso-Gill

Laura Collignon

2<sup>nd</sup> May 2007

## APPENDIX: S.13 LRHUDA 1993

### The initial notice

#### 13 Notice by qualifying tenants of claim to exercise right

(1) A claim to exercise the right to collective enfranchisement with respect to any premises is made by the giving of notice of the claim under this section.

(2) A notice given under this section (“the initial notice”)—

(a) must

[(i) in a case to which section 9(2) applies,] be given to the reversioner in respect of those premises; [and

(ii) in a case to which section 9(2A) applies, be given to the person specified in the notice as the recipient;] and

(b) must be given by [a RTE company which has among its participating members] a number of qualifying tenants of flats contained in the premises as at the relevant date which—

(i) . . .

(ii) is not less than one-half of the total number of flats so contained;

. . .

[(2ZA) But in a case where, at the relevant date, there are only two qualifying tenants of flats contained in the premises, subsection (2)(b) is not satisfied unless both are participating members of the RTE company.]

[(2ZB) The initial notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.]

[(2A) In a case to which section 9(2A) applies, the initial notice must specify—

(a) a person who owns a freehold interest in the premises, or

(b) if every person falling within paragraph (a) is a person who cannot be found or whose identity cannot be ascertained, a relevant landlord,

as the recipient of the notice.]

(3) The initial notice must—

(a) specify and be accompanied by a plan showing—

- (i) the premises of which the freehold is proposed to be acquired by virtue of section 1(1),
  - (ii) any property of which the freehold is proposed to be acquired by virtue of section 1(2)(a), and
  - (iii) any property . . . over which it is proposed that rights (specified in the notice) should be granted by him in connection with the acquisition of the freehold of the specified premises or of any such property so far as falling within section 1(3)(a);
- (b) contain a statement of the grounds on which it is claimed that the specified premises are, on the relevant date, premises to which this Chapter applies;
- (c) specify—
- (i) any leasehold interest proposed to be acquired under or by virtue of section 2(1)(a) or (b), and
  - (ii) any flats or other units contained in the specified premises in relation to which it is considered that any of the requirements in Part II of Schedule 9 to this Act are applicable;
- (d) specify the proposed purchase price for each of the following, namely—
- (i) the freehold interest in the specified premises [or, if the freehold of the whole of the specified premises is not owned by the same person, each of the freehold interests in those premises],
  - (ii) the freehold interest in any property specified under paragraph (a)(ii), and
  - (iii) any leasehold interest specified under paragraph (c)(i);
- (e) state the full names of all the qualifying tenants of flats contained in the specified premises [who are participating members of the RTE company] and the addresses of their flats, and contain . . . in relation to each of those tenants, . . .
- (i) such particulars of his lease as are sufficient to identify it, including the date on which the lease was entered into, the term for which it was granted and the date of the commencement of the term,
  - (ii) . . .
  - (iii) . . .;
- (f) state the full name or names of the person or persons appointed as the nominee purchaser for the purposes of section 15, and an address in England and Wales at which notices may be given to that person or those persons under this Chapter; and
- [(f) state the name and registered office of the RTE company;]

(g) specify the date by which the reversioner must respond to the notice by giving a counter-notice under section 21.

(4) ...

(5) The date specified in the initial notice in pursuance of subsection (3)(g) must be a date falling not less than two months after the relevant date.

[(5A) A copy of a notice under this section must be given to each person who at the relevant date is the qualifying tenant of a flat contained in the premises specified under subsection (3)(a)(i).]

(6), (7) ...

(8) Where any premises have been specified in a notice under this section, no subsequent notice which specifies the whole or part of those premises may be given under this section so long as the earlier notice continues in force.

(9) Where any premises have been specified in a notice under this section and—

(a) that notice has been withdrawn, or is deemed to have been withdrawn, under or by virtue of any provision of this Chapter or under section 74(3), or

(b) in response to that notice, an order has been applied for and obtained under section 23(1),

no subsequent notice which specifies the whole or part of those premises may be given under this section within the period of twelve months beginning with the date of the withdrawal or deemed withdrawal of the earlier notice or with the time when the order under section 23(1) becomes final (as the case may be).

(10) In subsections (8) and (9) any reference to a notice which specifies the whole or part of any premises includes a reference to a notice which specifies any premises which contain the whole or part of those premises; and in those subsections and this “specifies” means specifies under subsection (3)(a)(i).

(11) Where a notice is given in accordance with this section, then for the purposes of this Chapter the notice continues in force as from the relevant date—

(a) until a binding contract is entered into in pursuance of the notice, or an order is made under section 24(4)(a) or (b) or 25(6)(a) or (b) providing for the vesting of interests in the nominee purchaser [RTE company];

(b) if the notice is withdrawn or deemed to have been withdrawn under or by virtue of any provision of this Chapter or under section 74(3), until the date of the withdrawal or deemed withdrawal, or

(c) until such other time as the notice ceases to have effect by virtue of any provision of this Chapter.

(12) In this Chapter “the specified premises”, in relation to a claim made under this Chapter, means—

(a) the premises specified in the initial notice under subsection (3)(a)(i), or

(b) if it is subsequently agreed or determined under this Chapter that any less extensive premises should be acquired in pursuance of the notice in satisfaction of the claim, those premises;

and similarly references to any property or interest specified in the initial notice under subsection (3)(a)(ii) or (c)(i) shall, if it is subsequently agreed or determined under this Chapter that any less extensive property or interest should be acquired in pursuance of the notice, be read as references to that property or interest.

(13) Schedule 3 to this Act (which contains restrictions on participating in the exercise of the right to collective enfranchisement [specifies circumstances in which the fact that a qualifying tenant is a member of a RTE company is to be disregarded when considering whether the requirement in subsection (2)(b) is satisfied], and makes further provision in connection with the giving of notices under this section) shall have effect.