

A SHORT HISTORY OF LEASEHOLD REFORM

Mark Chick uncovers the origins of this crucial legal area...

YOU MIGHT wonder “what exactly is ‘enfranchisement?’” In the dictionary, you will find the accepted meanings relating to the right to vote, or do to with the representation in Parliament. The historic meaning of the word relates to ‘freedom’ in the sense of setting free a medieval slave.

Modern long leaseholders are not exactly feudal tenants, but such words have sometimes been used. ‘Enfranchisement’ in the legal sense relates to the right of residential long leaseholders either to extend their lease or buy their freehold. This area is also referred to as ‘leasehold reform’.

The consultation on proposed legislative changes in this area proposed by the New Labour government in 1997 was entitled ‘An End to Feudalism’. This consultation led to the passing of the

Commonhold and Leasehold Reform Act 2002 (‘the 2002 Act’) which has made substantive amendments to existing legislation and enabled many more people to extend their lease or buy their freehold.

Over the past 40 years the rights available to residential long leaseholders have greatly increased. The starting point in recent enfranchisement history is to be found towards the end of the 19th century when a Royal Commission on The Housing of the Working Classes in 1884-5 considered whether the acquisition (on fair terms) of the freehold interest in buildings would greatly improve the quality of general living conditions for people in such property. However, there did not appear to be much political appetite for this type of reform and the committee

formed the view that such steps would not actually improve housing conditions.

Later, in 1886, a select committee considered the point once more, but none of these recommendations made progress into Parliament. It was therefore not until 1948 that there was a recommendation by the Jenkins Committee that the owners of long-leasehold dwelling houses should have the right to acquire the freehold and any intermediate interests.

However, there was no actual movement to table legislation in this area until the consultation which led up to the passing of the Leasehold Reform Act 1967 (‘the 1967 Act’). This enabled the owner of a house held on a long lease either to purchase the freehold or acquire a 50-year lease extension.

The 1967 Act as originally enacted set out numerous qualifying criteria, a residence condition and a complex series of applicable tests based on the rateable value of the property to see whether it could be enfranchised. Subsequent legislation has now relaxed most of these requirements and the qualification criteria under the 1967 Act now merely have effect to determine the basis on which the freehold to the house will be valued.

Interestingly enough, during the 1967 Act consultation, no real consideration was given to individual flats or maisonettes. There does not appear to have been any particularly logical reason for this, save perhaps for

the fact that the government of the day did not consider there to be enough middle-class voters involved to make the area worthy of attention at the time.

It was therefore not until the Landlord and Tenant Act 1987 (‘the 1987 Act’) that flat owners obtained any rights to acquire the freehold of their building.

The 1987 Act establishes a right of ‘first refusal’ for long-leasehold flat owners in certain circumstances where the landlord intends to sell the freehold.

As first enacted, the legislation is said to have been relatively unworkable and although there have been subsequent reforms, the 1987 Act is still not a popular statute. However, for all its faults, the position is now that the owners of long-leasehold flats in a block will generally have (subject to certain requirements as to the non-residential parts of the building not exceeding 50% of the internal floor area) a right either to purchase against a successful bidder at auction or, if the landlord wants to dispose for a fixed price, purchase the freehold subject to serving an appropriate Acceptance Notice and taking further steps.

The major legislative change affecting residential flat owners came into force on 1st November 1993 with the enactment of the Leasehold Reform Housing and Urban Development Act 1993 (‘the 1993 Act’).

Despite being the subject



of contentious debate during consultation and while passing through both houses, the right of flat owners to extend a long residential lease by 90 years on top of its unexpired term at a peppercorn ground rent was established, the price for a lease extension in such circumstances being determined in accordance with the valuation provisions of the 1993 Act.

This right to extend was initially subject to a qualifying period of ownership or residence, which has since been amended by the 2002 Act, so that now a flat owner only needs to have owned a flat for two years to qualify for this right.

The 1993 Act also made provision for purchase of the freehold to a building in certain circumstances by a qualifying number of the long-leasehold flat owners. Initially, 66.6 per cent of owners had to join in the giving of the notice, although changes brought in by the 2002 Act have reduced this to 50%. There were also originally residence criteria (which have now been removed)

“ Whilst the debate will continue to rage in relation to valuation matters the principle of enfranchisement and long leasehold residential property is now very firmly established in English law ”

and it is curious to note that while a flat owner must own their lease for two years to qualify for the right to extend it, the right to participate in a collective purchase of the freehold is not subject to any such restriction.

The 1993 Act has enshrined the rights of flat owners in a block either to purchase their freehold or extend their lease.

While the practical question as to whether, as a matter of law and public policy enfranchisement this should be permitted has now been decided (it was a hotly contested point during the passage of the 1993 Act), the area has been subject to further reform. The remaining frontiers of leasehold reform for flat

owners could be pushed back further and questions such as why a leaseholder wait two years to extend their lease and why can't an attorney or an agent sign a notice under the 1993 Act remain unanswered.

No doubt as time progresses and the legislative timetable permits, perhaps there will be yet further developments. However, as things stand (and while you might not immediately think this as a long leaseholder), compared to times past, 'you've never had it so good.'

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TIME LINE

A Short History of Leasehold Reform

1948

Jenkins Committee Report

1966

White Paper consulting on Leasehold Enfranchisement for Long Leasehold Houses

1967

Leasehold Reform Act 1967: gives rights to purchase the freehold or extend the lease of a house held under a long lease subject to qualification criteria

1987

Landlord and Tenant Act 1987: introduces right of first refusal

1993

Leasehold Reform Housing and Urban Development Act 1993 introduces the individual right of lease extension for flat owners, the collective right of freehold purchase (subject to conditions)

2002

Commonhold and Leasehold Reform Act 2002 relaxes the qualification criteria for lease extension, reduces the threshold for qualification for collective freehold purchase, introduces the right to manage

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