

# Leasehold enfranchisement

## Latest Update

28 October 2013

## Author(s)

Paul Letman - 3 Hare Court

Enfranchisement in property law terms refers to the rights of a tenant under a long lease to acquire the freehold, or an extended lease of their premises. Such rights were first introduced, not as a fillip to the London super-prime market, but to save miners in South Wales from the injustice of losing their homes at the end of their long tenancies. The first significant leasehold reform legislation that afforded such rights was the [Leasehold Reform Act 1967](#). This gave to a lessee of a house under a long tenancy the right to purchase the freehold of the house or to a 50-year lease extension.

The 1967 Act was seen by many as confiscatory, but a human rights challenge to the principle of enfranchisement failed in the seminal decision of the [James v United Kingdom \(A/98\) \(1986\) 8 E.H.R.R. 123](#). There followed the [Landlord and Tenant Act 1987](#), granting leaseholders of flats the right to acquire the freehold reversion to their flats in the case of management failure by the landlord. But by far the most significant developments came with the [Leasehold Reform, Housing and Urban Development Act 1993](#) ("LRHUDA 1993"), which extended enfranchisement rights to lessees of flats.

The 1993 Act grants two main rights. First, there is the right of a group of qualifying tenants of flats in a self contained building to acquire the freehold of their building and appurtenant property and common parts ([Collective enfranchisement](#)). And secondly, the right of qualifying tenants of individual flats who have owned their lease for at least two years (as originally enacted there was a residence requirement but this was abolished by the [Commonhold and Leasehold Reform Act 2002](#) ("CLRA 2002")) to extend their lease by 90 years. In each case the statute delimits the terms of acquisition and price to be paid. The key financial advantage of purchasing the freehold is the value obtained by paying only half of the marriage value. If agreement cannot be reached as to terms or price of the acquisition, an application can be made to the First Tier Property Tribunal to resolve the issues.

This article provides an introduction only to the two main Acts (1967 and 1993), their essential provisions and effect, and highlights along the way some of the more significant issues and difficulties that are likely to be encountered.

## Overview of Topic

1. **The Leasehold Reform Act 1967:** The 1967 Act was intended to confer on leaseholders of houses, held on long leases at low rents, the right to acquire on fair terms the freehold or an extended lease of their house. Originally these rights were limited to houses below certain rateable values, but these limits were gradually increased by statutory amendment and have since 1993 been almost entirely removed. Thus in essence, and subject to the detail of the Act as repeatedly amended, the entitlement to enfranchise or obtain a lease extension under the 1967 Act arises where there is (a) a tenant (leaseholder) (b) of a house (c) under a long lease (d) at a low rent. Considering these requirements in greater detail.

2. **Tenancy:** "Tenancy" for the purposes of the Act is narrowly defined to mean a tenancy at law or in equity, but not a tenancy at will nor an interest created by way of security (see [s.37](#)). It also excludes any tenancy where the letting of the house is ancillary to the letting of other land or premises or is of an agricultural holding or where the landlord is a charitable housing trust. As originally enacted the statute imposed a main residence requirement and a 3-year qualifying period of occupation in the last 10 years preceding the notice of claim. However, with two exceptions, the CLRA 2002 ([ss.138](#) and [139](#)) abolished the residence requirement as from 22 July 2002, so that a tenant of a whole house under a long tenancy for two years preceding the claim is now entitled.
3. The exceptions to the residence requirement are firstly where a lease is a business lease for a term longer than 35 years, and secondly where a flat forming part of a house is let to a person who is the qualifying tenant of the flat for the purposes of [Ch.1 or 2 of Pt 1 of the LRHUDA 1993](#). This last exception was introduced (by [s.1\(1ZB\)](#)) to address concerns that with the abolition of the original residence test would allow the headlessee of a house, whose interest might be limited to no more than a nominal reversion and ground rent, to exercise the right to enfranchise.
4. **House:** This requirement has proved in recent years to be one of the more controversial areas of entitlement. The basic definition in [s.2\(1\)](#), provides that:
 

" For the purposes of this Part of the Act, 'house' includes any building designed or adapted for living in and reasonably so called, notwithstanding that the building is not structurally detached, or was not or is not solely designed or adapted for living in, or is divided horizontally into flats and maisonettes."
5. The decision of the House of Lords in [Boss Holdings Ltd v Grosvenor West End Properties Ltd \[2008\] UKHL 5; \[2008\] 1 W.L.R. 289](#) concentrated on the purpose for which the building was originally designed, but left open questions over the extent of subsequent adaptation say for commercial purposes that might result in a building ceasing to be a house. These questions have now been recently considered in the conjoined appeals in [Day v Hosebay; Day v Hosebay Ltd \[2012\] UKSC 41; \[2012\] 1 W.L.R. 2884](#). In these cases the Supreme Court decided, contrary to indications in [Boss](#), that properties now used entirely for commercial purposes were no longer "a house reasonably so called", whatever their original design or current appearance.
6. **Long Lease:** As to the requirement of a long lease, the primary definition (as under the 1993 legislation, for which see below) is a tenancy originally granted for a term exceeding 21 years. However, a number of other types of tenancy are also included in the definition of a long tenancy such as perpetually renewable tenancies and shared ownership leases, as well making detailed provision for the inclusion of continuation and consecutive tenancies, and in certain cases concurrent tenancies ([s.1\(1ZC\)](#)). Provision is also made (see [s.1\(1ZA\)](#)) for the situation where a house is let under 2 or more tenancies, to ensure that it is only the most inferior tenancy that fulfils the qualifying conditions that will be entitled, to the exclusion of the superior tenancies.
7. **Low Rent:** Finally, consideration must be given to the low rent requirements. This is best understood chronologically, through the history of amendments to [s.1 of the 1967 Act](#). As originally enacted a tenant was only entitled to enfranchisement or an extension if at all material times his tenancy had been at a low rent (see [s.1](#) and further [Harris v Plentex, Ltd \(1980\) 40 P. & C.R. 483](#)). By a further sub-section to [s.1](#) introduced under [Ch.III of Pt 1 of the 1993 Act](#), rights under [s.1 of the 1967 Act](#) were extended with effect from 1 November 1993 to tenancies at higher rents and with higher rateable values. By further amendment to [s.1](#) with effect from 26 July 2002 (save for one minor exception) the requirement that the tenancy should be at a low rent was abolished by [s.141 of the CLRA 2002](#). Finally the low

rent test has been abolished altogether for tenancies granted after the commencement of [s.300 of the Housing and Regeneration Act 2008](#) on 7 September 2009.

8. The detailed and differing tests for whether or not a tenancy is at a low rent is beyond the scope of any introduction to the topic. It is a critical issue, however, because depending upon whether a tenant qualifies for enfranchisement under the original or more relaxed subsequent tests, a different basis of valuation will apply.
9. **Valuation:** There are three different bases of valuation, contained in [ss.9\(1\)](#), [9\(1A\)](#) and [9\(1C\)](#) respectively, depending upon the sub-section of [s.1](#) under which the tenancy qualifies for enfranchisement. In summary, where the right to acquire the freehold arises by any one or more of the provisions of [ss.1A](#), [1AA](#) or [1B](#) or where the tenancy has been extended under [s.14](#) and the tenant's notice of claim was given after the original term date, the basis of valuation is [s.9\(1C\)](#). Where the former does not apply and the rateable and other financial limits for a [s.9\(1\)](#) valuation are exceeded, the basis is [s.9\(1A\)](#). In all other cases, effectively where the claimant is entitled under the 1967 Act as originally enacted, the basis is [s.9\(1\)](#).
10. The [s.9\(1\)](#) basis is unquestionably the most favourable so far as the tenant is concerned. It comprises a site valuation with a 50 year lease extension under [s.14](#), on the assumptions that:
  - a. the tenant and members of his family residing in the house are not buying or seeking to buy, so as to exclude any element of marriage value or hope value;
  - b. that there is no right to acquire the freehold (the no act world assumption); and
  - c. that the lease has been extended.
11. [Section 9\(1A\)](#) is the next most favourable basis, being an open market valuation of the house and premises without a 50 year lease extension but with a right for the tenant to remain in occupation, on the assumption that the tenant has no repairing obligations, but not excluding the special interest bid of the tenant and his family. Although in [Pitts v Earl Cadogan \[2008\] UKHL 71; \[2010\] 1 A.C. 226](#) the House of Lords decided that there can be no "hope value" in valuations under [s.9\(1\)](#) and also [s.9\(1A\)](#). A [s.9\(1C\)](#) valuation is the same as a [s.9\(1A\)](#) valuation save that no account is taken of the tenant's security of tenure at the end of the lease, and compensation may be payable to the landlord under [s.9A](#).
12. The actual valuation is a fertile ground for dispute, from yield and deferment rates to cleared house or the more usual standing house valuation principles and prices. The guidance in [Sportelli](#) is a key starting point for some of the issues on rates (see further below) as well as in the case of a [s.9\(1C\)](#) valuation the assessment of marriage and hope values. The recent decision of the lands tribunal in [Clarise Properties Ltd. Re \[2012\] UKUT 4 \(LC\)](#) also provides essential direction on the correct approach to a [s.9\(1\)](#) valuation, in its move away from a 2 stage valuation in favour of a three-stage approach including the so-called "Haresign" addition (see [Haresign v St John's College \(Oxford\) \(1980\) 255 E.G. 711](#)). Plainly though the valuation is a matter upon which expert valuation evidence is required.
13. **Exercising the Claim:** A tenant who wishes to exercise his right to claim the freehold or an extended lease of his house, must serve on his landlord a "notice of leaseholder's claim." The notice must be in Form 1 as prescribed by the [Leasehold Reform \(Notices\) Regulations 1997/640](#), or a form substantially to the like effect. The notice must make clear whether the claim is for the freehold or extended lease (they cannot be claimed together or in the

alternative). The notice must also contain the detailed particulars indicated by the Form including details of the house, lease and basis of entitlement.

14. Inaccuracy in the required particulars does not invalidate the notice, but a complete failure to provide any one of the required particulars will probably do so (see the contrasting decisions in [Speedwell Estates Ltd v Dalziel \[2001\] EWCA Civ 1277; \[2002\] H.L.R. 43](#) and [Earl Cadogan v Strauss \[2004\] EWCA Civ 211; \[2004\] H.L.R. 33](#)). My experience is that the notices are often replete with errors and missing information, and preparation of the notice is probably not something for the uninitiated. A notice must be signed by the tenant or a duly authorised agent and should be served on the freeholder (though service on any intermediate landlord will suffice (see 1967 Act [Sch.3 para.8\(1\)\(a\)](#))), with copies to any other persons believed to have an interest in the property superior to the claimant.
15. The notice can be served at any time during the continuance of the long tenancy (including any period of statutory extension, see [s.3\(2\)](#)), unless the tenant has previously given a notice terminating his tenancy and no new tenancy has arisen, there is an agreement for a future business tenancy or the notice is served more than 2 months after a landlord's notice terminating any statutory continuation (though see also the refinement to this at [Sch.3 para.2\(1\)](#)).
16. The 1967 Act makes provision for the landlord to serve a Notice in Reply, and there is a prescribed form for this (or again a form substantially to the same effect may be used). Where the landlord wants to object to the inclusion or exclusion of any premises the subject of the claim (subject to any claim for possession), the landlord should (see [Sch.3 para.7](#)) be sure to do so, or reserve his right to do so, with or before his Notice of Reply. But apart from protecting his position in this regard a landlord's failure to serve a Notice in Reply will generally have little if any adverse consequences for him; in contrast with the position under the 1993 Act considered in detail below.
17. The effect of a valid tenant's notice is that the landlord and the tenant become contractually bound respectively to grant and accept either the freehold or an extended lease as appropriate ([s.8\(1\)](#)). The 1967 Act and the Regulations made under it prescribe in detail the terms and conditions of acquisition, the estate to be conveyed, the purchase price (as discussed above) as well as the liability for the costs of the enfranchisement process. Whilst those matters are worked out (and it is beyond the scope of this article to detail every aspect of the same) it is important to note that as an essential first step, the statutory contract created by service of the tenant's notice should be protected by registration under the [Land Charges Act 1972](#) or [Land Registration Act 2002](#) as appropriate.
18. **The 1993 Act - Qualifying Premises:** As regards collective entitlement under [Ch.I](#) of the 1993 Act, the right under [s.1](#) applies to premises: (a) That consist of a self contained building or part of a building, (b) That contain 2 or more flats held by qualifying tenants, and (c) Where the total number of flats held by qualifying tenants is not less than 2/3rds of the total number contained in the premises. In short, therefore, the (relevant) premises under the Act, despite the rather opaque definition of these, are the self contained building or part of a building to which the Act applies and which in due course when made the subject of an initial or tenant's notice become the "specified premises".
19. The main exclusions are set out in [s.4](#) which provides that collective enfranchisement under [Ch.1](#) does not apply to any building or part of a building where:
  - a. The non-residential parts of the building or part taken together, excluding the common parts and any part of the premises in question such as a garage or storeroom used in conjunction with a particular dwelling contained in the premises, exceed 25% of the internal floor area of the whole of the premises ([s.4\(1\)-\(3\)](#)):

- b. Different persons own the freehold of different parts of the building or part of a building in question and any of the parts separately owned is itself a self-contained part of a building within the meaning of [s.3\(1\)](#) (see below) ([s.4\(3A\)](#) refers), and
  - c. Where the premises in question have a resident landlord and do not contain more than 4 units ([s.4\(4\)](#)).
20. To be a self-contained building, the building must be structurally detached ([s.3\(2\)](#)). To be a self contained part of a building, the part must satisfy the following requirements:
- a. Constitute a vertical division of the building and the structure of the building must be such that that part of the building could be redeveloped independently of the remainder of the building, and either
  - b. the relevant services provided for the occupiers of that part by means of pipes, cables or other fixed installations, are provided independently of the services of the remainder of the building, or
  - c. the relevant services provided for the occupiers of that part could be provided independently without involving the carrying out of any works likely to result in a significant interruption in the provision of any such services for the occupiers of the remainder of the building.
21. Disputes concerning the vertical division of a building or the degree of ease with which electrical and plumbing and like services can be separated are not uncommon, but are normally capable of resolution by agreement. As to vertical division, flying freeholds are obviously excluded. Indeed it is likely that any more than de minimis overlap between premises will exclude the potential for enfranchisement (see [Maleness v Howard de Walden Estates Ltd \(No.2\) \[2003\] EWHC 3106 \(H\); \[2004\] 1 W.L.R. 862](#)). As regards the provision of services, HHJ Marshall QC provided some helpful guidance in [Oakwood Court \(Holland Park\) Ltd v Daemon Properties Ltd \[2007\] 1 E.G.L.R. 121](#). She propounded a common sense five-point approach, but this will often be an elementary issue on which it is as well to take expert and legal advice.
22. Importantly, in addition to the building itself, the right to collective enfranchisement extends to appurtenant property demised by the lease held by a qualifying tenant of a flat in the relevant premises ([s.1\(3\)\(a\)](#)). Appurtenant property in relation to a flat means any garage, outhouse, garden yard or similar belonging to or usually enjoyed with the flat (see [s.1\(7\)](#)). Further, the right extends to common parts used by any qualifying tenant under the terms of his lease, whether those parts are contained in the relevant building or not. Although, in the latter case the freeholder may elect to retain ownership, provided permanent rights equivalent to those enjoyed on the relevant date are granted over the same or other property.
23. Pursuant to [s.2](#), the right to collective enfranchisement encompasses also intermediate leasehold interests and the leases of any common parts or appurtenant property (as referred to above), although provision is made to exclude the acquisition of intermediate leasehold interests held by public sector landlords. If it were otherwise, any secure tenant or introductory tenant of a flat would lose their security of tenure.
24. In the case of lease extensions of course the above issues do not arise. [Chapter 2 of Pt I of](#)

[the 1993 Act](#) simply confers on a tenant who has been the qualifying tenant of the flat for the last 2 years (see [s.39](#)) the right, exercisable subject to and in accordance with that Chapter, to acquire a new long lease of the flat extended by 90 years on payment of a premium determined again in accordance with that Chapter. Where a flat means (according to the [s.101](#) definition) a separate set of premises (whether or not on the same floor) which forms part of a building and which is constructed or adapted for use as a dwelling, and either the whole or a material part of which lies above or below some other part of the building.

25. **Qualifying Tenants:** As well as identifying the qualifying premises (as above), the qualifying tenant/s must be determined. Under [Ch.1](#) the matter has been simplified by the abolition of any residence requirement (by the [CLRA 2002](#), with effect from 26 July 2002). Now under [Ch.2](#) a "tenant of a flat" will have the right to acquire a new lease of that flat on payment of a premium determined in accordance with that Chapter, where the tenant has for the last 2 years been a qualifying tenant (as defined above) of the flat. The particular issue that has arisen here, however, is whether the lessee of premises such as a block of flats which includes property other than the flat (for example shops or offices) for which a lease extension was claimed, could be the qualifying tenant of that flat or any of the flats comprised in those premises. The issue came to the House of Lords in the leading case of [Howard de Walden Estates Ltd v Aggio \[2008\] UKHL 44; \[2009\] 1 A.C. 39](#), which combined 2 appeals, one by the Cadogan and the other by the Howard de Walden estates.
26. In both appeals, the whole (or most) of a self contained building converted into a number of self contained units, was let under a headlease. In Cadogan, the building had six storeys, of which the lower 3 were used as offices, which were in part underlet, and the upper 3 consisted of a maisonette which had been the subject of an assured shorthold tenancy but was currently vacant. In Howard de Walden, the five storeys of a building had been converted into self-contained residential flats, of which the upper three were subject to long underleases, and the lower 2 were let out on ASTs.
27. In each case the headlessee served a notice on the freeholder pursuant to [Ch.2](#); in Cadogan to acquire a new lease of the maisonette which was itself accepted to be a flat for the purposes of the 1993 Act, and in Howard de Walden, to acquire firstly a new lease of the ground floor flat (within the headlease), and subsequently a new lease of the basement flat. In each case the freeholder served a counter-notice denying that the headlessee was a qualifying tenant of the flat concerned.
28. Thus in one case the property apart from the flat was offices and in the other the property apart from the flat was other flats. Accordingly, in Cadogan, the freeholder argued that a lessee cannot be a "qualifying tenant of a flat" if his lease includes property other than "flats" within the meaning of the 1993 Act. Whilst in Howard de Walden, the freeholder contended that a lessee cannot be a "qualifying tenant of a flat" if the premises demised by his lease consists of a building which includes a number of flats.
29. The prima facie construction of [s.39](#) of the Act could readily be resolved against the freeholders; their strongest arguments were based on the practical difficulties that would arise if the section was not limited to the singular ownership of a flat and that having regard to those matters it was clear the legislature did not intend or envisage lessees such as the appellants being qualifying tenants for the purposes of [Ch.2](#).
30. The practical difficulties are indeed compelling. For example, if a headlessee of a block could be a "qualifying tenant" of a flat within that block (perforce not the subject of an long occupational lease), the LVT would find itself having to draft a new long lease from scratch. Further, even if the deemed surrender of the old lease and re-grant of the new extended lease in substitution for the old (under [s.56](#)) could be read as restricted to the flat in respect of which the extension is claimed only, this would lead to a patchwork of ownership, in the sense that after the grant of the new lease, the freehold would be subject to 2 immediately

derivative interests, the new lease of the flat and the original headlease covering the whole of the block other than the particular flat.

31. It was also pointed out that there was no obvious mechanism under the Act for apportioning the rent under the original headlease. Further, the new lease would not automatically acquire rights over the common parts, and there would seemingly be a very odd service charge regime, under which, at least in the normal case, the new lease would place no repairing obligations on the freeholder and no service charge liabilities on the new lessee until the headlease expires. Lord Neuberger, however, steered his way through these difficulties, confident that they could be resolved by the LVT, and hence decided in favour of the claiming lessees. The decision has led to many headlessees seeking to extract value from their headleases where previously they had thought there was none, or had been too cautious to try. The complex drafting issues involving two part leases, with differing provisions for the remainder of the original term and the extended term are matters upon which it is imperative to seek legal assistance.
32. **Exercising the Claim:** Subject to entitlement as discussed above, a claim to exercise the right to collective enfranchisement under [Ch.1](#) with respect to any premises is made by the giving of an initial notice pursuant to [s.13](#) by a sufficient number of qualifying tenants (a number not less than half of the total number of flats). The claim under [Ch.2](#) is initiated by a single tenant giving a tenant's notice pursuant to [s.42](#). Getting these notices right is absolutely essential, since they will generally be invalidated by any failure to include all the required information (as to the savings under [Sch.3, paras 15](#) and [16](#), see below).
33. Thus in preparing the notice it is necessary slavishly to follow the provisions of [s.99](#) which provides the notice must be in writing and may be sent by post (as well as making detailed provision for the address for service) and [ss.13](#) or [42](#) as the case may be and other requirements of the 1993 Act. The best advice therefore is to use one of the standard forms provided by legal stationers, and fill in all the boxes. Certainly a valid section 13 notice must contain the following:
- a. A Plan: The notice must specify and be accompanied by a plan showing the freeholder each of the 3 types of property to be acquired. A suitably clear plan such as the lease plan or Land Registry plan should, therefore, be carefully marked up with say a red line showing the building comprising the specified premises, a green line showing the appurtenant property, and a third coloured line showing any property over which is it proposed rights (specified in the notice) should be granted.
  - b. A Statement of Grounds: Rather pedantically but nonetheless crucially, the notice must recite the grounds upon which it is claimed that the specified premises are, on the relevant date, premises to which [Ch.1](#) applies. For this purpose it is necessary to revert to the terms of [s.3](#) and state that the grounds upon which it is claimed the Chapter applies, namely: (a) The premises consist of a self-contained building or part of a building, as appropriate, (b) Contain 2 or more flats held by qualifying tenants in that there are X number of such flats in the premises, and (c) That the total number of flats in the building is Y number such that the number of flats held by such tenants is not less than 2/3rds of the total number of flats contained in the premises.
  - c. Details of Leases to be acquired and Leasebacks: Thus the notice must specify any intermediate leasehold interests proposed to be acquired under or by virtue of [s.2\(1\)\(a\) or \(b\)](#) (see above). It must also specify any flats or other units which are covered by the mandatory leaseback provisions under [Pt II of Sch.9](#), namely all those flats let on secure tenancies or let by housing associations under tenancies other than secure tenancies.
  - d. The Purchase Prices: Crucially here, and this requirement must not be overlooked, separate prices must be specified for each of the different property interests which are

the subject of the claim, the freehold of the specified premises (separating this price if there is more than one freeholder), the price for the freehold of the appurtenant property, and the price for any leasehold interests to be acquired (as above). Although expert evidence is not absolutely required for this, the decisions in [Viscount Chelsea v Morris \(1999\) 31 H.L.R. 732](#); and [9 Cornwall Crescent London Ltd v Kensington and Chelsea RLBC \[2005\] EWCA Civ 324; \[2006\] 1 W.L.R. 1186](#) (albeit concerned with s.42 notices and counter- notices respectively) establish that the price must be realistic and proposed in good faith. The safest course, therefore, is to get a valuer on board at this stage to provide the prices.

- e. Details of the Qualifying Tenants and Leases: As stated at [s.13\(3\)\(e\)](#) the notice must specify the full names of all the qualifying tenants of flats contained in the building (not just the participators) and the addresses of their flats, and contain in relation to each of those tenants such particulars of their 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 commencement of the term. (But see the saving provisions discussed below).
  - f. The Name and Details of the Nominee Purchaser: The full name or names of the person or persons appointed as the nominee purchaser, and an address in England and Wales at which notices may be given to that person or persons.
  - g. The Counter-Notice Date: The notice must specify the date by which the freehold reversioner must respond to the notice by giving a counter-notice under [s.21](#). The date (as provided under [s.13\(5\)](#)) must be a date falling not less than 2 months after the relevant date. The relevant date (see [s.1\(8\)](#)) is the date the notice was given. That provision is understood to mean the date the notice was served, which for the purposes of the 1993 Act is (see [Viscount Chelsea v Hirshorn \[1998\] 2 E.G.L.R. 90](#)) the date the notice was actually delivered to the reversioner's address. The best advice must be, therefore, to give ample time for delivery plus the required 2 months; in practice I would recommend adding at least 14 days to the 2 months.
  - h. Copies: A statement (in accordance with [Sch.3, para.12\(2\)](#)) of the name/s of all other relevant landlords on whom copies of the notice are also being served.
34. The other essential requirement of any valid notice, be it [ss.13](#) or [42](#), is that the notice must be signed personally by each of the tenants by whom it is given (as required by [s.99\(5\)\(a\)](#)). If there are joint tenants, then they should each sign, given that they jointly constitute the tenant ([s.5\(4\)\(b\)](#) refers). If a company is signing the notice must be properly executed in accordance with what is now [s.44 of the Companies Act 2006](#). That is to say, by affixing its common seal, or by signature by two authorised signatories or by a director of the company in the presence of a witness who attests the signature. It is submitted that nothing less will do. Indeed in [St Ermins Property Co Ltd v Tingay \[2002\] EWHC 1673 \(Ch\); \[2003\] L. & T.R. 6](#) signature by an agent, even one holding a power of attorney, was held not to be sufficient.
35. The stringency of these requirements is only ameliorated in the case of any inaccuracy in the particulars of the leases required under [s.13\(3\)](#) or by any mis-description of any of the property to which the claim extends ([Sch.3, para.15\(1\)](#)). The decisions in [Viscount Chelsea v Morris \(1999\) 31 H.L.R. 732](#) and [John Lyon's Free Grammar School v Secchi \(2000\) 32 H.L.R. 820](#) establish that this is not a general saving. It does not apply to all the information required under [s.13](#), but only more narrowly to the particulars of each participating tenant's lease required under [s.13\(3\)\(e\)](#), i.e. sufficient particulars to show that they were entitled to exercise the right at the relevant date.
36. **Registration & Effect:** Once the initial notice (under [s.13 of Ch.I](#)) or tenant's notice (under



[s.42 of Ch.II](#)) exercising the right to collective enfranchisement or a lease extension, as the case may be, has been served (an initial notice must be served on all the relevant landlords including all those who responded to any request for information notice under [s.11](#) and a tenant's notice must be served on the landlord and any third party to the tenant's lease) it is again of paramount importance that the notice is immediately registered at the Land Registry. Unless this is done the initial or tenant's notice will be void for want of registration against any new purchaser of the freehold.

37. In the case of registered land the notice will need to be registered as an estates contract by way of a notice (rather than restriction) on the register (see [s.97\(1\)](#)). Land Registry requirements in relation to a notice under the LRA 2002 are set out in LR Practice Guide 27 (November 2008). The Guide indicates that it may also be desirable to register the initial or tenant's notice against the title of any intermediate landlord, and it is generally now accepted practice to do so. In the more unusual case of unregistered land, the notice is registrable under the [Land Charges Act 1972](#).
38. Whilst the initial notice continues in force, that is until a binding contract or vesting order is made, or the notice is withdrawn or deemed withdrawn or ceases to have effect (see [Poet's Chase](#) and [Goldeagle](#) discussed below) the 1993 Act makes provision to stop a freeholder or any other relevant landlord trying to strip the value out of their interests (section 19 refers). Thus the freeholder may not make any disposal severing his interest in the specified premises or in any property specified in the notice, for example by granting a 999-year lease of a caretaker's flat (see [Earl Cadogan v Panagopoulos \[2010\] EWHC 422 \(Ch\); \[2010\] 3 W.L.R. 1125](#)), and neither may any relevant landlord grant any further intermediate lease out of his interest. Equally, any contract to sell the whole or any part of the specified premises is suspended during the currency of the notice (see [s.19\(2\)-\(5\)](#)).
39. **Section 20 & the Counter Notice:** As soon as the initial notice is given the reversioner has the right under [s.20](#) within 21 days of the relevant date (being the date the initial notice is given, i.e. received) to give the nominee purchaser a notice requiring him, to deduce the leasehold title of any person giving the notice, so as the reversioner can verify that person is indeed a qualifying tenant of a flat contained in the specified premises.
40. The most important step, however, for the reversioner is the service of a counter notice. A counter notice should be given in every case by the date specified in the initial notice, to avoid being compelled (pursuant to [ss.25](#) or [49](#) as the case may be) to transfer the property on the terms set out in the initial or tenant's notice (albeit it has been suggested that the decision in [Willingale v Globalgrange Ltd \(2001\) 33 H.L.R. 17](#) where the Court of Appeal held that "may" meant "must" might be vulnerable to challenge under the [Human Rights Act 1998](#)). Any counter notice will need to state whether the reversioner/landlord admits the tenant/s right on the relevant date to exercise the right to enfranchise (a positive counter notice) or whether for such reasons as are specified in the counter notice the right is not admitted (a negative counter notice), and in either case state that the claim is opposed on the grounds, if it is the case, that the landlord intends to redevelop.
41. The difficulty that frequently arises in practice, however, is that the reversioner or landlord may dispute the validity of the notice on certain grounds, such as failure to provide all or some of the information required under [ss.13](#) or [42](#), whether or not it is the case that he admits or does not admit the right to enfranchise. Notably both [ss.22](#) and [46](#), although entitled "proceedings relating to the validity" of the notice do not cover such a challenge (the title is a misnomer), but are concerned only with the tenant/s right to exercise the right.
42. What should the landlord do? In practice I prefer the belt and braces approach of serving a negative counter notice without prejudice to the validity of the notice, with the covering letter to the notice reciting this and stating the grounds of challenge to the notice as well as the notice itself noting the grounds of challenge. Admittedly, the validity of a negative counter notice which simply challenges the initial notice rather than the right remains an open

question (see [Sinclair Gardens Investments \(Kensington\) Ltd v Poets Chase Freehold Co Ltd \[2007\] EWHC 1776 \(Ch\); \[2008\] 1 W.L.R. 768](#)), but it would be a brave tenant who did not make an application under [s.22](#) faced with such a counter notice.

43. It makes little sense in my view to serve a positive counter notice without prejudice to the validity of the initial or tenant's notice. This results in confusion, to the disadvantage of the landlord, because whilst the timetable for resolving disputed terms is running, leading to a possible application under [ss.24](#) or [48](#), the preliminary issue of validity has not been determined. Whereas in the case of a negative counter notice to an initial notice, the issue can be got on by way of counterclaim to the nominee purchasers [s.22](#) application or by a specific application by the landlord to the court under [s.90\(2\)](#). Under [Ch.2](#), the landlord can take the point in his application under [s.46](#).
44. **The Key Time Limits:** Once the initial or tenant's notice is served, crucially, there are a series of key time limits under [Chs 1](#) and [2](#), failure to comply with which will result in an otherwise valid notice being struck out or in the language of the Act "deemed withdrawn"; in addition of course to the tenant's rights under both chapters (see [ss.28](#) and [52](#) respectively) unilaterally to withdraw by "notice of withdrawal". The critical time limits under [Ch.1](#) may be summarised as follows:
- a. Reply to Request for Information under [s.20\(2\)](#); Unless within 21 days of any request for information under [s.20\(1\)](#) being given the nominee purchaser complies with that request the initial notice shall be deemed withdrawn at the end of that period ([s.20\(2\)](#) refers).
  - b. Negative Counter Notice; where the reversioner gives a negative counter notice stating that he does not admit the right to enfranchise or rely on redevelopment to defeat the same, the nominee purchaser must make an application to the court under [s.22\(1\)](#) seeking a declaration that they were so entitled and requiring the reversioner to give a further counter notice, and unless that application is made not later than the end of the period of two months beginning with the date the counter notice was given to the nominee purchaser the initial notice will be deemed withdrawn the end of that period of 2 months ([s.29\(1\)](#)).
  - c. Withdrawing Application; If such an application as above contesting a negative counter notice is made in time but withdrawn, the initial notice is deemed withdrawn on the date of withdrawal of the application ([s.29\(1\)](#)).
  - d. Terms of Acquisition; where a positive counter notice has been given, but the terms of acquisition remain in dispute at the end of the period of 2 months beginning with the date on which the counter notice or further counter notice was given, then unless within 6 months of the date on which the counter notice or further counter notice was given (i.e. a further 4 months from the end of the 2 month window to agree the terms) either the nominee purchaser or reversioner apply under [s.24\(1\)](#) to the LVT to determine the matters in dispute, the initial notice will be deemed withdrawn at the end of that period of 6 months ([s.29\(2\)](#)).
  - e. Again if the application under [s.24\(1\)](#) is made but withdrawn the initial notice is deemed withdrawn on the date of withdrawal ([s.29\(2\)](#)).
  - f. Terms Agreed/Determined; where following a positive counter notice or further counter notice all the terms of acquisition have been either agreed between the parties or determined by the LVT pursuant to the application under [s.24\(1\)](#) but no binding contract has been entered into by the end of the "appropriate period", that is: (a) where all the terms have been agreed, by the end of the period of 2 months beginning with the date all the terms were finally so agreed, or (b) where all or any of those terms have been

determined by the LVT, by the period of 2 months from the date when the LVT decision becomes final (see [s.101\(9\)](#)) or such further period as may have been fixed by the tribunal when making its determination, (c) unless the nominee purchaser or reversioner apply for a vesting order or deemed withdrawal order no later than the end of the period of 2 months beginning immediately after the appropriate period referred to above (2 months or as fixed by the LVT) the initial notice will be deemed withdrawn at the end of that further period of 2 months for making the application ([s.29\(2\)](#)). It is this guillotine that has received the most judicial attention, as discussed below.

- g. **No Counter Notice**; where no counter notice or further counter notice as ordered by the court is served in time, unless the nominee purchaser makes an application that the court under [s.25\(1\)](#) determine the terms of acquisition not later than the end of the period of 6 months beginning with the date by which the counter notice was to be given, the initial notice shall be deemed withdrawn at the end of that period ([s.29\(3\)](#) refers).
  - h. **No Binding Contract**; where a court has determined (as above) the terms of acquisition but no binding contract has been entered within the period of 2 months beginning with the date the court order determining the terms became final or such other period as the court may have fixed when making that order, the nominee purchaser may apply under [s.25\(5\)](#) for a vesting order and the reversioner can apply for an order that the initial notice shall be deemed withdrawn at the end of that period ([s.25\(6\)\(c\)](#) refers).
  - i. **No (Vesting Order) Application**; unless an application is made under [s.25\(5\)](#) for a vesting order or deemed withdrawal order (presumably by the reversioner) by no later than the end of the period of 2 months beginning immediately after the end of the 2 months referred to above for entering the binding contract, the initial notice shall be deemed withdrawn at the end of that further period of 2 months ([s.29\(4\)](#) refers).
  - j. **Terminating appointment of Nominee Purchaser**; unless within 28 days of a notice being given (under [s.15\(3\)](#)) by the participating tenants terminating the appointment of any person as the nominee purchaser or as one of the persons constituting the nominee purchaser (where that notice itself does not specify the new nominee) a further notice is given to the reversioner providing particulars of the new nominee purchaser the initial notice shall be deemed withdrawn at the end of that period of 28 days ([s.15\(10\)](#) refers).
  - k. **Resignation or death of Nominee Purchaser**; similar to the case of termination, where a nominee purchaser resigns or dies, the participating tenants have 56 days to provide the reversioner with particulars of the replacement nominee and unless they provide those particulars within that period the initial notice shall be deemed withdrawn at the end of that period of 56 days ([s.16\(8\)](#) refers).
45. Under [Ch.2](#), in so far as relevant these time limits are mirrored if not repeated. Thus under [s.46](#) where a negative counter notice is given not admitting the right or relying on an intention to redevelop, the landlord (here in contrast to the position under the [Ch.2](#)) has 2 months to apply to the Court disputing the tenant's notice and if he fails to do so within that time, or does so and then withdraws the application, he loses the right to oppose the terms of acquisition and the matter proceeds as if he had failed to give a counter-notice at all.
  46. Where a positive counter-notice is given, but any of the terms of acquisition remain in dispute after 2 months, either party can apply (under [s.48\(1\)](#)) to the LVT within the 6 months from the giving of the counter-notice for the matters in dispute to be determined, but if no such application is made the tenant's notice is deemed withdrawn ([s.53\(1\)](#) refers).
  47. Also following [Ch.1](#), where all the terms of acquisition have either been agreed or

determined, the parties have 2 months or such period as the LVT fixes to enter a new lease, and then a further 2 months to apply to the Court for the lease to be entered or, presumably only if it is the landlord applying, for the tenant's notice to be deemed withdrawn, and if no such application is made the notice is deemed withdrawn anyway ([s.53\(1\)](#) refers).

48. Further, there are similar provisions under [Ch.2](#) to those under [Ch.1](#) leading to deemed withdrawal, where the landlord fails to serve his counter notice or cannot be found ([s.49](#)). Thus there is the 6 months for applications to determine the lease terms where the landlord fails to serve a counter notice, a further 2 months to enter the lease, and a final 2 month window to apply for a vesting order. Additionally, in the case of Chapter 2 rights, if the tenant's lease is assigned without the benefit of the notice, the tenant's notice will also be deemed to have been withdrawn on the date of the assignment (see [s.43\(3\)](#)).
49. The significance of the withdrawal or deemed withdrawal is that no further notice may be served for a period of 12 months from the date of withdrawal or deemed withdrawal (see [ss.13\(9\)](#) and [42\(7\)](#)). Oddly, therefore, as in [Sinclair Gardens Investments \(Kensington\) Ltd v Poets Chase Freehold Co Ltd \[2007\] EWHC 1776 \(Ch\); \[2008\] 1 W.L.R. 768](#) it may be the tenants who end up arguing that their first notice was actually a nullity, given that as decided in that case they are not estopped from setting up the invalidity of their first notice and immediately serving a further initial or tenant's notice.
50. **Time Running:** In practice the time limit that appears to be the most problematic is the 2 months under (6) above; as demonstrated by the trilogy of cases [Penman v Upavon Enterprises Ltd \[2001\] EWCA Civ 956; \[2002\] L. & T.R. 10](#), [Sinclair Gardens Investments Kensington Ltd v Eardley Crescent No.75 Ltd](#) and [Goldeagle Properties Ltd v Thornbury Court Ltd \[2008\] EWCA Civ 864; \[2009\] H.L.R. 13](#). In [Upavon](#), the tenant's application to the LVT had invited it to determine both the price and terms of the transfer (there was an issue over the inclusion of an indemnity), but the LVT had determined only the price. The tenant then applied to the court within the 2 months from the LVT decision becoming final for a vesting order, whilst the issue over the indemnity remained unresolved. The Court of Appeal held that the application was premature, the LVT still had jurisdiction, subject to a possible (Henderson v Henderson) estoppel argument against the landlord, to determine the further issue over the conveyance which had been put before it but not decided.
- a. In [Eardley](#), HHJ Huskinson went further and held that the LVT could determine terms that were in dispute (not agreed) at a later hearing, even if the original application had only identified the purchase price and cost as being in dispute. He rejected the landlord's rabbit out of a hat argument. In [Goldeagle](#), the issue was again over when the terms of the transfer had been agreed. However, the terms of the transfer were not put before the LVT and the landlord argued that time ran from the date the LVT decision became final. The Court of Appeal held that there was nothing in the terms of [s.24](#) which prevented the LVT from dealing with unagreed points in stages.
- b. As Jacob LJ stated, "it makes no difference whether all the disputed matters are put forward in a single application with the LVT deciding them in succession or are put forward successively. Once an application is made to the LVT within time, the LVT remains seized of all matters in dispute." Thus although at one alarming point in the argument it appeared to be the case that the Court of Appeal agreed with the submission that time ran from when "all or any" of the terms of acquisition were determined by the LVT as referred to under [s.24\(6\)](#), ultimately, they accepted the views of LJ Arden in [Penman](#) that the controlling provision was the opening words of [s.24\(3\)](#), that time begins to run when all of the terms have either been agreed or determined.
- c. Thus the appropriate period does not start until the process of resolving all the terms of acquisition has been completed, and the "decision" for the purpose of [s.24\(6\)](#) is the last decision of the LVT in any case where it has given more than one decision. The important point in practice is that parties must be astute to make clear exactly what has

been agreed and what has not been agreed, so as to ensure that what is not agreed and remains in dispute is put before the LVT for decision (see Jacob LJ at para.28).

51. The LVT Application: The LVT application should, therefore, be drawn in suitably wide terms and care taken also in the statements of case to set out what is and is not agreed, and what remains for the LVT to rule upon. Under [Ch.1](#), the terms of acquisition mean the terms of the proposed acquisition relating principally to (a) the interests to be acquired (b) the extent of the property to which those interests relate or the rights to be granted over any property (c) the amounts payable as the price for such interests (d) issues of apportionment of conditions arising from severance of the reversion (e) the terms of the transfer. All these matters must be resolved. Thus, if the form of transfer has not been agreed, include a draft in the application to the LVT to flush out what needs to be determined.
52. Under [Ch.2](#), the terms of acquisition are the terms on which the tenant is to acquire the new lease of his flat, whether they relate to terms on which the tenant is to acquire a new lease of his flat or to the premium or any other amount payable by virtue of the valuation [Sch.13](#) or otherwise (see [s.48\(7\)](#)). To be clear though, the terms of acquisition do not include the form of the lease, given that the Regulations made under the 1993 Act provide a timetable following agreement or decision by the LVT for the preparation by the landlord of a draft form of lease and exchange of this travelling draft. However, beware the elephant trap here of negotiating the terms of the lease, whilst the 2 months after the end of the appropriate period expires.
53. Of course under both Chapters the most common basis of the application to the LVT is differences over the acquisition price. It is this that leads the parties into the realms of expert valuation, [Sportelli \[2006-2010\]](#), marriage value and hope value. The exact valuation exercise and determination of price is a matter for expert reports and evidence. But a few introductory comments may assist. Thus, taking for example the more complex case of Chapter 1 valuation, the matters that are now usually disagreed are the capitalisation rate and deferment rates to value the freeholder's current interest, and the relativity to be applied to agreed (virtual) freehold values for the flats to arrive a value for the tenants' current interest and marriage value.
54. Presently, many valuers take the view that the "default" capitalisation rate is 7%, but the rate is best determined by reference to market transaction evidence if available, resorting only if necessary to the (non-binding) decisions of other LVTs or the Lands Tribunal. With regard to deferment rate the debate is inevitably whether the binding guidance in [Sportelli](#) which determined rates of 4.75% for houses and 5% for flats in Prime Central London (PCL) should be disapplied or not in the particular circumstances of the case in question.
55. The favoured grounds for seeking to dis-apply [Sportelli](#) are reduced growth rate prospects looked at over the long term in the subject area compared with PCL, greater risks of deterioration and obsolescence, and particular management difficulties associated with the premises in question. Notable cases in this regard include the decision of the [Hildron Finance Ltd v Greenhill Hampstead Ltd \[2008\] 1 E.G.L.R. 179](#) refusing to disapply [Sportelli](#) to blocks of flats in Hampstead, and Kelton Court ([Zuckerman v Calthorpe Estates Trustees \[2009\] UKUT 235 \(LC\)](#)) determining a rate of 6% in a number of new lease claims in a block in Birmingham. Although the decision in [Daejan Investments Ltd v Benson \[2013\] UKSC 54](#) materially reduces the management risk for which allowance was made in Kelton.
56. The Upper Tribunal (Lands Chamber) has also now determined that where the unexpired term is less than 20 years, the Sportelli starting point of 5% should be adjusted to 5.25% for terms of 17.3 to 17.8 and 5.5% for terms of 15.6 to 16.1 years, to take account of pessimism over real growth rates. However, the decision did not consider terms of less than 10 years, and again in such cases different considerations may arise, some valuers

advocating a net rental value calculation over such a short term.

57. As regards relativity, evidence of sales will be preferred wherever possible over the industry graphs (see [Nailrile Ltd v Earl Cadogan \[2009\] 2 E.G.L.R. 151](#)). However, if graphs are to be used, it is better to look at the range of different graphs referable to the location and type of property in question, suitably updated, including the graph of graphs, which in many instances is the preferred choice.
58. **Conclusion:** As the discussion above reveals, enfranchisement is a highly technical and specialist area of property law. The entitlement to enfranchisement itself poses numerous complex issues under both the [1967](#) and [1993](#) legislation. Subject to entitlement it is then important to comply with the statutory requirements for any claim notice, to avoid potential challenges and findings of invalidity. It is no less important also to meet the numerous statutory time limits, particularly under the 1993 Act so as to avoid the punitive consequences that can result. In addition, there are the considerable complexities of determining the purchase price on the many different bases applicable under the various legislative provisions. The need for expert legal and valuation advice at every stage of the process whether under the 1967 or 1993 Act is inevitably, therefore, difficult to avoid.

## Key Acts

[Leasehold Reform, Housing and Urban Development Act 1993](#)

[Leasehold Reform Act 1967](#)

## Key Subordinate Legislation

None.

## Key Quasi-legislation

None.

## Key European Union Legislation

None.

## Key Cases

[Nailrile Ltd v Earl Cadogan \[2009\] 2 E.G.L.R. 151](#)

[Daejan Investments Ltd v Benson \[2013\] UKSC 54](#)

[Zuckerman v Calthorpe Estates Trustees \[2009\] UKUT 235 \(LC\)](#)

[Hildron Finance Ltd v Greenhill Hampstead Ltd \[2008\] 1 E.G.L.R. 179](#)

[Boss Holdings Ltd v Grosvenor West End Properties Ltd \[2008\] UKHL 5; \[2008\] 1 W.L.R. 289](#)

[Day v Hosebay Ltd \[2012\] UKSC 41; \[2012\] 1 W.L.R. 2884](#)

[Harris v Plentex, Ltd \(1980\) 40 P. & C.R. 483](#)

[Clarise Properties Ltd, Re \[2012\] UKUT 4 \(LC\)](#)

[Goldeagle Properties Ltd v Thornbury Court Ltd \[2008\] EWCA Civ 864; \[2009\] H.L.R. 13](#)

[Penman v Upavon Enterprises Ltd \[2001\] EWCA Civ 956; \[2002\] L. & T.R. 10](#)

[John Lyon's Free Grammar School v Secchi \(2000\) 32 H.L.R. 820](#)

[James v United Kingdom \(A/98\) \(1986\) 8 E.H.R.R. 123](#)

## **Key Texts**

None.

## **Further Reading**

None.