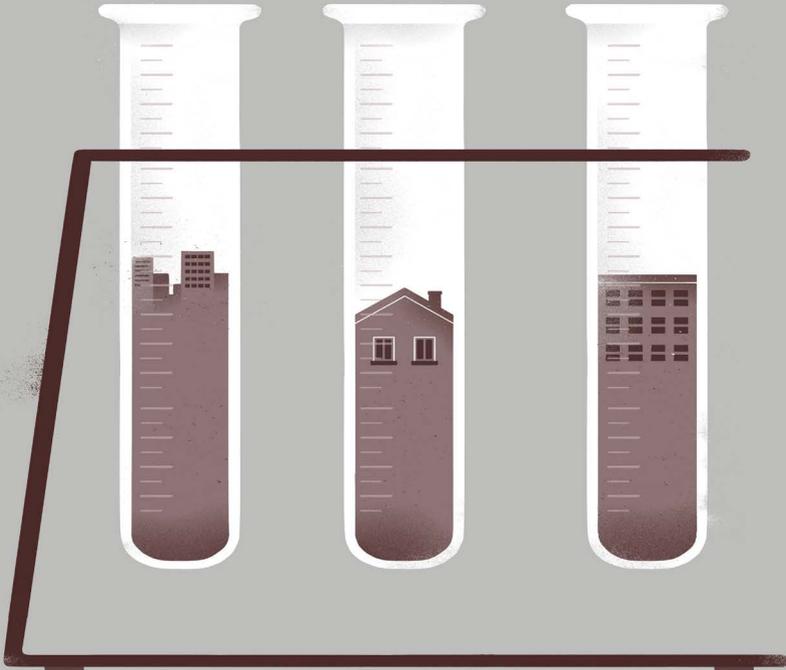


A Guide to Extending the Lease of Your Property

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Can I extend my lease?

If you can answer “yes” to the following questions, you will usually qualify for a lease extension:

- You own a long lease of a flat
- You have been registered at the Land Registry as the owner of the flat for at least 2 years.

STEP ONE: Before making the claim

Why should I extend the lease of my flat?

A lease is a depreciating asset. As the lease term diminishes so does its value. Furthermore, a lease with a short term loses its attractiveness on the open market because high street mortgage providers will often only lend against lease terms longer than 60 years. By extending the lease you will preserve your property’s value and marketability. The statutory procedure extends the lease term by a further 90 years and reduces any ground rent payable under the lease to a peppercorn, i.e. nothing.

How do I extend my lease?

To make a claim, a notice of claim needs to be served on your landlord. It should contain details of your existing lease and state your proposals for the new lease including the price you expect to pay for an extra 90 year term.

STEP ONE: Before making the claim

Before serving the notice we will identify the landlord who can grant the extended lease. We will also obtain copies of your lease and any supplemental documents and check that there is evidence to show that you have owned the lease for the required 2 year period.

In certain circumstances, it may be possible, when extending the lease, to request an amendment to the lease terms. We will review the lease to check for missing or defective terms to see whether any amendments might be necessary due to changes in the law or procedures since the lease was originally granted.

You will need to obtain professional valuation advice on the premium you might expect to pay for the new lease before serving the notice of claim. This is (a) for your benefit, so that you can make any necessary financial arrangements and (b) to ensure that the correct **premium** is proposed in your notice of claim to the landlord. If the proposed **premium** is unrealistic there is a danger that the claim might not be valid.

STEP TWO: Claim Procedure

Making the claim

Once we have reviewed the lease and collected the relevant information, we will draft the notice of claim and serve it on your landlord and any other party who might be affected by the claim (eg a management company).

Your landlord must be given at least 2 months to respond to the notice of claim. During that time, he is entitled to access the flat in order to value it and is entitled to request a deposit of 10% of the **premium** proposed in the notice. If requested, you must provide the deposit within 14 days.

Your landlord must reply to the notice of claim by serving a counternotice by the deadline stated in the notice of claim. If the landlord fails to meet this deadline, you may be entitled to a new lease on the terms set out in the notice of claim, subject to making an application to court within 2 months of the counternotice deadline.

Assuming that a counternotice is served, it will either deny that you have a right to a new lease or accept your right but set out counterproposals to the proposals contained in the notice of claim including the **premium**.

Usually, the claim will be admitted subject to the lease terms and **premium** being agreed. The **premium** proposed by the landlord will, in most cases, be much higher than the **premium** proposed in the notice of claim and it will be for the valuers to negotiate this. In most cases your solicitor will work with the landlord's solicitor to agree the new lease terms at the same time as the valuers are negotiating the **premium**.

What if I cannot agree the terms of the new lease or premium with the landlord?

If the parties cannot agree the **premium** or lease terms, either party may apply to the First Tier Tribunal (Property Chamber) ("the Tribunal") to hear the dispute and reach a decision. The application cannot be made until at least 2 months after the landlord's counternotice has been served.

Unless the new lease has already been granted, an application to the Tribunal must be made within 6 months of service of the landlord's counternotice. If not, the claim for the new lease will be deemed withdrawn.

If the claim is deemed withdrawn, you cannot make another claim until a period of at least 1 year has elapsed since the date of deemed withdrawal or until you have owned the flat for two years whichever is later (as below).

It is not unusual to make a protective application to the Tribunal well in advance, even where it is expected that the matter will settle, just to make sure that the 6 month deadline is not missed.

STEP TWO: Claim Procedure

What happens if an application to the Tribunal is made?

The Tribunal usually takes a few weeks to respond to any application and so this gives the parties more time to continue with negotiations. The Tribunal will send out a list of directions to the parties requiring them to meet and discuss their differences and will then set a hearing date. This helps to focus the parties' minds on resolving those issues still in dispute. As the hearing date gets nearer, we would look at instructing Counsel to represent you at the Tribunal hearing. The stage at which we would do this will depend upon the issues between the parties and whether there is any chance of settlement.

If the matter does not settle before the hearing date, the matters in dispute (i.e. the price or the terms of the new lease) will be heard by the Tribunal which will then issue its decision. There is scope to appeal the decision to the Upper Tribunal if the Upper Tribunal consents.

STEP THREE: What will it cost?

Cost

Once we have seen your lease, we will be able to give you an indication of our costs. However, in addition to your own costs, you will be responsible for your landlord's costs for his valuation of the flat and also his legal costs in considering the claim and granting a new lease.

If the Tribunal is needed to hear any matters in dispute, you do not have to pay the landlord's costs in relation to the hearing or preparation for it, but you will need to pay your barrister's fees and those of your valuer, assuming that it is the **premium** which cannot be agreed. These costs can be substantial which is why it is often advantageous for the parties to settle prior to the Tribunal hearing.

You may withdraw from the lease extension process at any time, however, you will always be liable for the landlord's valuation and legal costs up to the date of withdrawal. The landlord is entitled to deduct these from the deposit before returning the remainder (if any) to you. As mentioned above, if you withdraw from the process, you will be barred from making a claim for 12 months (or longer, if necessary, if you have only just acquired the flat). As the lease length decreases the premium for a new lease is likely to increase (see below).

How much is the premium?

The premium for the new lease is determined under a statutory formula. The landlord must be compensated for the loss of rent for the remainder of the current lease term, the loss of his **reversion** for the term of the extended lease and compensation for the loss in value of other property he owns. In addition, if the lease has under 80 years of the term left when the claim is made, you must also pay the landlord 50% of the **marriage value**.

The valuation for a lease extension is not the same as an open market valuation. We recommend that you instruct a valuer with specific expertise in this area.

Don't wait until your lease term is running out. The longer you wait, the more expensive it will become to extend the lease.

STEP FOUR: Completing the new lease

What will I get?

The landlord is required to grant you a new lease at a peppercorn rent which will expire 90 years after the date on which the existing lease ends, i.e. a 90 year extension. You are entitled to a lease on the same terms as the existing lease of the flat unless it is necessary to depart from those terms; for example, if a change in the law means that they are no longer suitable, or if the lease is defective in some way. Usually your new lease will be almost identical to your existing lease; however, on some larger estates, landlords do sometimes seek to impose a new standard form of lease which, although more modern, may contain many more onerous covenants. We will negotiate with the landlord to try to remove those terms and make sure the new lease is no more onerous than the current one. Where we are not successful, we will advise you of the implications and whether or not it would be worth asking the Tribunal to consider the issues.

Some additional lease terms are required by statute. When the new lease is granted it will contain a clause giving the landlord a right to repossess the flat for the purposes of redevelopment, but only where the proposed work could not be carried out without possession of the flat. This right does not arise until the end of the term of the existing lease and again at the end of the extended term and the landlord must make a court application to exercise it. If repossession is granted the landlord must pay the tenant full compensation for the flat in accordance with a statutory formula. This term will not affect your ability to mortgage or sell the flat.

How long will it take?

A claim can be completed in as little as 4 months where both parties respond promptly to correspondence and the new lease terms proposed by the landlord are reasonable. However, some cases can take up to a year or even longer if the parties are unable to agree the **premium** and lease terms. We would suggest that somewhere between 6-9 months would be about average for a claim.

Completing the new lease

Once the **premium** and the terms of the new lease have been agreed, either by the parties or by the Tribunal, the new lease should be completed within two months. However, either party can serve notice during that time for completion to be brought forward and for the lease to be completed within 21 days of that notice.

If the lease isn't completed within the initial two month period following the agreement of terms, either party can apply to the court within the next two months to have the claim struck out or to have the lease completed. In most cases, the lease will complete at some point within the four month period without such an application having been made. If it does not complete and no application has been made to the court the claim will be deemed withdrawn. In view of these time limits, if you need extra finance in order to pay the **premium**, you should address this in good time

STEP FOUR: Completing the new lease

Stamp Duty Land Tax (SDLT)

On completion of your new lease, you will need to pay **SDLT** on the **premium** and the relevant fee for registration of the new lease at the Land Registry. The new lease takes the place of the existing lease of the flat (which is automatically cancelled). Any mortgages will be transferred to the new lease.

Collective Enfranchisement

If, after you have made your claim but before your new lease is completed, a claim is made by a group of tenants in the building to acquire the freehold of the building, your lease extension claim (and therefore any time limits applicable to it) will be suspended until that claim for the freehold has been completed.

In the event that you have not joined in with the freehold purchase the new freeholder will still be bound by your claim for a new lease and it will be completed once the freehold purchase has taken place. The price that you will pay for your new lease will remain unaffected as the valuation date is set at the date of your original notice of claim.

STEP FIVE: Buying / Selling with a Short Lease

Buying or selling a flat with the benefit of a notice of claim.

If you wish to sell or buy a flat particularly where the lease term is nearing 80 years remaining, the selling agent may suggest a lease extension. There is no need for the seller to complete the lease extension process prior to any sale. Contract terms can provide for the seller to rely on his period of ownership and serve the notice of claim on the landlord prior to completion of the sale. The buyer will then purchase the flat with the benefit of the Seller's notice of claim and can continue to negotiate the premium and new lease terms with the landlord. The seller need have no further involvement with the claim once the sale of the flat has completed.

The tenant's ability to make a claim also passes to his personal representatives on death who may make a claim to extend the lease within 2 years of the grant of probate or letters of administration. They will then be in a position to sell or pass on a flat belonging to the deceased with the benefit of a lease extension claim.



This brochure is intended as a guide to the process of extending a lease.

For further information, or to make an appointment, please contact:

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Disclaimer:

This is a very basic summary of a complex area of law and taxation. It is not to be taken as legal advice. Before acting or omitting to act in relation to your UK tax position, you should always take specialist tax advice.

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