



LOSING YOUR ENTITLEMENT TO A NEW LEASE

Fleur Neale and **Shamin Kashem** outline the pitfalls for personal representatives and new owners

THERE ARE A NUMBER OF INSTANCES where a tenant can lose their entitlement under the 1993 Act to a new lease.

Below are two examples of such instances commonly encountered in lease extension applications which tenants (and their representatives) should be aware of:

PERSONAL REPRESENTATIVES

The 2002 Act extended the provisions of the 1993 Act by introducing a new right for a personal representative to make an application for the grant of a new lease of a flat on behalf of a deceased qualifying tenant.

This right is, however, subject to a time limit - in effect, any Notice of Claim seeking a new lease of a flat must be served by a personal representative not later than two years after the grant of probate or letters of administration. If a Notice of Claim is not served within this time period, then the right is lost and any new registered proprietor of the flat will be required to wait a further period of two years to become a qualifying tenant (and apply for a new lease).

This time limit is of particular

importance where a personal representative wishes to sell a flat held as part of a deceased's estate because in many cases an application for a lease extension will be required to improve a flat's marketability and ensure its sale.

A personal representative will therefore need to be aware of the time limit imposed by the Act regarding applications for new lease claims to ensure that the right for them to apply for a new lease is not lost and they correctly administer the estate and otherwise comply with their duty of care to any beneficiaries.

NEW OWNERS AND ASSIGNMENTS OF LEASE EXTENSION CLAIMS

Assignments of lease extension claims are quite common in the current property market where lenders require an extended lease term before providing a mortgage or where a tenant wishes to sell or transfer (e.g. as a deed of gift to son or daughter, or on separating/divorce) their flat.

A qualifying tenant is entitled to assign their claim for a statutory lease extension to a new owner. Upon the assignment, the new owner inherits their

predecessor's two-year ownership and completes the claim.

There are strict rules governing the assignment of lease claims and if a 'simultaneous' assignment of both the lease claim and the flat does not occur, the new owner could lose their right to a new lease and be required to wait a further two years to become a qualifying tenant.

This delay in re-qualifying could prove costly for a new owner because the price of a lease extension is partly dependent on the length of the lease, ie the shorter the lease is, the higher the premium paid.

Avoiding this scenario is especially important for flat leases with remaining terms of 80-82 years, where a delay in re-qualifying could see the lease drop below 80 years and the amount subsequently payable to the landlord for a new lease increasing significantly with the addition of a marriage value component to the premium payable.

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