

Buying the Freehold of your Building

Guidance for Homeowners

Introduction

Enfranchisement of flats

Typically, the freehold of the block of flats is owned by Southwark Council. In many cases this means Southwark Council as landlord is also responsible for managing and maintaining the building. Service charges are paid to Southwark Council to cover the cost of managing, maintaining and insuring the building. There may also be a separate third party management company who deals with this.

The individual flats are then let on long leases (typically 125 years). This means that the owners of the leasehold flats own that property for a fixed period of years only.

If you qualify, you can collectively buy the freehold of the building. This is known as Collective Enfranchisement.

Enfranchisement of houses

When you own a leasehold house, you own that property for a fixed period of years only. As time passes, the term remaining on the lease reduces and with it the value of the property. If your lease is short, you may have difficulty selling or mortgaging the property.

In Southwark, you may own an underlease house on the Dulwich Estate. If you qualify, you can buy the freehold of your building. This is known as Individual Enfranchisement.

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Sale of Freehold Reversionary Interest: A voluntary scheme for flat owners

Southwark Council operate a voluntary scheme to provide leaseholders with the opportunity to purchase the freehold of their building from the Council and take control of how the property is managed moving forward.

Qualifying Criteria

- your block must consist of leaseholders only. If there is a Council tenanted property within your block then this voluntary scheme is not available to you. You would need to check to see if you are eligible to proceed via the statutory route
- all leaseholders within the property must agree to purchase the freehold
- there is a maximum of 3 flats in the block
- there are no service charges, major works charges, or any other charge registered on the leasehold titles in favour of the Council. Or, if there are, you agree that these will be cleared in full on purchase of the freehold

Buying the freehold will result in the following:

- you will become your own landlord and will own a share of the freehold
- you and the other freeholders will gain complete control in how you want to manage your property. For example, deciding how and when you want to do repairs to the building and arranging cleaning and keeping the communal areas in good repair as may be required

The Process

We strongly advise that you instruct your own solicitors. The Council are unable to provide you with legal advice. If you would like to proceed with a voluntary application for the purchase of the freehold, you will need to do the following:

- e-mail us at HSG.Conveyancing@southwark.gov.uk confirming that you wish to apply under the voluntary scheme. Return the Sale of Freehold Reversionary Interest

application form. Your form should include the full names of all leaseholders and the address of the building

- pay the non-refundable administration fee of £362.00. The fee can be paid by using the Conveyancing Payments Form. Please include your Property Reference Number (PRN) as the reference when completing the form. This will ensure that we are able to credit your payment against your application

On receipt of the above, the Council will refer your application to our internal teams for their consideration and comments.

If the application is approved by internal departments, the Council will then instruct a Council Surveyor to value the property and negotiate a premium for the freehold interest with the leaseholders.

Once the premium is agreed and approval has been obtained from the Council's directors, the Council's external solicitors will be instructed to liaise with your solicitors to complete the matter.

Costs

As well as being responsible for your own legal fees, you will also be responsible for the following costs:

- non-refundable administration fee: £362.00
- valuation fee: £885.00
- the Council's legal fees: fixed fee of £412.10 + VAT and disbursements

Timescales

We anticipate this process to take approximately 6 months depending on the length of negotiations and the conveyancing process.

Things to consider

Please note that we will not consider your request if your service charge or major works accounts have not been maintained in accordance with your lease. We also insist that prior to completion all monies/charges owed to the Council are paid in full.

In addition, we require your written undertaking that whether or not this matter proceeds to completion, you will be responsible for the administration, valuation and legal fees if the application reaches the relevant stage as described in our costs summary above.

Collective Enfranchisement: A statutory process for flat owners

The Leasehold Reform, Housing and Urban Development Act 1993 states that leaseholders who own flats in the same building can collectively purchase the freehold provided certain criteria are met. The legal term for this process is Collective Enfranchisement.

Criteria

Under this legislation, provided you satisfy certain criteria, you can force the landlord to sell the freehold of the block to you.

The main criteria are as follows:

- the building must contain at least two flats held by “qualifying tenants” (leaseholders with long leases)
- the total number of flats owned by qualifying tenants in the block must be at least two thirds of the total number of flats in the block
- at least half of the qualifying tenants (or both where there are only two flats in the building) must take part in the collective enfranchisement
- importantly, if a person or company owns 3 or more flats in the building then they do not count as a qualifying tenant

Example

A residential block consists of 12 properties. If there are 9 leasehold properties and 3 Council owned properties, this would mean:

- the Building would qualify as at least two flats (9 in total) are held by qualifying tenants
- the total number of qualifying tenants in the block is 9. This would amount to $\frac{3}{4}$ (or 75%) of the total flats in the block
- at least 4.5 (rounded to 5) of the qualifying tenants must agree to take part in the collective enfranchisement

Statutory Process

You may serve on us a Section 13 Notice in accordance with the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) and proceed under the statutory route.

Upon receipt of the Notice, the Council will take the following steps simultaneously:

- instruct a Council Surveyor to carry out a valuation

- instruct the Council's external solicitors who will liaise with yours to conclude the matter

Costs

As well as being responsible for your own legal fees, you will also be responsible for the following costs:

- valuation fee: £885.00
- the Council's legal fees, which are charged at an hourly rate of £247.26 + VAT and disbursements (as recoverable under Section 33 of the Act)
- claim investigation fee: £362.00

Timescales

We anticipate this process to take approximately 6 months depending on the length of negotiations and the conveyancing process.

Buying the Freehold of your Building: FAQs for flat owners

Where can I find additional information about purchasing the freehold?

www.leaseholdadvicecentre.co.uk/buy-your-freehold

What does buying the freehold mean?

As a leaseholder, you are responsible for the maintenance and upkeep of the inside of your home as stated in your lease. When you buy the freehold, you (and any joint freeholders) will in addition be responsible for the structural maintenance and upkeep of the whole building i.e. communal areas, external walls, and roof.

What responsibilities will I have if I buy the freehold?

You will be responsible for organising your own:

- building insurance
- all repairs and maintenance for the building and any communal areas
- management of the building

Please note the above is not an exhaustive list and you must ensure your solicitor advises you regarding your responsibilities as a freeholder.

If I have already been advised by Southwark Council that they are planning to do works to the building, will they still go ahead with the works?

If you apply to buy the freehold, any proposed works will be removed from the programme and you will not have to pay (unless costs have already been incurred by the Council). However if major works have already started to your block, it may not be possible to cancel these works.

I am interested in buying the freehold but don't know how to contact the other leaseholders in the building as they don't live there. How do I contact them?

Where we have a correspondence address for a non-resident leaseholder, we will send them this information and letter upon your request.

If the property is let out you may wish to ask the residents if they could provide you with contact details of the landlord or pass on your contact details to the leaseholder.

What do all the leaseholders in the block need to consider in buying the freehold together?

You need to get together and discuss how you want to manage the building. Everyone involved should understand and agree on:

- what buying the freehold means
- whether or not you will instruct one solicitor to act on behalf of all of you or whether each participant wants to have their own solicitor
- how application, valuation and legal fees will be paid
- how you plan to manage the process and the property in the future, detailing what needs to be managed, when and how. Your solicitor should be able to provide information on participation agreements

What will buying the freehold cost?

The purchase price for the freehold will only be known following valuation of the property. However, online freehold calculators are a useful tool to get an estimate on how much it might cost you. A note of caution: online valuations are based on general information about properties and areas based on current market values. They won't take into account any potential development opportunities the building might have.

Will I need a solicitor?

Yes, you will need a solicitor to advise all leaseholders and manage the conveyancing process on your behalf. You should look for a solicitor who has experience in residential enfranchisement (buying the freehold).

Individual Enfranchisement: A statutory process for leasehold houses

Please note that the Council do not offer a voluntary process for individual enfranchisement. The statutory process must be followed.

Criteria

To qualify to purchase the freehold, both you and your house must meet certain criteria, which are as follows:

- in order for the building to qualify, it must be a 'house'. But, there must be no material over or under-hang with an adjoining building (if there is, then it is likely to be a flat); and
- you (the leaseholder), must have a lease of the whole house and it must be a long tenancy (i.e. a lease with an original term of more than 21 years); and
- you (the leaseholder), must have held the lease for a minimum of two years at the time of submitting your application

Statutory Process

You can apply to purchase the freehold, by serving a Notice on the freeholder and the Council under the Leasehold Reform Act 1967.

Upon receipt of the Notice, the Council will take the following steps simultaneously:

- instruct a Council Surveyor to carry out a valuation
- instruct the Council's external solicitors who will liaise with yours to conclude the matter

Costs

As well as being responsible for your own legal fees, you will also be responsible for the following costs:

- valuation fee: £885.00
- the Council's legal fees: fixed fee of £919.30 + VAT and disbursements
- claim investigation fee: £362.00

Things to consider

We strongly advise you to instruct solicitors to act on your behalf.

If the freeholder of the property is Dulwich Estate, it is advisable to make contact with them at the earliest opportunity. Their contact details are included below:

Address: The Dulwich Estate, The Old College, Gallery Road, London, SE21 7AE

Telephone: 020 8299 1000

Fees

Once you have applied via any of the processes listed above, you will be responsible for the Council's reasonable fees at each stage of the process, whether or not the matter proceeds to completion. This includes the administration fee / claim investigation fee, the valuation fee, and legal fees.

Contact Information

If you have any queries, please e-mail the Residential Conveyancing and Compliance Team at HSG.Conveyancing@southwark.gov.uk or call us on 020 7525 3338.