



## Guidance Notes

### Leasehold Reform Housing and Urban Development Act 1993 (as amended) Lease Extensions

If you have a flat held on a long lease, the 1993 Act may give you a statutory right to extend your lease by 90 years (ie 90 years in addition to the term currently remaining). The Act prescribes information that must be included in the Notice of Claim; if this is not followed the claim could be invalid. Therefore, if you wish to seek an extension you are advised to consult a solicitor or a surveyor who is familiar with the required procedures.

The Policy of The Portman Estate generally is to promptly process valid claims for such lease extensions subject to agreeing an appropriate price.

The process by which you can extend your lease can be summarised into a number of simple steps although, as advised above, we recommend that you take professional advice as this is for guidance only:

#### 1. Qualification – In terms of qualification:

- Your property must be a flat.
- Your flat must be held on a long lease (ie more than 21 years when granted).
- You must have owned the lease for more than 2 years.

#### 2. Process – Making the Claim

- The Notice of Claim (S42 Notice) must be served on the “competent” Landlord (various family trusts own the freehold of The Portman Estate but your solicitor will take care of this aspect of the application).
- At the same time, a copy of the S42 Notice must be served on any third party to the lease (eg a Management Company).
- A copy of the S42 Notice should also be served on any intermediate headlessee.
- The S42 Notice must include a realistic proposal as to how much you propose to pay for the lease extension putting forward separate figures for proposed payments to the competent landlord and each of the intermediate interests (if any).
- The S42 Notice must give a deadline date for the Landlord’s Counter Notice, which must be not less than 2 months from receipt of claim.

#### 3. Process – Validity and Counter Notice

- Our solicitors will investigate the validity of your claim, seek proof of title and request a statutory deposit from you (10% of the aggregate premium proposed in the S42 Notice).
- If you are an underlessee, you will need to arrange for a certified copy of your current underlease to be supplied to our solicitors.



- We usually instruct external valuers to inspect, to provide a valuation for the Counter Notice and to negotiate settlement to ensure we achieve the right price for the lease extension.
- The Counter Notice will say which of the S42 Notice proposals are agreed and will give counter proposals for those not agreed.

#### **4. Process - Disputes**

- If the extension premium (price) or other terms of the extended lease cannot be agreed, either you as the claimant or we as the Landlord may apply to the Leasehold Valuation Tribunal (LVT) for a determination. Effectively this provides a means of resolving any aspect that has not been agreed already.
- In this eventuality the LVT has no power to award costs to either party and so each party will bear its own costs whatever the outcome of the hearing.
- The LVT is empowered to impose a fine of £500 if either party acts frivolously.

#### **5. Legal Status on Completion**

If you are an underlessee of the Estate – that is, we are not your direct Landlord – by serving a formal Notice of Claim we will be able to grant you an extended lease notwithstanding the existence of the intermediate headlease. This is because, at the time of grant of the new extended lease, the existing headlease is momentarily assumed not to be in place. Thereafter, the intermediate headlessee remains your Landlord until his own lease expires.

#### **6. Other Important Factors**

- By serving the formal claim under the 1993 Act, you will be responsible for our reasonable legal and valuer's fees in connection with the extension claim (except the fees in relation to dispute settlement by the LVT where each party bears its own costs).
- It is possible for you to serve a Notice of Claim and subsequently to assign the benefit of that claim together with your current leasehold interest in that flat. However, the 1993 Act requires the assignment of the interest in your lease and the benefit of your claim to be legally concluded at the same time.

#### **7. Disclaimer**

This note has been provided as general guidance to assist you in considering a claim and should not be relied upon. Regulation surrounding residential lease extensions is complex and you should appoint at least a solicitor and a valuer to act on your behalf.

3 October 2006