



## Flat Owners Respond to Market Slow-Down By Buying Freehold

By Kat Callo

The slow down in the residential property market is prompting a growing number of flat owners to take special steps to boost the value of their homes. They are joining forces with neighbours to buy the freehold of their building, so they can later grant themselves 999-year leases and pursue related action to make their flats more valuable.

There are striking similarities between the consumer drive now gathering momentum in England to "collectively enfranchise", that is for leaseholders to compel their landlord to sell them the freehold of their building and to do so at a fair market price in a statutory timeframe, and the so-called "co-op" movement that emerged in New York in the 1970s. Back then, a change in tax regulations made it possible for renters to buy their apartment buildings. These owner-occupied "co-ops" soon became some of the best-managed, most desirable residential buildings in Manhattan.

The law that made Collective Enfranchisement easier and more accessible in England and Wales has been in force for over two years, but a surprisingly large number of leaseholders remain unaware of their right to compulsory freehold purchase. The Commonhold and Leasehold Reform Act 2002 removed an earlier restriction that banned buy-to-let and other absentee leaseholders, and company leaseholders from taking part in Enfranchisements. The Residential Property Tribunal Service, a quasi-judicial body whose Leasehold Valuation Tribunals decide on freehold prices in Enfranchisements, last year was swamped with some 2,500 applications from leaseholders, up from 861 in 2000. The RPTS expected last year's number to treble in 2005. Since a large majority of Enfranchisement initiatives are settled by negotiation before reaching an LVT hearing, these numbers actually represent only the tip of the iceberg.

It is easy to understand why leaseholders are Enfranchising. The value of a leasehold property diminishes as each year goes by. Once a lease has just 60 or 50 years left, it is difficult for would-be buyers to get a mortgage. When the lease's term dips down to 40 or 30 years, it can be tough for the leaseholder to sell it. By buying the freehold of one's building, residents not only gain 999-year leases, but they also secure control of management. This means they can put in place greater cost controls and demand more value for money from a managing agent. Many Enfranchisers succeed in boosting the value of their flats significantly within five years of completing the freehold purchase by upgrading the portage, replacing carpets in the front lobby and sprucing up the building's main entrance.

While the 2002 Act has resulted in a great increase in the number of Enfranchisements, there remain a few elements of the legislation that have not yet been implemented. In order for these to become enforceable, secondary legislation needs to be created. Some of this secondary legislation, ironically, is expected to create new delays in the freehold purchase process. Because of this, a number of leaseholders are rushing to Enfranchise before the secondary legislation is enacted in late 2005 or next year.

Buying the freehold has increased the value of many participants' flats and brought other benefits through the control of management, but Enfranchisement can be a difficult and sobering experience for the ill-prepared. One of the most common complaints by leaseholders is the lack of experienced qualified surveyors, solicitors and project managers to help them Enfranchise their building. A growing number of negligence cases have been filed in the past year by residents' groups against solicitors claiming falsely to have specialist expertise in Enfranchisement. Lawyers that have spent years handling Enfranchisement Notices on behalf of large landlords have described in horror the large percentage of Notices that are rendered invalid as a result of mistakes made by leaseholders' lawyers or surveyors. These mistakes can be costly for residents and can delay an Enfranchisement initiative by more than a year.

Leaseholders wanting to Enfranchise are advised to select their professional advisers carefully and to instruct solicitors, surveyors and project managers with a solid track record in Enfranchisement. Thoughtful preparation in the planning stage, before the resident management company is created and before an Enfranchisement Notice is served on the landlord, can eliminate much risk in a freehold purchase project. Joining forces with one's neighbours can indicate a communitarian aspect to Enfranchisement, but leaseholders need to remember they are pursuing a commercial venture and making a financial investment with other people in the building. Issues such as the status of non-participants should be raised early on, during a formal sign-up period, and before the Enfranchisement Notice is served. The more that leaseholders approach Enfranchisement in a professional and business-like manner, the more likely they are to avoid misunderstanding and conflict amongst residents later on.

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