

# Straining at the lease

It may be wise to buy your freehold, but the process isn't always easy, says Wendy Sloane

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After our first child was born, we decided to move. Our top-floor flat in London was crowded, and we were sick of lugging shopping up four flights of stairs. Plus, we wanted outside space for our growing family. But we had lived on our leafy road near Hampstead Heath for five years and didn't want to leave. We liked our neighbours and the local primary. So when we found a fourbed maisonette two doors down, we grabbed it. It had been gutted by wannabe developers, but it was light and airy with a big garden, so we paid £730,000 for a virtual shell on a lease with just 58 years left, dodgy electrics, no kitchen or plumbing, and damp.

The lack of facilities was the least of our worries: it has taken us years to first try to extend the lease, then buy our share of the freehold. We are now older, wiser and considerably poorer.

In theory, extending a lease or buying the freehold is easy. If a freeholder agrees to extend a lease and a price is agreed, it can happen almost straightaway. If not, you can formally seek an extension after owning the leasehold for two years.

“What you pay depends entirely on the price of the property and the length of the lease,” says Peter Haler, chief executive of the Leasehold Advisory Service, a public body that provides free legal advice on such issues. “If you can renew the lease before it dwindles to 80 years, it can probably be renewed for £3,000 or £4,000. If it goes under 80, it's an entirely different situation.”

Buying the freehold of a block of flats in league with other leaseholders — “collective enfranchisement” — should also be straightforward. “It is only when negotiations fail that the law provides an absolute right to force the issue,” says Haler. And even then it's not easy, as we discovered.

Why do either? “The primary reason is security,” says Gavin Buchanan, a partner in the leasehold reform division of Knight Frank, a nationwide estate agency. “The lease is a diminishing asset as the term gets shorter.” We, for example, were told that potential buyers of our flat could have difficulty securing a mortgage without a longer lease.

When we bought in 2001, our first mistake was to hire a solicitor who claimed to be a leasehold expert to handle the deal. It took him months just to locate the freeholder; his conveyancing fees were wildly inflated, and when we paid, he vanished.

Still, the flat was ours, even though we were skint. But we needed to extend our lease quickly, and the freeholder was an elusive elderly man, with a portfolio of freeholds, who was in no hurry to do this.

Living in one squalid room while renovating on a shoestring budget, we rethought our strategy. Given how hard it was to contact the freeholder, we foresaw problems if we needed to get his permission to carry out any structural improvements. The other two flats in the building had virtually identical short leases: why not all club together and buy the freehold? We could force a sale even if the freeholder wasn't willing (and he wasn't). To do so, we needed two-thirds of the flats to agree. The owner of the middle flat wasn't interested. Our upstairs neighbour was an ailing widow too ill to discuss it, but after she died, her son, who inherited her property, said yes.

By now, it was late 2002. My husband, Duncan, and I invited the freeholder to visit, hoping to talk him into selling. He wouldn't budge. Then came more bad news: the son who had inherited the upstairs flat saw a surveyor's estimate of the value of the freehold and decided to sell up entirely. For the two or so years it took him to settle his mother's estate, we were in leasehold limbo.

Then, in 2005, a developer bought the upstairs flat, spent months doing it up, and agreed to buy the freehold with us. After a third survey, we agreed a 50-50 split, and served notice on the freeholder of our desire to buy.

Things became even more fraught. Freeholders must respond within six months, or accept the suggested purchase price such notices include. Our freeholder, who was blind, billed us a huge sum for yet another survey, quoted an extremely steep purchase price with no supporting paperwork, asked that all letters be in Braille, and declared our notice invalid.

Our new solicitor told us to take him to court, a tactic Buchanan supports: "Threats of a court action may be sufficient to deter a freeholder from proceeding with blocking a freehold purchase, as sums can be reduced substantially if it goes to court." In our case, talk of court did make our freeholder more amenable, although his asking price stayed high.

By now, Duncan and I had extended our mortgage to cover the rising costs: there were legal fees, surveyors' fees and some of the freeholder's costs to pay. Just as we hit rock bottom, the freeholder and our property-developer neighbour had a heart-to-heart and agreed on a reasonable sum. It was in the nick of time for our bank balance, too, as we now had a third daughter.

So fairy tales can come true, although, in our case, it took six years — the purchase only went through a few weeks ago. We have paid £95,000 for our half share of the building's freehold and a total of £7,000 in costs — adding more than £200,000 to the value of our home in the process. The irony is that the cost of settling all this has been so high, we may soon no longer be able to pay the mortgage.

## **Know your rights**

- Lease extensions and collective freehold purchases can occur at any time if the freeholder agrees. If they don't, the Leasehold Reform, Housing and Urban Development Act 1993 grants leaseholders an absolute right to do either, if the lease in question was originally granted for more than 21 years and they meet certain conditions.
- First, hire a valuation surveyor (an estate agent's estimate of what the freehold might be valued at isn't good enough) and a specialist solicitor. The Leasehold Advisory Service (020 7374 5380; [www.lease-advice.org](http://www.lease-advice.org)) has lists for both.
- If a freeholder won't extend a lease, you qualify to have it extended after owning it for two years. All leases can have 90 years added at "peppercorn rent", but those with less than 80 years left to run also entitle the freeholder to a "marriage value" payment: a percentage of the property's enhanced value once the lease is extended.
- Buying a block's freehold with other leaseholders is called "collective enfranchisement". There must be at least two flats in the building, two-thirds must be leasehold, no more than 25% of the floor space must be in nonresidential use, and at least half the leaseholders must apply (or both if there are only two flats).
- In a stand-off, the price may be decided by a Leasehold Valuation Tribunal. The Leasehold Advisory Service carries previous decisions, so see what the freehold of similar properties has been valued at.
- The purchase of the freehold of a leasehold house is covered by the Leasehold Reform Act 1967. There are two ways to do it, and it is complex, so seek specialist advice.