

Collective Enfranchisement: Nuts & Bolts Completion and post-completion issues

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What are the issues?

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- SDLT
 - Other tax issues
 - The status of the nominee purchaser
 - Granting new long leases
 - Company law remedies
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Stamp Duty Land Tax



Section 74 of the Finance Act 2003:

- Exercise of right to collective enfranchisement is a **chargeable transaction**
- Calculate:

$$\frac{[\text{Consideration}]}{[\text{Number of qualifying flats}]}$$
 =
 Price at which rate is applied (quotient)
- **Danger** – using a company where the quotient is £500K+

Other tax issues - CGT



Surrender & re-grant will not be a chargeable gain provided:

- Transaction should be as if made between unconnected parties bargaining at arms-length
- Transaction not part of a larger scheme or series
- T does not get a capital sum
- Extent of premises stays the same
- Terms of the lease stay the same (ignoring trivial differences)

Status of freehold company

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Is there a trust? *NRC v Danilitskiy* [2017] EWHC 1431 (Ch)


- Recent incorporation – for sole purpose of holding title
- No other assets, operations or means
- Purchase monies provided by the person in control
- No evidence of a loan or capital contribution

NB – *Parkes v Wilkes* [2017] 4 WLR 123



Granting new long leases

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- Who?
 - What?
 - When?
 - How?
 - How much?
 - Tax?
- 

Scenario



- Block of six flats
 - Successful collective enfranchisement
 - All leaseholders are shareholders
 - Five flats get new 999 year leases for no premium
 - Several years later the sixth flat wants a new 999 year lease on the same terms
 - What does he do?
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Company law remedies



Unfair prejudice petition – section 994 Companies Act 2006

- Most likely to apply to small companies
- Usually requires exclusion from management

Directors' duties – sections 170 – 177

- Should inform decisions by directors of the freehold company

Derivative claim – section 260 & ff.

- But may not succeed if you cannot pass the threshold
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Lunch?

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