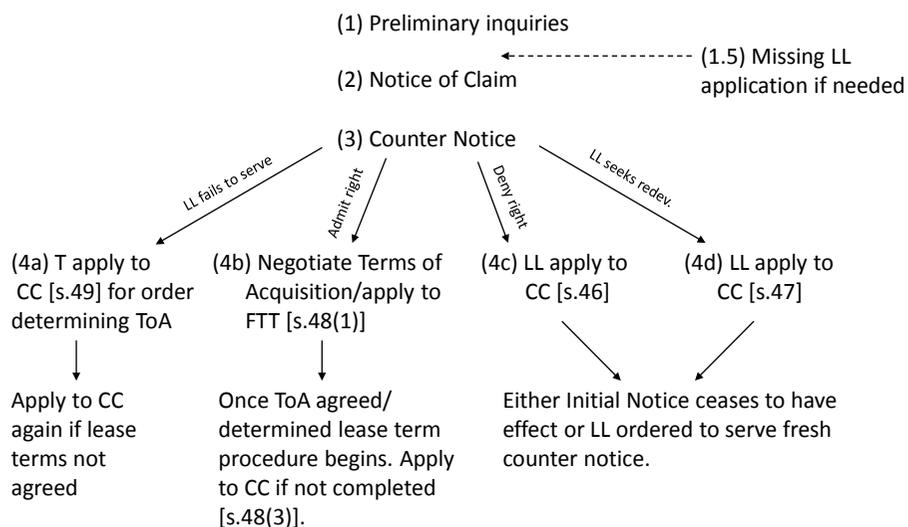


Property Law Nuts & Bolts Pt 2: Lease extension claims under the 1993 Act

Procedure: Opportunities and Pitfalls

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Overview



(1) Preliminary inquiries (section 41)

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- The tenant may need to ascertain “competent landlord” before serving notice of claim.
 - A notice under section 41 can be served on immediate landlord, or freeholder, or any other intermediate interest.
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(1.5) Missing landlord applications (s.50)

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- The Act requires that the competent landlord be served and the other landlords be given copies of the notice of claim.
Under section 50:
 - If competent LL cannot be found, T may apply to CC for a vesting order.
 - If other LL’s to whom notice must be given cannot be found, T can apply to CC for order dispensing with service.
 - Will have to persuade the county court that no further “proper” steps are required. The tenant will need evidence of advertisements and that enquiries have been made – in practice this will normally be via agents.
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(2) Notice of claim (section 42)

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- Requirements in s.42(3), Schedule 11 para 2,
 - Sufficient particulars to identify property to which claim extends
 - Sufficient particulars to identify original lease
 - Specify premium proposed to be paid (including for each intermediate interest)
 - Specify terms which T proposes should be contained in any new lease
 - Whether copies of initial notice have been given to other LLs
 - Date by which counter notice should be given



Section 42 Notices - validity

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- Questions of validity:
 - Inaccuracies in the s.42(3)(b) particulars (i.e. particulars of flat, lease) will not invalidate: schedule 12 para 9.
 - The proposal for premium must be a “*genuine opening offer as opposed to a nominal figure*”: **Westbrook Dolphin Square** [2014] EWHC 2433. (NB caselaw not straightforward)
 - Notice must give at least two months to respond: **Free Grammar School of John Lyon** [1999] 3 EGLR 49.



Section 42 Notices – validity (2)

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- As to lease terms, the proposal below was held to be valid in **Bolton v Goodwin-Austen** [2014] EWCA Civ 27, but if T knows that modifications are necessary in order to make lease mortgageable this should be specified at outset:

“The new lease’s terms should contain such modifications and amendments as the Landlord is entitled to under and/or as may be necessary to give effect to the requirements of Chapter II of Part I of the Act and without prejudice to the generality of the above such further reasonable modifications to be agreed.”



Registration and assignment

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- Other key practice points:
 - Critical to register notice. See **Regent Wealth Ltd v Wiggins** [2014] EWCA Civ 1078.
 - No fresh notice may be given so long as notice continues in force
 - Where T wishes to assign, care must be taken to ensure that the notice is assigned simultaneously with the legal transfer of the original lease, i.e assignment effective on registration.
 - If solicitor signs notice make sure that you can evidence authority to do so.



(3) Counter Notice (section 45)

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- The competent LL must respond with a counter notice which either:
 - Admits right to claim; states which of T's proposals are accepted; and makes any counter proposals.
 - Denies right to claim; or
 - Admits right to claim, but states that LL intends to redevelop.
- Other requirements
 - The counter notice must specify LL's address for service of further notices



Should LL challenge the initial notice?

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- Tips for LL
 - Is it worth challenging claim? Generally no point unless
 - There has been an assignment so purchaser would have to wait 2 years
 - Counter notice is challenged
 - Do not waive defect by demanding deposit
 - If LL wants to challenge notice of claim this occurs outside of the statutory procedure. It is not a claim under s.46. Will therefore need to serve a counter notice without prejudice to validity of the notice.



(4) Post notice procedure (sections 46-49)

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- No counter notice
 - Under s.49 T must apply to CC within 6 months to determine terms of acquisition. No subsequent procedure for determining lease terms – Hague advises re apply to CC.
 - Counter notice admitting right to bring a claim
 - Attempt to negotiate with other side; LL may ask for deposit of 10% of T's proposed premium;
 - Under s.48 either party may apply to FTT if terms not agreed after 2 months, within 6 months.
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Post notice procedure (2)

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- Counter notice not admitting right to bring a claim
 - Under s.46, LL must apply to CC within 2 months; if not made in time then as if no CN served at all.
 - Counter notice seeking redevelopment
 - Under s.47, LL must apply to CC within 2 months; if not made in time then LL has a further 2 months to serve a further CN.
 - If LL has also denied right to bring claim then this must be determined first.
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Procedure after terms agreed or determined



- Terms of acquisition must be either
 - Agreed or
 - Finally determined (and time for appeal expired)
 - Timetable for lease preparation (1993 Regulations)
 - Deemed agreement if time limits missed
 - Application to court essential if no lease 4 months after terms agreed or determined
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Termination and suspension (sections 52-54)



- Under s.52, T may withdraw claim at any time before the new lease is entered into, but will be liable for s.60 costs.
 - A failure to comply with the time limit in s.48(2) will bring about a deemed withdrawal, as will a failure to apply under s.48(3) within 2 months of the terms of acquisition having been agreed.
 - Under s.54 the notice of claim will be suspended if a collective enfranchisement claim is brought in relation to the same premises.
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