

**Property Law Nuts & Bolts**  
**Lease extension claims under the 1993 Act**

**The right to a new lease**

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**Landmark Chambers**  
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**Topics to cover**

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1. What is the right to a new lease?
  2. Who can exercise that right?
  3. What premises qualify for the right?
  4. Who is the right exercisable against?
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# 1. WHAT IS THE RIGHT TO A NEW LEASE?



## 1. What is the right to a new lease?

- If:
  - you are a qualifying tenant (Question 2)
  - of qualifying premises (i.e. a “flat”) (Question 3)
- Then: you have the right under Chapter 2 of the Leasehold Reform, Housing and Urban Development Act (“the 1993 Act”), upon payment of a compensating premium, to a **new lease** (in substitution for your existing lease) from your landlord (see Question 4) for a period of 90 years plus the remaining term of your existing lease, at a peppercorn rent.
- The premium compensates the landlord, among other things, for the loss of the rent for the remainder of the term



## The right to a new lease



Also known commonly as a “lease extension”.

Not to be confused with:

- (a) the right to acquire the freehold or lease extension if you are the tenant of a house (see Leasehold Reform Act 1967).
- (b) the right together with other qualifying tenants to collectively acquire the freehold under Chapter 1 of the 1993 Act.



## Why go for a lease extension?



- Unlike collective enfranchisement:
  - The lessee is not required to cooperate with neighbours.
  - The lessee doesn’t need to assume obligations of managing the building.
  - It can be exercised where there is no right to collective enfranchisement, e.g. too few qualifying tenants (or qualifying tenants are unwilling to participate) or greater than 25% commercial use.
- A group of qualifying tenants in collective enfranchisement can choose to exclude some neighbours—those excluded retain the right to a lease extension.



## 2. WHO CAN EXERCISE THE RIGHT TO A NEW LEASE?



### 2. Who can exercise the right to a new lease?

- You need to have been a “qualifying tenant” of the flat for two years prior to the date on which you give notice to the landlord of your claim for a new lease: section 39(2)(a).
- Before considering what a “qualifying tenant” is, note that:
  - Only legal ownership as registered proprietor for two years counts: *Wellcome Trust Ltd v Baulackey* [2010] 1 E.G.L.R. 125
  - But, an agreement for a lease is sufficient: section 101(2).
  - Not clear whether, if A+B are joint tenants, and then only A is a tenant, the period of joint tenancy counts in 2 years.



## Qualifying tenant

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- What is a “qualifying tenant”?
  - Tenant of a flat under a long lease: section 39(3)(a) and section 5.
  - A “long lease” most commonly is “a lease granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture or otherwise” (although see other options and detailed provisions in section 7).
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## Qualifying tenant

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- Can't be a qualifying tenant if:
    - Business lease - section 5(a).
    - Landlord is charitable housing trust – section 5(b).
    - See also section 5(c).
  - Unlike for collective claims, there is no limit on the number of the number of flats someone can be qualifying tenant of: section 39(3) (disapplying section 5(5)).
  - Joint owners are the “qualifying tenant”: section 5(4).
  - No longer a “low rent” requirement.
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## Death of qualifying tenant

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- If a qualifying tenant dies, then provided the deceased person had been the qualifying tenant of the flat for two years before his death, the right to a new lease is exercisable by his personal representatives: section 39(3A).



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## 3. WHAT PREMISES QUALIFY FOR THE RIGHT TO A NEW LEASE?



## Premises must be a “flat”.

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- “Flat” is defined in section 101(1) as meaning:

*a separate set of premises (whether or not on the same floor)—*

*(a) which forms part of a building, and*

*(b) which is constructed or adapted for use for the purposes of a dwelling, and*

*(c) either the whole or a material part of which lies above or below some other part of the building.*

- includes “any garage, outhouse, garden, yard and appurtenances belonging to, or usually enjoyed with, the flat and let to the tenant with the flat” when the notice seeking a new lease is given to the landlord: section 62.



## Flat

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- Not a flat if a serviced apartment booked through a centralised booking system: *Smith v Jafton Properties Ltd* [2013] 2 EGLR 104. Para 152: “*This provided places to stay similar to rooms and flats provided by hotels and aparthotels. In my judgment this kind of occupation is outside the scope of the [Act].*” Lack of sufficient degree of permanence for it to be adapted for use as a “dwelling”.



## Cadogan v McGirk [1996] 4 All E.R. 643

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- The question was whether the storeroom on the sixth floor formed part of the flat on the second floor. Millett LJ said:
- Maisonettes are included.
- "Separate" suggests both "physically separate" or "set apart" and "single" or "regarded as a unit".
- The definition is concerned with the physical configuration of the premises.
- The rooms which form part of the flat do not have to be contiguous.
- Many sets of chambers in the Inns of Court are physically divided by a common staircase and landing but they would be regarded as a single "separate set of premises".
- The question is one of fact and degree, and must largely be one of impression. The degree of proximity of any part of the premises which is not contiguous is likely to be decisive.
- What is decisive is the absence of any natural or physical relationship between the flat and the storeroom. The storeroom could equally well have been allocated to and let with any of the other flats; just as any of the other storerooms could equally well have been allocated to and let with the flat.

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## 4. WHO IS THE RIGHT EXERCISABLE AGAINST?

## Landlords

- In a claim for a new lease, who is the landlord? Section 40(1):

40.— (1) “the landlord” ... means the person who is the owner of that interest in the flat which for the time being fulfils the following conditions, namely—

(a) it is an interest in reversion expectant (whether immediately or not) on the termination of the tenant's lease, and

(b) it is either a freehold interest or a leasehold interest whose duration is such as to enable that person to grant a new lease of that flat in accordance with this Chapter,

and is not itself expectant (whether immediately or not) on an interest which fulfils those conditions.



## Landlords

- The “landlord” holds the lowest reversionary interest sufficient to grant 90 year extension.
- That “landlord” is the “competent landlord” (section 40(4)(b)), who conducts claim on behalf of “other landlords” holding shorter intermediate leases, subject to Schedule 11.
- Schedule 11 governs the extent of and limitations to competent landlord’s authority to bind other landlords.
- E.g. no liability for loss provided landlord acts in good faith and with reasonable care and diligence (Schedule 11, para. 6(4)).
- Other landlords can act independently by giving notice under para. 7 of Schedule 11.
- See *Kateb v Howard de Walden Estates* [2016] EWCA Civ 1176





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