

Collective Enfranchisement: Nuts & Bolts

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Participating tenants and agreements

Tom Jefferies
Landmark Chambers

Who are the participants?

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- s14 (1) the participating tenants are
 - a) in relation to the relevant date, the qualifying tenants by whom the initial notice is given; and
 - (b) in relation to any time falling after that date, such of those qualifying tenants as for the time being remain qualifying tenants of flats contained in the specified premises.
 - S13 Notice must be given by QTs of at least 50% of total number of flats in specified premises
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Restrictions on eligibility



- Must be registered proprietor unless new equitable lease
 - Cannot be QT if
 - own more than 2 flats – s6(5)
 - 2 leases with different landlords – s6(5)
 - Ineligible without permission of court if forfeiture proceedings pending (schedule 3 para 3)
 - Complex issues under schedule 3 if lease nearing expiry
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Participants are self-selecting...



Relevant factors

- Desire to extend leases
 - Price payable
 - Marriage value only payable for
 - Participating tenants
 - Unexpired terms no more than 80 years
 - Length of unexpired term
 - Management control
 - Solidarity
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Section 18 agreements



Section 18(1): If at any time during the period beginning with the relevant date and ending with the time when a binding contract is entered into in pursuance of the initial notice—

- (a) there subsists between the nominee purchaser and a person other than a participating tenant any agreement (of whatever nature) providing for the disposal of a relevant interest, or
- (b) if the nominee purchaser is a company, any person other than a participating tenant holds any share in that company by virtue of which a relevant interest may be acquired,

the existence of that agreement or shareholding shall be notified to the reversioner by the nominee purchaser as soon as possible ...

Dealing with changes to the participants



- Section 14
 - Assignment – requires the election of the assignee
 - Latecomers – requires approval of the existing participants
- No particular formalities to approval: see *82 Portland Place (Freehold) Limited v Howard de Walden Estates Limited* [2014] UKUT 0133(LC) – nominee purchaser had authority to approve on tenants' behalf.
- Death, personal representatives, bankruptcy and mortgagees.

A cunning plan...

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- Marriage value is only payable for those “persons who are participating tenants immediately before a binding contract is entered into in pursuance of the initial notice”: Schedule 6 para. 4(2)
- *Earl Cadogan v Cadogan Square Ltd* [2011] UKUT 154 (LC); [2011] 3 E.G.L.R. 127.

Participation agreements Why, when and who?

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- Why have one?
- When you know
 - The participants
 - The estimated price and costs
 - Means of funding
 - The tax implications
- Who?

Participation agreements Standard Provisions

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- Role and obligations of Nominee Purchaser
 - Warranties
 - Authority to sign notice
 - Participating Tenants' Covenants
 - Apportionment of premium
 - Grant of new leases
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Participation agreements Change of parties

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- Assignments
 - Including non-participants
 - Death
 - Withdrawal
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Participation Agreements Other Property

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- Non-participating flats, caretakers flats, roofspace
- Funding options
 - Price payable by all
 - Price payable by some participants
 - Loan and A shares
 - SPV
 - White Knight
- Agreements between NP and third parties disclosable under s18

Questions?

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