



Your Guide to
**Collective
Enfranchisement**

BONALLACK & BISHOP
SOLICITORS

The Enfranchisement Solicitors

For FREE initial advice about buying the freehold of your block.

Call our team on 01722 422300 or FREEPHONE 0800 1404544

Or email us at enquiries@bishopslaw.com





Your Guide to Collective Enfranchisement

This guide has been compiled to ensure that we use our many years of enfranchisement experience to help you make the right choice when looking for a Solicitor to help you.

Throughout this guide you will come across the phrases "freehold purchase", "collective enfranchisement" and "lease or leasehold enfranchisement".

Don't worry they all mean exactly the same thing.

FREE Specialist Phone Advice

We hope that you find this guide helpful, but if you have any questions please do not hesitate to e-mail our team enquiries@bishopslaw.com or call us on 01722 422300.

We will be happy to help you. www.leaseextensionuk.co.uk



About Us

Bonallack & Bishop are a Wiltshire and Hampshire based law firm.

We are one of a very small number of law firms with genuine lease extension expertise. We have a specialist team dealing with nothing but lease extension, lease enfranchisement and right to manage company work, on behalf of both landlords and flat owners.

We have over 25 years experience in lease extension work, during which time we have helped thousands of flat owners to extend their own leases throughout England and Wales.

We are members of the specialist group, The Association of Leasehold Enfranchisement Practitioners (ALEP).

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ALEP

ASSOCIATION OF LEASEHOLD
ENFRANCHISEMENT PRACTITIONERS



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8 Great Reasons To Buy Your Freehold

If you, along with a total of at least half of the qualifying leaseholders in your block want to buy the freehold of your building (and provided that a minimum of two-thirds of the flats are on long leases, originally granted for at least 21 years) then in general terms your freeholder has no choice but to sell the freehold to you.

But Enfranchisement is no cheap investment – so why bother to buy your freehold?

1 - Your asset stops deteriorating.

As the length of time left on your lease decreases, so does its value. It's a diminishing asset. You can, however, usually increase and at the very least stop the value decreasing by getting together with other leaseholders to buy the freehold of your block.

2 - You extend your lease for FREE:

Being part of an arrangement to buy the freehold means that you can then grant yourself a very long lease extension – as long as 999 years – without paying any premium.

3 - You pay no ground rent

When the new lease is agreed, the ground rent will be a "peppercorn rent" which means, in effect, you don't pay any ground rent at all.

4 - Enfranchisement increases the value of your flat

As well as the benefits of the 999 year lease, and freedom from ground rent, any flat where a share of the freehold is owned is far more attractive to any potential buyers.

5 - Control the management of your block

Purchasing the freehold through collective enfranchisement allows the leaseholders involved to take over the management and maintenance of the block. This usually allows them to avoid expensive service charges involved with hiring a management company and improve the quality of the blocks management too.

6 - Cut down on Service Charge Disputes

One of the most common reasons why leaseholders decide to buy their freehold stems from the desire to avoid arguments over service charges.

7 - Avoid restrictions on your lease

Often, leaseholders have to abide by conditions in their lease about not owning pets or carrying out certain repairs. When you buy a share of the freehold, you have the chance to have your lease rewritten and updated.

8 - Re mortgaging may become easier

This is because many banks and building societies feel that lending on a freehold property is less risky than lending on properties with a share of the freehold.





Now is the Right Time to Enfranchise

Whether or not the housing market is booming or struggling, now is almost certainly the right time for you to buy the freehold of your block.

Why?



1 – As the remaining term of your lease gets shorter, enfranchisement becomes increasingly expensive. In particular, once a lease drops below 80 years then an additional sum of money will become payable to your freeholder (called the "marriage value"). This sum can add significantly to the premium you will need to pay your freeholder as part of the cost of freehold purchase – and marriage value rises sharply as the remaining term of your lease gets shorter. So if your lease is getting near to that critical 80 year point, now is the right time to crack on with enfranchisement.

2 – The market valuation of your flat has a big impact on the premium you will need to pay to your freeholder in exchange for the purchase of a share in the freehold itself.

3 – So whether the housing market is strong and your flat continues to increase in value, or if the housing market is depressed and prices are not currently rising, but will as soon as the market recovers, NOW is the best time for you to exercise your right to enfranchise.

4 – Buying a share of your freehold can make your flat easier to sell.

5 – Exercising your right to enfranchise and granting yourself a 999 year lease will make your flat easier to mortgage. Many mortgage lenders have become increasingly reluctant to lend on short lease properties, often requiring a remaining lease term of 75 years or more, and their criteria seem to be growing increasingly tight.

6 – Unless you buy your share of the freehold and grant yourself a 999 year lease, or go for an individual lease extension your flat is diminishing asset. Eventually the lease will run out entirely and you will be left with nothing.



Do I Really Need a Solicitor

If you decide to buy your freehold, are you really going to need a Solicitor? Or can you do it yourself?



- Enfranchisement is very procedural and complex – and the legislation difficult to understand if you aren't a specialist lawyer with plenty of experience in this area.
 - The implications of missing deadlines during the process can be far-reaching, and it's not always easy to know when the deadlines are.
 - Your freeholder will almost certainly use a solicitor – so don't put yourself at a disadvantage by trying to do without specialist legal advice.
 - We have an expert team which can help you get together all the documents you need, can assist with all the paperwork including the formal notice, and can manage the process to make sure that your application hits all the required deadlines.
 - It can be tricky to find the correct, knowledgeable surveyor to conduct the valuation of your freehold purchase.
- Our team has good working relationships with specialised surveyors nationwide, and as part of our one-stop shop service, can help you with choosing the right valuer, and instruct them on your behalf.
- If you are looking to update unfair or badly drafted clauses of your existing lease, our solicitors will advise you of the legal effect of your proposed alterations and can draft the appropriate new clauses in your lease.
 - If negotiations fail and an agreement simply can't be reached with your freeholder as to the premium payable to buy the freehold, our solicitors have the expertise to both advise and represent you in any application to the first-tier Property Tribunal (previously known as the leasehold valuation tribunal or LVT) for a determination of that premium.
 - And finally, our solicitors will deal with those essential post-completion matters, such as registering the new block at HM Land Registry.



Alternatives to Enfranchisement

There may be any number of good reasons why you might be unsure about whether to go ahead with a freehold purchase.

Perhaps it is simply too expensive or perhaps its going to prove too difficult to initially get and maintain the involvement of enough of your fellow leaseholders to complete the enfranchisement process.

Either way there are two other options for you to consider, both of which can benefit you from some of the advantages of enfranchisement.

A. Lease Extension

What is a lease extension?

If there are any flats in your block with short leases, it can often prove more practical not to involve your fellow leaseholders, but instead to go down the statutory 90 year lease extension route using the same legislation that gives you the right to enfranchise (the Leasehold Reform, Housing & Urban Development Act 1993).

A single lease extension is certainly much simpler. Whats more, extending your lease does not, in any way, restrict your right to buy your freehold at a later date. On the contrary, extending your lease now, means that your share of the costs of a future collective enfranchisement will be much lower.

Often leaseholders think that extending their lease by 90 years is just as good as owning it permanently, given that they wont be expecting to be alive when the 90 years is up. But do remember – just extending your lease doesn't give you the same benefits as owning a share of the freehold.

Lease Extension or enfranchisement?

If its practically possible, then our advice is usually to go ahead with enfranchisement. The costs are likely to be greater, but the gain is significantly better.

However, especially with large blocks, the biggest hurdle is usually not just getting enough leaseholders to commit to the enfranchisement at the outset, but keeping them onboard throughout the entire process.

So in short our advice is simple;

- Small block – or confident that you can keep sufficient leaseholders committed to enfranchisement – buy your freehold.
- Looking to sell your flat soon, or concerned about the number of leaseholders you'll need to keep on board? Play safe for now and go for lease extension – which of course makes enfranchisement later, much cheaper for you.



B. The Right to Manage

What is the Right to Manage?

People who own flats have the legal right to force the landlord of the block to grant them the right to manage their block, assuming that they meet certain legal conditions.

Exercising your right to manage (or RTM) provides you and the other participating leaseholders increased control over the maintenance and development of your block.

In order to manage the block of flats, leaseholders have to set up a Right to Manage Company. This is sometimes called an RTM company for short.

Right to manage – Whats in it for me?

- Is your landlord or management company charging you too much given what they are doing in the block?
- Is the management company doing a poor job when it comes to maintaining your block of flats?
- As a group, do the leaseholders think that they can take over the management and do it cheaper and better?
- Do you simply want control over the management of your block?

You don't have to prove that the landlord isn't managing the block of flats properly or is in some way breaching his contract with you to be granted right to manage.

How much does exercising our Right to Manage cost?

You don't have to pay any financial compensation for taking over the right to manage. But you will need to pay:

- Your own legal costs
- The reasonable legal costs of your freeholder.
- The cost of setting up your Right to Manage Company

Right to Manage or Enfranchisement?

Just like enfranchisement the right to manage means getting the support of at least 50% of the leaseholder in your block

Whilst it's true that both enfranchisement and the right to manage, unlike lease extension, involve taking on responsibilities as members of the freehold purchase company or RTM company, there are big differences between purchasing the freehold and claiming the right to manage it – these include;

- Unlike freehold purchase, your freeholder is entitled to join the RTM company as a member, and depending on how your company is set up, your freeholder could have voting rights in the management of your block.
- Enfranchisement is more expensive – you are buying the freehold not just taking over the right to manage your block. The cost can mean that it's often much harder to get enough qualifying leaseholders on board for enfranchisement when compared to RTM – and this gets harder as the size of the block gets bigger.
- The financial benefits are much greater with freehold purchase. RTM doesn't allow you to grant yourself a long lease or avoid paying ground rent – and the increase in value of any flat following enfranchisement is much greater than after exercising your right to manage.
- RTM does not mean you own the freehold and so you won't be able to make changes to your lease.
- Under RTM you will only be able to manage the block in line with any provisions set out in the lease.



Enfranchisement

What Will It Cost?

One of the most common questions when talking about a freehold purchase project is just how much everything is going to cost.

The problem with giving a straight answer to this is that there is no set amount, or even any rough guidelines to the cost.

Enfranchisement costs – not just the purchase price

The fees involved with collective enfranchisement will include (but may not be limited to):

- The premium you need to pay your freeholder to buy the freehold
- The price of setting up and administering your freehold purchase company
- Depending on the price paid, Stamp Duty Land Tax may be payable on the purchase of the freehold.
- Your solicitor's legal fee's
- The fee charged by your surveyor for valuing the freehold and helping to negotiate the price.
- The legal and valuation costs of your freeholder – if they are "reasonable"
- Fees charged by the Land Registry

Depending on your circumstances and the size of your block, you may also have to add in the costs of a project manager to handle the whole project.

When you are talking to your fellow leaseholders about projected costs, make it crystal clear that any figures are just estimates and could change considerably. Also, there are large costs which must be paid right at the beginning of the freehold purchase process.

It's not uncommon to find yourself in a vicious circle – your fellow leaseholders won't sign up until they get a definite cost, but this can't be given until the process goes ahead. It can also prove difficult to get leaseholders to pay a deposit without knowing the total costs. One option is to give them an informal estimate of the costs with the promise of a formal freehold valuation once the required 50% of leaseholders have joined into the enfranchisement and paid the deposit.

Don't forget – only one chance to join in the enfranchisement.

It's always a good idea to make sure that any leaseholders who choose not to join the collective enfranchisement know that they won't have the option of extending their leases until the process is complete.

Also, once the freehold of the block has been bought, leaseholders who choose not to take part won't benefit from the 999-year leasehold extension which comes as part of the process - the most they will be able to demand is a 90-year extension.

It is a good idea to enter into a Participation Agreement (see overleaf) which will tie the participants into the transaction once they have agreed to take part. This prevents anyone pulling out later on.



Getting Your Fellow Leaseholders Involved

Collective enfranchisement can only succeed if at least 50% of the qualifying leaseholders in the block take part. There is, however, no need to have that many on board when starting the process, as long as the 50% threshold is reached in the end.

Buying the freehold is always easier when dealing with smaller blocks of flats. If there are only six flats in your block, you will only have to get two other leaseholders on side to get 50%. If on the other hand you are in a large block of 100 flats, getting the additional 49 leaseholders to sign up to the collective enfranchisement, and keeping them interested, is a much harder job.

Send out an Invitation

Starting the process is always easier when many of the leaseholders have already decided that they are interested in being involved in freehold purchase.

The best way to kick things off is by sending all the leaseholders a formal invitation to inform them about the proposal for freehold purchase and inviting them to take part. There is no legal requirement to send out this sort of invitation.

Get Leaseholders to Sign Up

When you send the invitation, include a short sign-up form. Keep it simple, and just ask the leaseholder to let you know if they are interested in taking part in the enfranchisement. Let them know that they are not committing to anything by saying that they are interested.

Hold a Residents Meeting

Another good idea is to hold a residents meeting and invite residents who might have questions or doubts about getting involved in the process. A meeting allows them to ask questions and get more information before signing up and is also a good way of getting more leaseholders interested in joining the process. We may be able to help with this and provide information packs.

Residents and Leaseholders – the difference

Inviting everyone living in the block might not help you in finding out who the leaseholders are, many flats are owned as investments by buy to let landlords who rent them out. It's the person who is the legal owner of the property, not necessarily the person who lives in it, who needs to be involved in an enfranchisement. You could try speaking to your Management Agent.

What is a participation agreement?

A participation agreement is a clear written agreement between the participating leaseholders

about how they are going to jointly buy the freehold. This is a formal, written agreement between the participating leaseholders about how they are going to jointly buy the freehold.

This is a formal, written contract which agrees the course of action which will be followed and lays out the obligations and responsibilities of each member of the group e.g. the amount of money each person must pay and when.

If one or more members fails in their obligations, this can prove a real problem for everyone else. The funding of enfranchisement is crucial, and if someone doesn't pay their agreed share of the cost of the freehold purchase, the rest of the group may face a stark choice: stump up the shortfall, or default on the whole process. Further, it could leave you with insufficient numbers to qualify.

On the date on which the Initial Notice is served on the freeholder, all participating leaseholders become liable for the freeholder's legal costs, until the date on which they default or withdraw from the process. They will also not be able to start a new freehold purchase process for a full year if they pull out.

Can we draft our own participation agreement?

In theory, yes. We strongly recommend, however that you get a Solicitor to prepare it, as the agreement is a formal contract which has important consequences for all involved. You could add in any bespoke clauses you like.

Appoint a spokesperson

Groups always work best when one person is named as spokesperson. Having one point of contact avoids duplication of efforts, wires getting crossed, confusion and extra costs. We would recommend that the leaseholders nominate one person to take overall control of the enfranchisement. Allow them to work with the solicitor and other professionals, and report back to the group when necessary.



7 Tips

For Successful Enfranchisement



- **Issue an Invitation** to all leaseholders.
- **Get as many leaseholders involved as possible.** If there are lots of you interested in the enfranchisement, this can reduce the legal and valuation costs as they will be split between more people. It can also give you more bargaining power when it comes to negotiating the premium.
- **Appoint a spokesman to lead the project**
Someone who has the time, skill and interest to drive it forward.
- **Consider a participation agreement**
Binding everyone to an agreed course of action.
- **Keep all participation leaseholders informed**
of any progress, and of problems if there are delays.
- **Appoint the right solicitor**
Someone with plenty of specialist enfranchisement experience.
- **Instruct a suitably qualified specialist valuer**
Your surveyor will advise on what the enfranchisement should cost and can help negotiate the premium payable to the freeholder.
Most surveyors don't deal with leasehold extension or freehold purchase very often, if ever, so its important to get one who knows what they are doing so you get the right advice.



Setting up

Your Freehold Management Company

What is a nominee purchaser?

When buying the freehold you need to select a “nominee purchaser” – this is who will eventually be the new freeholder and be legally responsible for the block. The nominee doesn't have to be one individual; it can be a group, a limited company or any other recognised legal entity.

Equal Shares in Your Freehold Company

For most people getting together as a group of leaseholders to buy the freehold of their block, the best option is to form a limited company with each leaseholder having an equal share. This in turn means that as the freehold will be owned by the limited company, each leaseholder will have an equal share in it too.

Forming a freehold company is not a legal requirement, but is the easiest and simplest way of doing things.

Your Freehold Company – It's not a Residents Association

The difference between a residents association and a freehold purchase company has to be made clear to everyone involved in a freehold purchase process.

A leaseholder is not necessarily the same as a resident. Leaseholders might not actually live in the block under discussion, and not everyone who lives in the block will be a leaseholder.

This is an important distinction to make as leaseholders can often come to the freehold company with problems which are outside its remit. As a result, it is important to set out the aims and responsibilities of the freehold company from the outset.





Collective

Enfranchisement Flowchart

Check you Qualify

- Are at least 2/3 of the flats owned on long leases?
- Is less than 25% of the building used for commercial purposes? (this is calculated based on square feet)
- Do enough qualifying leaseholders want to participate? (At least 50%)
- Is the freeholder exempt?



Instruct a Surveyor to Prepare a Valuation for your Enfranchisement

This should be carried out by a specialist surveyor who will base the valuation on the statutory criteria.

Your surveyor will provide you with the “best case” figure (lowest amount you could expect) and a “worst case” figure.

The amount payable is referred to as a premium. Your surveyor will also advise you as to the figure to offer in your statutory notice. We can put you in touch with someone suitably qualified.



Set up a Company

Apply to have a company incorporate which is set up for the purposes of the freehold purchase. We can organise this for you.



Enter into a Participation Agreement

You will need a participation agreement drawn up for all participants to sign which binds them to the transaction and prevents anyone pulling out later on, which could have costs implications for the remaining participants or worse, result in the claim failing due to lack of participation. We can also prepare this document as part of the process



Serve an Enfranchisement Notice on your Freeholder

Serving a notice activates the freehold purchase procedure – and in it you will propose an offer price for the enfranchisement premium and also set out the extent of the property which you intend to claim.

You will be liable for the reasonable legal and valuation costs of your freeholder from the date that you serve this notice, we recommend that you instruct solicitors to serve this notice for you (in fact we can assist you from the early stages and assist you in locating a suitably specialist surveyor).

Serving an invalid notice can be fatal to your enfranchisement. We can also protect your rights by registering the notice at the Land Registry.

Your freeholder has a period of at least 2 months in which to respond to your notice by way of counter notice.



Freeholder Requests Access to the Property for their Surveyor

You must give access. The Freeholder may also require proof of legal title to your flat.



Freeholder Serves Counter Notice

Stating that they accept your right to buy the freehold and either accepting your offer figure and extent of the property claimed, or counter-proposing with their own figure and extent.

They are not obliged to provide a draft transfer for discussion at this stage but often this will be supplied and negotiation can then begin regarding the wording of this while the premium is being agreed.

No Counter Notice is Served

You will be entitled to make an application to the County Court for a Vesting Order within six months of the date counter-notice should have been served upon you claiming the freehold for your offer price

If your freeholder cannot be found you can also make an application to County Court for an Order that you don't need to serve a notice and then the Tribunal will determine the price which should be paid instead.



Negotiations Commence

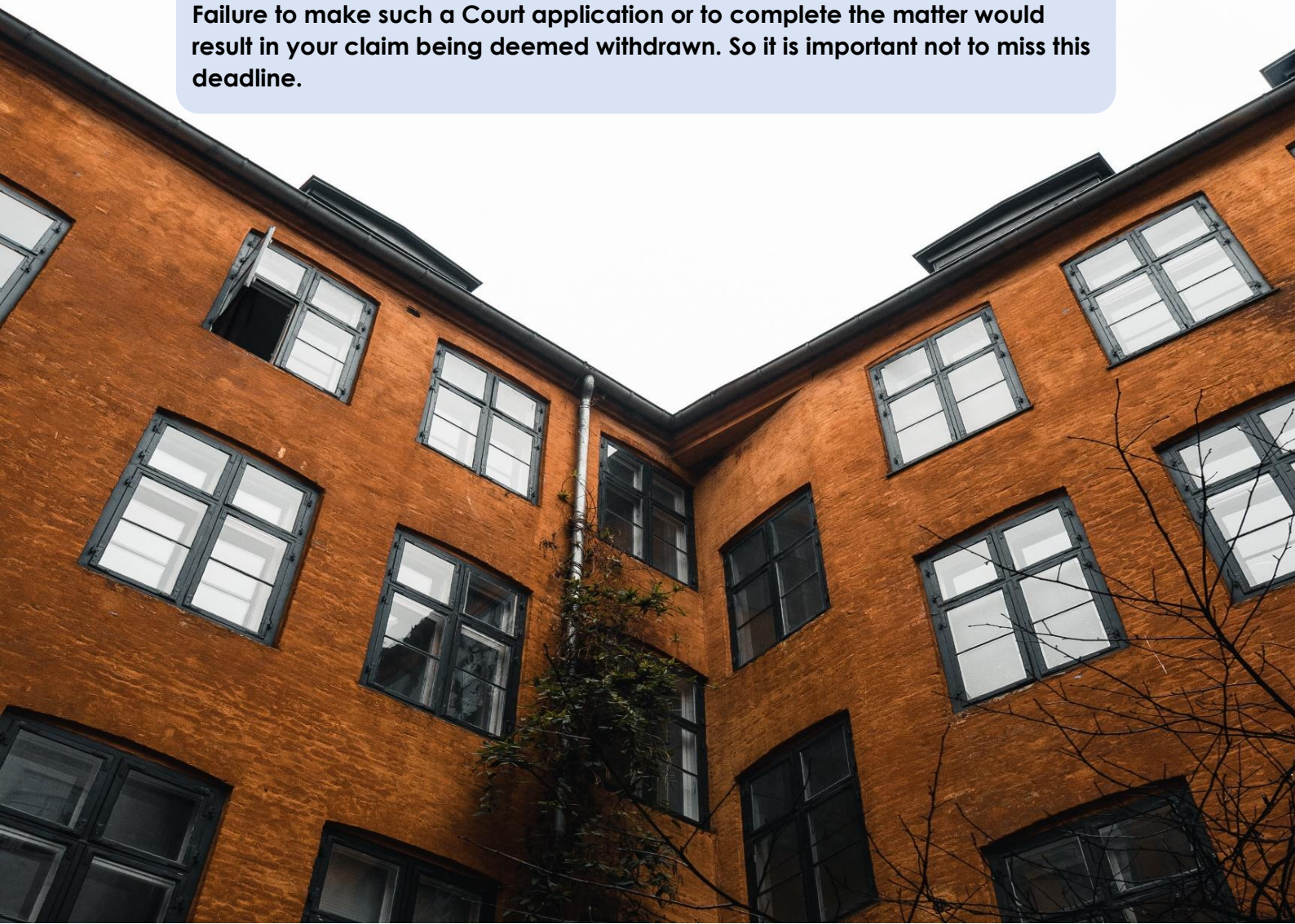
Your surveyor and the freeholder's surveyor will conduct negotiations on price for between 2-6 months. If an agreement is not reached before 6 months from the date of the counter-notice you will need to refer the matter to the First Tier Property Tribunal who will determine the price payable and the terms of the transfer for your freehold purchase.



Completion of Your Freehold Purchase

Once the terms are agreed or determined you will need to complete your freehold purchase within two months, or if this does not happen, either party have a further two months in which to make an application to Court for an Order either to force completion or to be released from their obligations in respect of the claim.

Failure to make such a Court application or to complete the matter would result in your claim being deemed withdrawn. So it is important not to miss this deadline.





Summary

The 3 key things to remember if you decide to go ahead with enfranchising your block are;

- 1 – Preparation
- 2 – Get the right legal advice
- 3 - Get an accurate valuation

FREE Specialist Phone Advice

If you have any questions at all about Enfranchisement, our team are happy to help you.

For FREE initial advice about exercising your right to enfranchise (or extending your lease or exercising your right to manage) and for a FREE quote on your legal costs.

Call our team on **(01722) 422300** or FREEPHONE **0800 1404544**

Or fill in the brief online enquiry form at our Enfranchisement website:
www.enfranchisementsolicitors.co.uk

*We hope that you have found this guide useful.
Thank you and Good Luck !*