The Commonhold and Leasehold Reform Act 2002 makes amendments to both the Leasehold Reform Housing and Urban Development Act 1993 and the Leasehold Reform Act 1967 by tightening up loopholes and widening the criteria which have to be met before a tenant will qualify to enfranchise.

Qualifying to Enfranchise or Extend a lease

In relation to flats, the 1993 Act required at least two thirds of the qualifying tenants to participate in the purchase of the freehold and at least half of those participating to pass a residence test. Compliance with a residence test was also required if a tenant wished to extend his lease or enfranchise a house.

The residence test has now been abolished for residential property. There is now no need to prove that the tenant himself lives in the property although, for lease extensions, he must show that he has owned it for at least 2 years.

This change has significant implications. First it means that companies can now enfranchise. Similarly, flats bought on a buy-to-let basis will qualify. Secondly, it should reduce the factual arguments available to landlords in relation to residence, for example, where a tenant lives in two properties. Now the tenant has either owned the flat for two years or he hasn't. Hopefully the removal of the argument about whether a tenant has been personally resident, will reduce the cost of proceedings. Rather than two thirds of qualifying tenants having to participate, the requirement has been reduced to 50% of the tenants needing to join in serving the initial notice.

Another important amendment is in relation to deceased tenants. Under the previous provisions, if a tenant died before serving a notice of claim, his personal representatives lost all rights to enfranchise or extend a lease. This could have drastic results for the tenant's beneficiaries who might inherit a short lease of valuable property with no right to extend it. This problem has been ameliorated in that personal representatives can now serve a notice of claim either under the 1993 Act or the 1967 Act within 2 years of the grant of probate or letters of administration.

These changes should make it considerably easier to organise an enfranchisement within a large block where one of the big problems can be motivating fellow tenants to participate.

Other changes have been made to the criteria applicable to the building itself. For example, the limit on the non-residential part of a building to be enfranchised has been increased from 10% to 25%. This will increase the number of buildings which qualify to enfranchise and will be particularly helpful in the common situation where there is a shop on the ground floor of a building with, say, 3 flats above.

Changes to the Method of Enfranchising or Extending

Rather than selecting a nominated purchaser who may be an individual tenant or an unconnected company, tenants must now enfranchise through a Right to Enfranchise Company (RTE). This is a company limited by guarantee and each qualifying tenant is entitled to be a member. The RTE has to serve a notice inviting all non-participating qualifying tenants to become tenants - the purpose of this amendment is to prohibit the deliberate exclusion of any particular tenant as was previously possible.

Changes have been made to the valuation criteria as well. The landlords' share of the marriage value when calculating the price to be paid for the freehold has now been fixed at 50%. Under the old regime, considerable argument could take place in relation to the share the landlord was entitled to. Now there is no marriage value at all if the lease has 80 years or more of the term unexpired. The valuation date for collective enfranchisement has also been fixed as the date on which the notice is served. Again this reduces arguments and discourages delay.

Conclusion

The amendments brought in by the 2002 are a welcome relaxation to the rules on enfranchising for tenants. However, the basic procedure remains the same. While the removal of factual arguments in relation to

residence and marriage value will hopefully reduce the number of arguments open to landlords, tenants will still have to incur the expense of both solicitors and surveyors if they are to successfully purchase their freehold or extend their lease. It remains to be seen whether the changes to the criteria encourage more tenants to exercise their rights under the 1993 or 1967 Acts.