

## Andrew Moody on why more lessees are getting together to buy the freehold of their property

HENRY TOMKINS has completed a campaign to wrest control of the freehold of the block of flats in which he lives in central London from a property company. The 77-year-old former electrical engineer with London Underground enlisted the support of 26 fellow lessees to take over the 40-flat Regency Court block in Westminster. They acquired the freehold for £150,000 at the beginning of last year and have now appointed their own agents to manage the building.

'We had become increasingly dissatisfied with the old management and now feel much more in control,' he says.

Recent legislation has made it easier for flat holders to group together and buy the freehold of a building. According to Lease, the Leasehold Advisory Service, a non-departmental government body, there is set to be an 8 per cent increase in the numbers seeking their help in buying their freeholds this year.

But Nicholas Kissen, a senior legal adviser with Lease, says that even with the law now generally favouring leaseholders, it can still be difficult to acquire a freehold: 'It can be a protracted process, which is why we recommend you use a solicitor with experience in this area, particularly if you are dealing with one of the big property estate companies since they know the law inside out.'

The Commonhold and Leasehold Reform Act 2002 made it easier for lessees to buy their freehold. Under the legislation, only 50 per cent of lessees need to act together to buy a freehold, though in the case of a house divided into two flats both would need to participate.

Under the previous Leasehold Reform Act 1993, a 75 per cent majority was required, and half of them had to be resident.



Henry Tomkins outside the London flats where he and other lessees have bought the freehold.

Photograph by Alex Maguire

### 'The rule of thumb on the value of a freehold is that there is none. It varies drastically'

There is no longer any residential qualification, so buy-to-let landlords have the same rights as residents. Leaseholders don't have a right to buy the freehold if 25 per cent or more of the building is in commercial use.

The starting point for buying a freehold is sounding out other lessees. Kissen says there has to be full commitment from all the parties involved, since you don't want people dropping out at key

stages and the participant level dropping below 50 per cent.

'I would recommend people putting in place a participation agreement which, while not a partnership agreement, could have contractual implications on everybody,' he adds.

Lessees are advised either to engage a firm of solicitors or one of a number of specialist firms that operate in this area. The usual first stage in the process is to serve a Section 13 notice on the landlord. This will assert your right to buy the freehold and, most importantly, the price you are willing to pay. The landlord then has two months to come back with a counter-notice, which will often dispute your valuation.

The value of the freehold is based on a number of factors: the length of the

leases, what is called the marriage value (how much the value of the flats will increase if those who have a share of the freehold are granted 999-year leases), the ground rent being paid, the value of the property and the area it is in.

'The rule of thumb is that there is none,' says Philip Bazin of the Leasehold Advice Centre, a Guildford, Surrey-based company which helps people buy their freehold. 'It varies drastically. There are so many variables, and regrettably there isn't a yardstick. You can't say that typically three one-bed flats in London are going to end up coughing up X amount of pounds.'

Before serving the counter-notice the freeholder will normally instruct a valuer to carry out a thorough valuation of the property, which may require an

inspection of all the flats. The cost of this will be borne by those wanting to buy the freehold.

Alex Greenslade, director of Leasehold Solutions, based in Croydon, Surrey, says freeholders frequently try and argue that the freehold has extra value. 'The old chestnuts are, if there is a flat roof they were going to put some penthouse flats on top, or that they have a letter from 2002, for example, offering £7,000 a year for a mast on the roof.'

If leaseholders are worried about the cost of buying a freehold, under the 2002 act they can opt for Right to Manage status, where they take over control of the management of the building without having to pay for the freehold.

With freehold acquisition, if no one can agree on a price then either party can apply for a hearing at a Leasehold Valuation Tribunal. Those wishing to buy the freehold are required to do this within six months of the counter-service being served.

There are a number of LVTs around the country. They are three-person panels consisting of a solicitor, a chartered surveyor and a layperson (although sometimes the layperson may be another chartered surveyor).

Each side will make its representations and the panel will make its decision. At an LVT each side bears its own costs, whereas previously, the leaseholders were responsible for the freeholder's costs. Professor James Driscoll of the housing projects department at lawyer Trowers & Hamlin, based in London, says it is important not to make any errors during the process. 'It is almost like game of snakes and ladders. If anyone makes a mistake they go down a snake,' he says.

For Tomkins, now secretary and director of the freehold management company that owns Regency Court, it has been worth the effort. 'The building is so much better maintained. We had a leak on the head of the main staircase which we had to put up with for years and there are many small things like that we have fixed, including enhancing security. It has been well worth it.'

■ Leasehold Advisory Service, [www.lease-advice.org](http://www.lease-advice.org), 020 7374 5380