



# LEASE EXTENSION POLICY & PROCEDURE

**Responsible Director:** Director of Homes and Wellbeing

**Responsible Manager:** Head of Specialist Housing

**Last updated:** January 2020

**Next update:** January 2023

**G16 IHT Lease Extension Policy & Procedure**

**1. Purpose**

- 1.1 The purpose of this procedure is to ensure that the Intermediate Housing Team is able to respond to requests from Leaseholders to extend their lease in a consistent manner in accordance with statutory requirements and in accordance to the Leasehold Advisory Service.
- 1.2 Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 gave Leaseholders of flats the right to extend their lease by purchasing a new, longer lease to replace the existing lease. The effect of this transaction is to add 90 years to the time left on the existing lease. The process involves the existing lease being surrendered and re-granted on the same terms save for the variation in the length of the lease term and a reduction in the ground rent (where applicable) to a peppercorn rent. There is limited scope to make amendments to any provisions in the existing lease to modernise it or to remedy any defect.
- 1.3 Lease extension for houses is a statutory right under the Leasehold Reform Act 1967. The statutory right relates to leaseholders owning 100% but not the freehold. In these cases the statutory right is to have the lease extended for 50 years with a clause that at the start of the additional 50 years a ground rent is paid, as determined by the Surveyor.
- 1.4 For NCHA properties, when the leaseholder owns 100% of a house they usually own the freehold and thus there is no lease in place. Requests to extend a house lease will therefore be in relation to shared owners, including those who cannot staircase to 100% as the lease is protected in order to retain the property for shared ownership in perpetuity. See section 6.2 for the process for dealing with lease extension requests for houses.
- 1.5 In order to exercise their right to a lease extension, the Leaseholder must hold a long lease or the lease of the whole property and satisfy the ownership test. The ownership test requires the Leaseholder to have owned their property for the preceding two years. The Leaseholder must pay the Landlord's reasonable costs incurred, which will include legal fees and valuation costs.

**2. Risks**

- 2.1 Failure to meet statutory requirements, including responding to requests within the statutory timeframe
- 2.2 Failure to meet NCHA customer needs

- 2.3 Failure to meet HCA guidance and best practice regarding the Leaseholder's right to extend the lease

### 3. References

- 3.1 Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993
- 3.2 Leasehold Reform Act 1967
- 3.3 The HCA Capital Funding Guide 2015

### 4. Glossary

<b>Freeholder</b>	the land owner
<b>Leaseholder</b>	the tenant who occupies the land under a lease but owns 100% of the property
<b>Shared Ownership Leaseholder</b>	the tenant who occupies the land under a lease but owns less than 100% of the property
<b>Valuation</b>	the assessment of the property by a RICS registered Surveyor to determine the Lease Premium
<b>Surveyor</b>	RICS registered Surveyor appointed to determine the valuation
<b>Lease Premium</b>	the figure assessed by a RICS registered Surveyor that the Leaseholder must pay to extend the lease
<b>Landlord:</b>	the freeholder, being NCHA, Pelham Homes or a management company, described as the <i>competent landlord</i> by right of having the superior interest (over 90 years longer than the Leaseholder's present lease) in the property and being able to grant a lease extension
<b>Marriage Value</b>	the increase in the value of the property following the completion of the lease extension, reflecting the additional market value of the longer lease. This is calculated when the existing lease is less than 80 years and the

landlord is entitled to 50% of whatever the marriage value is calculated to be. If the lease is 80 years plus, the marriage value is zero.

<b>Section 41 Notice</b>	notice requesting information from the freeholder or landlord about their interest in the property
<b>Section 42 Notice</b>	formal notice served upon the freeholder that the Leaseholder wishes to extend their lease
<b>Counter-Notice</b>	the landlord's response to being served a Section 42 notice

## 5. Process

Although the right to extend the lease is contained within Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 and the Leasehold Reform Act 1967, the process set out is complex and can be simplified whilst retaining the rights enshrined in law. If an informal request is made then the process in 5.1 should be followed. If the Leaseholder submits a Section 42 Notice under section 42 of the Leasehold Reform Housing and Urban Development Act 1993 then the process in 5.2 should be followed.

In both cases the lease extension is actually the purchasing of a new longer lease rather than an extension of the current lease. For shared owners it is a variation on the lease as opposed to a new lease.

### 5.1 Leaseholder Request to Extend the Lease (flats)

5.1.1 If a request is received by the Intermediate Housing Team then the Housing Officer should establish that the Leaseholder is a 100% owner and has been so for two years or more (they do not need to have lived at the property for this extent but must own it). If a leaseholder owns less than 100% see section 6.

5.1.2 A sales invoice request should be completed for an initial payment of £500. This is for the valuation fee of £420 plus our administration fee of £80. These costs are inclusive of VAT and are non-refundable. Payment must be received before the valuation will be ordered. When payment is received a sales invoice should be created and sent to Finance with the payment.

- 5.1.3 The Housing Officer should raise a request via ebis in order to generate a purchase order number and this should be sent with an original Land Registry copy of the lease to the Surveyor.
- 5.1.4 The Surveyor will contact the Leaseholder in order to carry out a valuation and determine a cost for extending the lease (the Lease Premium). Valuation principles are set out in the legislation relating to the diminution of value (the freeholder's interest in the property is worth less after extension of the lease due to the loss of ground rent income and the loss of the right to get the flat back when the original lease expires), the landlord's share of the marriage value plus any compensation payable. It is for the Surveyor to appraise these constituent parts and suggest a Lease Premium.
- 5.1.5 The lease will be extended by a further 90 years with no ground rent; this is the standard lease extension period and will extend from the current term left. This means that if there is 80 years of the lease left the extended lease term will become 170 years.
- 5.1.6 The lease extension will be offered by NCHA at the Premium suggested by the Surveyor.
- 5.1.7 If the Leaseholder decides to go ahead we will instruct our solicitors to extend the lease. The Leaseholder will pay the price for the lease extension plus our solicitors' fees of around £750 plus VAT and disbursements.
- 5.1.8 The Leaseholder will need to instruct their own solicitor and pay their costs in addition to NCHA's/Pelham Homes Limited's.
- 5.1.9 If the leaseholder does not accept the Premium then it will be for the Head of Specialist or Specialist Housing Manager to negotiate an agreed Premium bearing in mind that there is recourse to the First Tier Tribunal.
- 5.2 Formal Section 42 Notice Submitted to NCHA/Pelham Homes as the Landlord (flats)
- 5.2.1 Section 41 of the Leasehold Reform Housing and Urban Development Act 1993 provides a right for Leaseholders to serve a Section 41 Notice on the freeholder requiring details of that interest. The Landlord is required to respond within 28 days. Note that this does not formally start the application for a new lease and no costs are incurred.
- 5.2.2 If the Leaseholder submits a Section 42 Notice, having gained their own valuation and legal advice to prepare the Notice, then the Landlord must take advice to ensure the Section 42 Notice is valid and then prepare and serve a Counter-Notice by the date specified in the Tenant's Notice; this

must be within at least two months of the date of service of the Section 42 Notice. The Leaseholder assumes responsibility for the Landlord's reasonable costs from the point of the Landlord receiving the Section 42 Notice.

5.2.3 NCHA's valuation and administration costs will be £500; legal costs will be approximately £750 plus VAT and disbursements. These costs will be met by the Leaseholder. On receiving the Section 42 Notice the Housing Officer will raise an invoice for the valuation and administration costs of £500 and upon receipt of the payment will organise a valuation to be undertaken to determine the Lease Premium. The valuation date is fixed as the same date as the Notice.

5.2.4 The valuation and determination of the Lease Premium will be used by the Specialist Housing Manager to instruct the solicitors to prepare a Counter-Notice. The Counter-Notice will be one of the three following options:

a The Landlord admits that the Leaseholder had, on the date the Section 42 Notice was served, the right to a new lease. The Landlord may accept the terms proposed in the Section 42 Notice or, for each term that the Landlord does not accept (such as the Lease Premium for example) the Landlord must propose another term

b The Landlord states that on the day that the Section 42 Notice was served the Leaseholder did not have the right to a new lease. This option can only be used where the Landlord believes that the Leaseholder does not qualify i.e. does not hold a long lease of the property and/or does not satisfy the ownership criteria

or

c The Landlord admits that the Leaseholder had, on the date that the Section 42 Notice was served, the right to a new lease but the Landlord intends to make an application for an order on redevelopment grounds. Redevelopment would mean to demolish, reconstruct or carry out substantial works of construction to any premises in which the property is contained. A court application would need to be made if the Landlord is relying on this option and it only applies if the remaining term of the lease is less than five years from the date the Notice was served. Should the Landlord claim right of redevelopment the application will be withdrawn and the Leaseholder will **not** be liable to pay the administration fee; any fees paid to the Landlord should be refunded.

5.2.5 The Landlord and Leaseholder have a period of two months from the receipt of the Counter Notice to agree the terms of the new lease (i.e. the Premium and any other amendments to the existing lease). If agreement is not reached within this timeframe both parties have a further period of four

months in which to apply to the First Tier Tribunal for a determination. Each party is responsible for their own legal costs at this stage.

5.2.6 Withdrawal of Notice – The Leaseholder can withdraw their notice to acquire a new lease at any time before the new lease is entered into. The Leaseholder will however be responsible for the Landlord's costs up to that date. If the notice is withdrawn (or deemed to be withdrawn), a new application cannot be made until 12 months after the initial one was made.

### 5.3 Lease Extensions where the Landlord is a Management Company

5.3.1 A different approach will need to be taken if the Leaseholder serves a Section 42 Notice on the freeholder and NCHA has only the head lease interest. The Leaseholder will need to contact the freeholder or their managing agents to find out if they have a process for lease extension. The freeholder may only deal with NCHA when discussing the lease extension. The process is likely to be that the freeholder will extend our 'head lease' and we will extend the Leaseholder's 'under lease'.

## 6 Lease Extensions for Shared Ownership Property

### 6.1 HCA Guidance

6.1.1 The HCA's model shared ownership leases were first issued in the late 1970s/early 1980s. Many of these leases would have been issued for a term of 99 years, and the remaining term would now be, or would be approaching, less than 70 years. The HCA is aware that this may create difficulties for those shared owners now wishing to sell their share as the property is less valuable and it is likely to be difficult to find a mortgage lender that will lend on a term under 70 years.

6.1.2 Leases with less than 70 years remaining are not an attractive investment to mortgage providers; it is unlikely that a lender will lend on a term of less than 70 years.

6.1.3 Whilst shared ownership Leaseholders have no statutory right to a lease extension, the HCA recommends providers consider granting extensions to shared ownership leases wherever possible. However in doing so the Agency requires providers to seek their own legal advice to ensure any obligations under current leasehold legislation are met.

6.1.4 As lease extension is not subject to a fundamental clause of the HCA model lease, there is no requirement for providers to seek the Agency's consent to extend a lease. Also as the shared ownership lease is a form of assured tenancy any extension of the lease, and therefore an

- extension of the assured tenancy, will not require s172 consent from the Regulator.
- 6.1.5 Extending leases will have implications for both providers and Leaseholders and the HCA recommends providers take various issues into account when discussing extension with shared owners.
  - 6.1.6 All legal costs will be met by the Leaseholder
  - 6.2 Process for Extending Shared Owner Leases (flats)
    - 6.2.1 There is no statutory requirement to extend a shared ownership lease and each case will be considered on an individual basis.
    - 6.2.2 On receiving a request to extend the lease the Housing Officer and Specialist Housing Manager or Head of Specialist Housing will discuss the case, taking legal advice if appropriate. Payment for legal advice will be the responsibility of the Leaseholder.
    - 6.2.3 If it is agreed to allow a lease extension then the process in 5.1 will be followed although it is recognised that ownership will be less than 100% and as there is no statutory right, the shared ownership leaseholder has no recourse to the First Tier Tribunal.
    - 6.2.4 For shared owners the lease extension will be in the form of varying the current lease as opposed to the purchase of a new lease. The Lease Premium will be proportionate to the share of the property owned as determined by the Surveyor.
  - 6.3 Process for Extending Shared Owner Leases (houses)
    - 6.3.1 As outlined earlier there is no statutory right for a lease extension but in accordance with best practice NCHA will offer this to shared owners although each case will be considered on its merits.
    - 6.3.2 If a request is received by the Intermediate Housing Team then the Housing Officer should establish that the Leaseholder has owned the property for two years or more (they do not need to have lived at the property for this extent but must own it).
  - 6.1.3 A sales invoice request should be completed for an initial payment of £500. This is for the valuation fee of £420 plus our administration fee of £80. These costs are inclusive of VAT and are non-refundable. Payment must be received before the valuation will be ordered. When payment is received a sales invoice should be created and sent to Finance with the payment.



- 6.1.4 The Housing Officer should raise a request via ebis in order to generate a purchase order number and this should be sent with an original Land Registry copy of the lease to the Surveyor.
- 6.1.5 The Surveyor will contact the Leaseholder in order to carry out a valuation and determine a cost for extending the lease (the Lease Premium). This will determine the diminution of value that extending the lease will create.
- 6.1.6 The lease will be extended by a further 50 years on the basis that the Lease Premium is paid, there will be no ground rent charged.
- 6.1.7 The lease extension will be offered at the Premium suggested by the Surveyor.
- 6.1.8 If the Leaseholder decides to go ahead we will instruct our solicitors to extend the lease. The Leaseholder will pay the price for the lease extension plus our solicitors' fees of around £450 plus VAT and disbursements.
- 6.1.9 The Leaseholder will need to instruct their own solicitor and pay their costs in addition to NCHA's/Pelham Homes Limited's.

## **7. Selling the property and extending the lease simultaneously**

- 7.1 A Leaseholder can start the lease extension process and sell simultaneously; they may wish to do this if they are having problems selling the property due to the number of years remaining on the lease.
- 7.2 The purchaser will have to agree to pay for the extension after the sale is completed, at a price agreed by NCHA; it is likely that this will form part of the price negotiation between seller and purchaser.
- 7.3 All NCHA's valuation, administration and legal fees will have to be met.

## **8. Appendices**

- 8.1 Appendix 1: Letter for leaseholder in response to a request to extend the lease that own a flat.
- 8.2 Appendix 2: Letter for leaseholder in response to a request to extend the lease that own a house
- 8.3 Appendix 3: Letter confirming valuation amount.

## Appendix 1:

Dear

Thank you for your recent enquiry about extending your lease. There are a number of costs involved in extending your lease, as follows:

- £500 - Valuation and administration fee. This is non-refundable
- Lease Premium - this is determined by the valuer and is the cost to be paid to NCHA for us to extend your lease
- NCHA Legal fees - £600-700 plus VAT and disbursements (registration with the Land Registry) Please note: this is an approximate cost
- Your legal fees - the fee your solicitor will charge to act on your behalf

Please note that if NCHA receives a Section 42 Notice from a leaseholder then our legal costs will be £700 plus VAT and disbursements. Lease extension will only be offered where the leaseholder has owned the property for a minimum of two years.

The cost of the Lease Premium depends upon a number of factors and will be linked to the length of time left on the term of your lease. The Leasehold Advisory Service can provide more information at [www.lease-advice.org](http://www.lease-advice.org) and there is a Lease Premium calculator that can be used as a guide at <http://lease-advice.org/calculator/>. This will give you guidance as to how much it may cost but the actual cost will be assessed by the valuer.

If you wish to proceed with extending your lease we will need to receive the £500 fee at which point we will instruct the valuation. Payment can be made over the telephone with a debit or credit card by calling 0345 650 1203.

Please note that if you change your mind having received the valuation this fee is non-refundable.

If you have any further questions please contact me or take advice from your own solicitor.

Yours sincerely

## Appendix 2

Dear

Thank you for your recent enquiry about extending your lease. There are a number of costs involved in extending your lease, as follows:

- £500 - valuation and administration fee. This is non-refundable
- Lease Premium - this is determined by the valuer and is the cost to be paid to NCHA for us to extend your lease
- NCHA Legal fees - NCHA Legal fees £600-700 plus VAT and disbursements (registration with the Land Registry) Please note: this is an approximate cost
- Your legal fees - the fee your solicitor will charge to act on your behalf

Lease extension will only be offered where the leaseholder has owned the property for a minimum of two years.

The cost of the Lease Premium depends upon a number of factors and will be linked to the length of time left on the term of your lease. The Leasehold Advisory Service can provide more information at [www.lease-advice.org](http://www.lease-advice.org) AS this is a house the term the lease will be extended by is 50 years.

If you wish to proceed with extending your lease we will need to receive the £500 fee at which point we will instruct the valuation. This can be paid by cheque made payable to NCHA and sent to our office address or by telephone using a debit or credit card on 0115 844 3399.

Please note that if you change your mind having received the valuation this fee is non-refundable.

If you have any further questions please contact me or take advice from your own solicitor.

Yours sincerely

### **Appendix 3**

Re: Proposed Lease Extension

#### **Re: Proposed Lease Extension**

Further to your enquiry and instructions to obtain a report to extend the lease you have at the above address, following the report from Rupert David & Co. I am able to confirm the following:

**To extend the lease a further .....(insert years) .....years will cost £**

Please see a copy of the report enclosed.

This does not include any solicitor costs for this transaction.

We would be able to confirm the costs should you wish to proceed.

I would like to advise that you will need to seek your own legal representative to act on your behalf.

If you wish to proceed, please confirm in writing giving details of your solicitors.

I look forward to hearing from you.