

How to Select a Leasehold Practitioner

Residential leaseholders in England and Wales have various rights in law to purchase their freeholds, extend their leases and address issues relating to the management of their properties.

There is a wide range of information available to leaseholders and there are many different sources of advice from a variety of organisations operating in the enfranchisement sector. These include government bodies, barristers, managing agents, project managers, solicitors, and valuers.

Many leaseholders are confused by the choices available to them and do not have the knowledge, inclination, or perseverance to exercise their rights, whether in conjunction with their neighbours, or on their own.

Why choose an ALEP Practitioner?

Prior to 2007, leaseholders and freeholders were unable to check the credentials of the practitioners they instructed to deal with their leasehold enfranchisement issues. There were numerous examples of people claiming to be professionals in the sector with insufficient experience or training.

These concerns led a number of our founder members to consider self-regulation for the sector and the Association of Leasehold Enfranchisement Practitioners (ALEP) was born.

Although ALEP is not a formal regulatory body, it exists to ensure that practitioners involved in the residential leasehold sector adhere to the ALEP constitution, thereby delivering an agreed level of conduct and service.

The Association brings together barristers, managing agents, project managers, solicitors and valuers that represent both freeholders and leaseholders, and operates in a fair and transparent way to promote best practice to all practitioners in the sector.

Each application to become a member of the Association is individually vetted to ensure that the applicant (be they an organisation, or individual practitioner) has sufficient expertise in leasehold enfranchisement. Members must also commit to high professional standards, integrity, quality customer service and a high level of market knowledge.

As a result, membership of ALEP acts as a badge of assurance, allowing those seeking help to trust that they are employing experienced professionals who can demonstrate not only the requisite track record and level of expertise to handle complex transactions, but also the commitment to delivering the highest quality of service.

What type of leasehold practitioner do I need and why?

Valuer

If you are a leaseholder looking to extend your own lease or get together with other leaseholders in your building to purchase your freehold, ALEP's view is that it is logical to appoint a valuer from the outset, as it is important to determine how much the transaction is likely to cost.

Understanding the potential costs upfront is vital; if the process is likely to be costly, it is advisable to ensure that you have (or will have) the funds in place in order to proceed.

If you are a freeholder and have received either a Section 13 or Section 42 Notice, then you will need a specialist valuer to inspect the property and carry out a valuation prior to responding to the Notice. Please note that your 'reasonable' costs in this respect will be payable by the leaseholder(s).

Since a leasehold valuation is more complex than an ordinary market valuation, due to the consideration of technical criteria such as marriage value and ground rent income, it is important for leaseholders and freeholders alike to appoint a valuer who specialises in leasehold and has an in-depth knowledge of valuation principles and the significance of previous tribunal decisions.

During lease extension or collective enfranchisement transactions, the valuer is not only responsible for carrying out the initial valuation, but also advising on the offer and, if necessary, providing evidence to the First-tier Tribunal, among other things, which again makes it important to appoint a valuer that you can trust to carry out an expert valuation.

Solicitor

Whether you are the freeholder or the leaseholder, appointing a solicitor is key because they are central to the enfranchisement process.

Due to the complicated nature of enfranchisement and the requirement to follow a specific process and strict timetable, it is a good idea to seek legal advice before entering into any kind of agreement. There are strict qualifying criteria for both lease extensions and freehold purchases, and it is important to ensure that these criteria are met before starting the process.

Considering buying a leasehold property?

If you are buying a leasehold property, then, in addition to the normal legal work involved in buying a property, your solicitor will need to review the lease and its terms, as well as deal with the landlord and/or management company and the vendor's solicitor.

Your solicitor should be able to provide you with a 'report on title', which includes a summary of the main provisions of the lease so you can understand what will be required of you as the owner of that leasehold property. These obligations may include: paying ground rent, service charges, and administration charges, as well as contributing to any major works

in the future. Your solicitor should make enquiries about any planned major works and obtain the balance of the service charge account.

It is vital for your solicitor to check the length of the lease because if there are less than 70 or 80 years left on the lease you may struggle to get a mortgage. If you are a cash buyer and able to buy the property regardless of lease length, you should still consider that any future buyer will probably also need to be a cash buyer, unless you extend your lease or purchase the freehold in the meantime.

If the lease is close to 80 years in length, then bear in mind that you must have owned the property for at least two years prior to being able to extend the lease. If the lease drops under 80 years, it will cost a lot more to extend. However, if you are buying the property the seller can start the process and you can take it over, thereby avoiding waiting two years. This could mean a significant saving if the lease would otherwise drop under 80 years.

Due to these extra pieces of work that a solicitor must undertake for a leasehold as opposed to a freehold property, conveyancing costs are usually more expensive. However, the complicated nature of leasehold properties means that appointing the right solicitor is vital and could save you money in the long term by ensuring you are aware of all the facts.

Before you contact a leasehold solicitor, you should aim to gather some important information about both the leasehold property that you want to buy and the freeholder of that property. This will enable you and the solicitor to understand more about the property before they are appointed.

It is important for you to know the address of the property, the lease length and the ground rent payable before you contact the leasehold practitioner. The lease length is particularly important as it costs more to extend your lease or buy your freehold once the lease drops below 80 years because of the marriage value that becomes payable to your freeholder. You can download the leasehold title from the Land Registry website for just £3, which will show you the exact length of the lease.

It is also a good idea to have an approximate value for the property, a guide to which can usually be obtained by looking at the price that was paid for the last property sold in the building.

Some buyers also purchase properties only to find out that their freeholder is managing the property badly or levying excessive service charges. To avoid this, you can ring on the doorbells of neighbouring flats and ask the owners about the freeholder with questions about the fees that they charge, the standard of work they carry out and how quickly they respond to urgent matters. If it turns out that the building is badly managed, you should check that you can buy the freeholder out or walk away from the purchase. Always try and visit a leasehold property before buying it as a walk around the property will usually enable you to gauge how well it is managed.

Barrister

A barrister may be required if complications occur during the transaction. If this is the case, it is important to choose one with experience in enfranchisement, such as dealing with the fallout from a contested claim in either the First-tier or Upper Tribunal. Your solicitor will be able to guide you through such an appointment.

Specialist advice is likely to be required where the freeholder responds to the leaseholder's notice of claim by denying the rights claimed or asserting that the notice of claim is invalid. For instance, if the freeholder challenges the leaseholder's attempt to extend their lease or purchase the freehold, then specialist advice may be needed, and the case may go to court.

More likely is the possibility that the freeholder will challenge the price offered. In many cases the parties settle but, if not, the case needs to be referred to the First-tier Tribunal (Property Chamber), which handles applications relating to leasehold disputes and leasehold enfranchisement.

At this stage, it is sensible to appoint a barrister if the argument relates to interpreting the law or the conditions of your lease, especially if the case is legally complex or focuses on valuation.

A barrister will be able to see the matter from a position of experience and expertise and guide you on the approach likely to be adopted to the other party. The barrister will also promote your interests by making submissions as to the law on point and the factual and expert evidence, and has the expertise and experience to best sort out your case before the tribunal. Usually, the barrister will work with an expert solicitor, although some barristers can be instructed directly.

How to choose a leasehold practitioner

When appointing a leasehold practitioner to help you with buying a leasehold property or conducting a lease extension, it is vital to carry out a number of background checks to make sure that you work with a professional that you can trust.

The first thing to check is whether they are a member of ALEP. ALEP individually vets each of its members to make sure that they have sufficient experience in the leasehold sector, so you can be sure that its members will hold expertise in this area.

Once you have found an ALEP member, you should look at their website. From this you should be able to tell how well they communicate and gain an understanding of how they work.

The firm's website will also give you an idea of the practitioner's fee structure. It is important to check whether they charge an hourly or fixed rate and if it includes VAT so that you are certain that you can afford the practitioner before you appoint them.

Although all ALEP members are accredited experts in leasehold matters, you should check whether they have a specialist department to deal with this sector, or if you will be

supported by a particular individual. In either case, it may help to know that they have experience working in your geographical location so that they are aware of any local issues that may affect your transaction.

While not all enfranchisement cases are referred to the First-tier Tribunal (Property Chamber), it is possible that your matter might be. It is worth checking the practitioner's experience of working in or giving evidence to a court or tribunal, so that you can have confidence in them if your case is referred further down the line.

Finally, it is worth calling the practitioner to see whether they act predominantly for leaseholders and/or freeholders and whether they are prepared to offer any initial advice free of charge over the phone. Although the law is the same for leaseholders and freeholders, some practitioners may have greater experience with a certain type of client and therefore be better or less suited to advising on your situation. Specialist valuers will also be happy to recommend solicitors with whom they work regularly and vice versa.

We hope that this guide has given you more clarity on the subject.