

THE RIGHT OF FIRST REFUSAL GUIDE



WHAT IS RIGHT OF FIRST REFUSAL?



If a landlord wants to sell the freehold of a property that contains flats, they are bound by law to offer the freehold to the qualifying tenants (leaseholders) before disposing of the title. This offer is known as the Right of First Refusal.



The Right of First Refusal (RFR) is provided by Part 1 of the Landlord and Tenant Act 1987 (the 1987 Act) as amended by the Housing Act 1996.



RFR is a formal procedure involving service of a notice that informs tenants of the landlord's intentions to dispose of the freehold and provides them with time to consider the offer. Once RFR notice has been served the landlord must allow the leaseholders a period of two months to consider the terms of the offer before he is able to offer the freehold to a third party. He is not able to sell it on different terms to those offered to the leaseholders



If the landlord sells the freehold without offering RFR to the qualifying tenants, it is considered a criminal offence. In this instance tenants can serve a notice on the new owner demanding details of the transaction, including the price paid. Tenants can then take action to force the new owner to sell to them at the price they paid.



WHAT PROPERTIES REQUIRE RIGHT OF FIRST REFUSAL?

Properties that are subject to RFR must fit the following criteria:



Contains at least two flats



More than 50% of the flats
in the premises must be
held by 'qualifying tenants'



No more than 50% of the
premises must be in non-
residential use (such as
offices, storage or shops)



WHO ARE QUALIFYING TENANTS?

Qualifying tenants include leaseholders and some fixed term or periodic tenancies. This does not include assured or assured short-hold tenancies, or tenants of more than 3 flats in the building. It also excludes resident landlords.



Landlords must offer RFR to all qualifying tenants by law, however this is considered to have been complied with if notice is served to no less than 90% of the qualifying tenants. Nevertheless, this is not a means to purposely exclude 10% of the qualifying tenants or 1 in 10.



WHAT HAPPENS IF YOU DON'T OFFER RIGHT OF FIRST REFUSAL?



If the landlord fails to comply with their legal obligation to offer RFR to the qualifying tenants, it is considered a criminal offence. The landlord is then open to criminal prosecution, and if convicted they can face a level 5 fine of up to £5,000.



Following the disposal, the qualifying tenants are legally able to demand information relating to the transfer. This includes a copy of the contract and transfer together with the amount paid. The new landlord is required to provide this within one month. The tenants are then able to force the new landlord to sell to them on the same terms as they acquired the freehold. This right can be enforced against subsequent purchasers should the new landlord sell on.



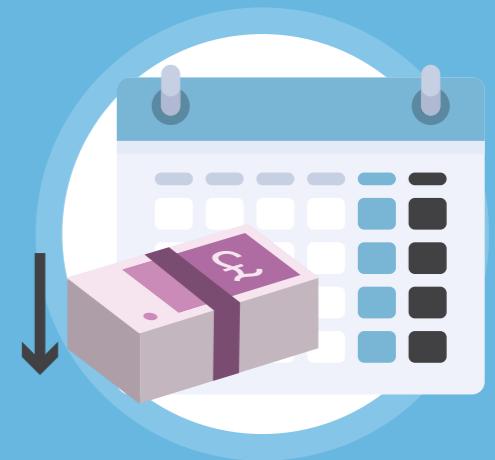
Once they have information on the terms of the sale, more than 50% of the qualifying tenants can serve notice on the new landlord requiring him to sell them the freehold on the same terms as he purchased.



HOW DOES THE RIGHT OF FIRST REFUSAL WORK?



When offering RFR, the landlord alone can set the price of the freehold. The landlord cannot then sell or offer the freehold to a third party on different terms or at a lower price within 12 months of the notice, unless this is also offered to the tenants. The landlord also has the ability to withdraw the RFR offer at any time before the contract is binding.



There are five different forms of notice, depending on how the freehold of the property is due to be sold. These include:



SECTION 5A

Simple sale by contract



SECTION 5B

Sale by public auction



SECTION 5C

A grant of an option or right of pre-emption



SECTION 5D

Sale not pursuant to a contract



SECTION 5E

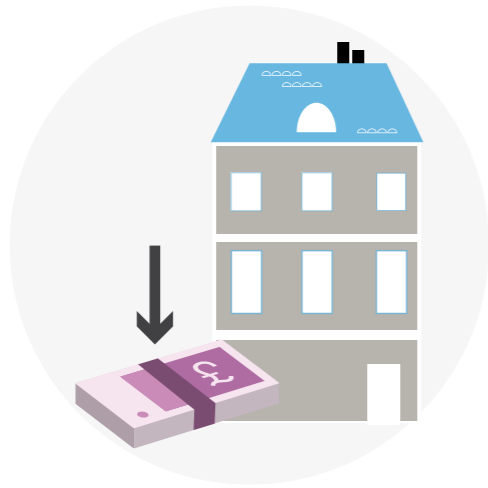
Sale for a non-monetary consideration

The most common notices are Sections 5A and 5B (sales by contract or auction). The 5A notice gives the qualifying tenants two months to accept the offer.



THE SECTION 5A NOTICE

The Section 5A notice is served on tenants when the landlord wants to sell the freehold of a property with at least two flats on the open market. This notice must include the following information:



The terms of the sale, such as the price of the freehold and any required deposit
(this price is non-negotiable)



A schedule of leases that exist at the time of service.



The date that the offer may be accepted.
(this cannot be less than two months from the date of the notice)

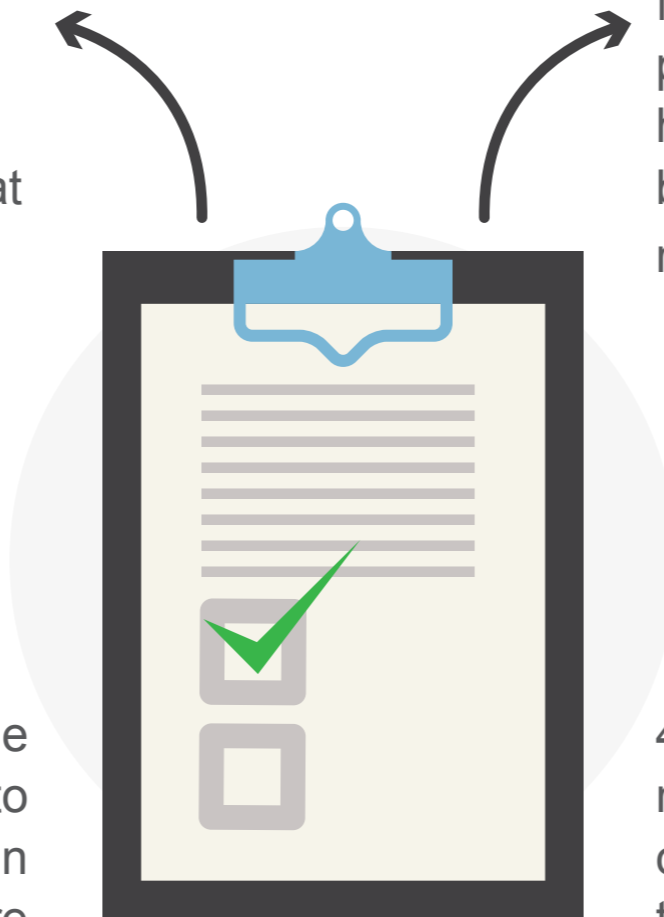
WHAT HAPPENS IF THE 5A OFFER IS ACCEPTED?

1. To accept the offer, more than 50% of the qualifying tenants must serve a notice accepting the landlord's offer within two months of the notice being served. It is advised that tenants seek independent legal advice before serving notice of acceptance.

2. The qualifying tenants then have a further two months to nominate a purchaser (such as a company that will hold the freehold). Once the purchaser has been nominated, the landlord has one month to send them a contract.

3. Upon receipt of a sale contract, the purchaser then has a further two months to sign the contract and pay the deposit (in readiness for exchange). Contracts are then exchanged within seven days and completion takes place on the date specified in the contract.

4. If the qualifying tenants do not serve notice of acceptance, or serve it outside the offer period, the landlord is then able to sell the freehold on the open market, but this cannot be on different terms or at a price lower than what was proposed to the tenants in the notice.



SEEKING LEGAL ADVICE

It is advised that tenants looking to accept a landlord's offer to buy the freehold should seek independent legal advice. This will ensure that no aspects of the offer are overlooked. In some instances, there are terms within the offer that may be overlooked. These can include responsibilities of costs, such as covering the seller's legal costs and associated fees on top of the cost of the freehold.



WHAT HAPPENS IF THE 5A OFFER IS NOT ACCEPTED?



If the qualifying tenants do not accept the landlord's offer within the two month period the landlord is free to sell the freehold to a third party within the next 12 months, but at no less than the figure offered in the offer notice.



THE SECTION 5B NOTICE

Where the landlord intends to dispose by auction, the notice must be served between four and six months before the date of the auction. The notice must include the following information:



The principal terms of the proposed disposal, the property and the interest. However, there will be no price or deposit mentioned (nor is the landlord required to divulge the reserve price);



That the disposal is to be by public auction;



That the notice is an offer by the landlord for the contract (if any) entered into by the landlord at the auction with the purchaser, to have effect as if the nominated person had entered into it;



The initial period for acceptance of at least two months. This initial period must end at least two months before the date of the auction; and



A further period of 28 days for the nomination of a purchaser (note, not two months, as in S5A notice). This period must end at least 28 days before the date of the auction.

