

# LIVING AT THE OFFICE

Following the introduction of the Commonhold and Leasehold Reform Act 2002, it has not been necessary for a tenant to satisfy a residence test in order to have the right to enfranchise. The residence test has been replaced with a test of ownership; the qualifying period being two years. As a result, commercial tenants – who were previously unable to satisfy a residence test – are now able to make enfranchisement claims and can, in certain circumstances, acquire the freehold of their building.

## WHAT IS A “HOUSE”?

In order to make an enfranchisement claim, a company tenant must have a long lease of a “house” and must not occupy the property for the purpose of its business. An example of a likely candidate would be a head lessee of a building that was originally built as a large family house but which has since been converted and sublet to a mix of residential and commercial sub-tenants. In this type of case, the main issue is whether the building qualifies as a “house” under the Leasehold Reform Act 1967 (the “1967 Act”). If it does, then the company head lessee will be entitled to acquire the freehold of the building.

In order to qualify as a “house” under Section 2 (1) of the 1967 Act, a property must satisfy two requirements. Firstly, it must be *designed or adapted for living in* and, if it passes that test, it must *reasonably be called a house*.

The full wording of the section is as follows:

*“2(1) for the purposes of this Part of this Act, “house” includes any building designed or adapted for living in and reasonably so called, notwithstanding that the building is not structurally detached, or was or is not solely designed or adapted for living in, or is divided horizontally into flats or maisonettes.”*

Before the residence condition was abolished, the definition of “house” under the 1967 Act did not cause too many problems because the tenant had to live in the building. It was therefore likely to be *“designed or adapted for living in”* and the words *“reasonably so called”* were words of limitation that excluded buildings such as large hotels or mansion blocks from the definition of house. Since removal of the residence condition, the definition under Section 2(1) has caused much judicial debate.

## TANDON TRUSTEES V SPURGEON HOMES

The House of Lords first considered the question in *Tandon Trustees v Spurgeon Homes*, before the residence condition had been removed. In that case, the property in question was a shop with a flat above. The property comprised 25% residential floor space and 75% commercial. It was accepted that the property was designed and adapted for living in because the tenant lived above the shop. The House of Lords decided that the property did fall within the definition of a “house” because it was a *“house reasonably so called”*.

## BOSS HOLDINGS LIMITED V GROSVENOR ESTATES LIMITED

In 2008, the House of Lords considered the question again in *Boss Holdings Limited v Grosvenor Estates Limited*. This appeal involved a six storey town house in Upper Grosvenor Street that was originally built in the eighteenth century as a private residence. It was used as a private residence until 1942, when it was occupied by the Free French Government in Exile. From 1946 onwards the top three floors were fitted out for residential use and the three lower floors were occupied by dressmakers. This use continued until shortly after 1990. At the date of the notice the property was unoccupied and in a dilapidated state. The top three floors of the building were virtually stripped out, although staircases, internal walls and floor joists remained in place. It was accepted that the property complied with the second limb of the test, namely that it was a “house reasonably so called” because from the outside its appearance was that of a house. The House of Lords had to consider the first limb of the test and whether the building, in its stripped out state was “*designed or adapted for living in*”. They decided that a property could qualify as a “house” even if it was not fit for immediate occupation provided it was originally designed or adapted for living in.

## CLAIMS BY COMMERCIAL TENANTS?

The decision in *Boss Holdings Limited v Grosvenor Estates Limited* opened up the possibility of claims by commercial tenants because it seemed that if a property looked like a house from the outside and had, in its past been designed or adapted for living in, then it was likely to come within the definition of a house even if it had been completely stripped out internally. A subsequent Court of Appeal case, *Prospect Estates Limited v Grosvenor Estates Limited*, however, appears to have reduced the ambit of the Act again. In this case, the Court of Appeal considered the second part of the test and decided that even if a house was designed or adapted for living in it cannot be a “house” if it has been substantially converted for commercial use and if its prescribed and predominant use is commercial.

More recently there has been a further County Court decision where the Court has had to consider whether a building comprising “serviced apartments” could qualify as a “house”. In this case, known as *Hosebay Limited v Hugo Day and Lady Hillary Day* [2009] the Judge decided that the building passed both limbs of the test and did qualify as a house.

## CONCLUSION

Commercial tenants of leasehold buildings will now need to consider the terms of their lease and also the current use of their building before deciding whether to make a claim for the freehold.

If the building has been substantially altered for commercial use and the actual and prescribed use under the lease is predominantly commercial then the building is unlikely to qualify as a house and the tenant will not be entitled to enfranchise.

There has been a shift away from the external appearance of the building to the actual and prescribed use of the building. It is not clear how the test should be applied where a tenant has a lease which allows mixed residential and commercial use throughout the building or where the building is unoccupied at the date of the notice of claim. Since the concept now has some flexibility it will be necessary to carefully consider the provisions of the lease and the actual use of the building in each case in order to decide whether there are “exceptional circumstances” that justify a conclusion that the building can no longer reasonably be called a house.

As a result of these recent cases, it can be seen that there are now opportunities for commercial tenants to enfranchise, although in order to maximise the chances of success, it is clearly important to obtain advice before embarking on the process.

This article offers general guidance, it reflects the law as at January 2010. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

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