

SIGNING INITIAL NOTICES – MORE TRAPS IN THE COLLECTIVE ENFRANCHISEMENT PROCESS UNDER THE LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993

The Initial Notice must be signed personally by each of the tenants by whom it is given and the signature of an agent, even one holding a power of attorney is not sufficient. Furthermore, signing a blank signature sheet and authorising an agent to attach it to an Initial Notice in due course is similarly ineffective where the tenant does not know the terms of the offer.

The Leasehold Reform Housing and Urban Development Act 1993 (the Act) gives, to qualifying tenants of flats, the right to purchase the freehold of their building.

The Act is an unwieldy and complicated beast which has been much criticised by landlords and tenants alike since coming into force nearly 15 years ago.

To those people who are not versed in the Act's nuances, the various deadlines and requirements are daunting. The potential pitfalls and traps within the requisite process of Initial Notice and Counter-Notice are significant.

Following the Court of Appeal decision in *Cascades & Quayside Limited v Cascades Freehold Limited* [2007] EWCA Civ 1555 at the end of last year, the issue of tenants' signatures has again been brought to the fore.

The facts in the *Cascades* case were not unusual in that the tenants of a large property, comprising 174 flats in London's E4, decided to tackle the logistical headaches of a collective enfranchisement by appointing a couple of representatives from their number with the unenviable task of managing the claim. The prospect of obtaining agreement to all of the terms from the requisite majority of tenants in a building of 174 flats was not appealing. In this case, those organising the tenants issued blank signature sheets to each of the tenants for signature. This was done in advance of the Initial Notice

being drafted and, therefore, the tenants were simply signing a blank sheet of paper without having seen the notice itself. The intention was that when the Initial Notice was agreed by the tenants' representatives, the signature sheets would be appended to it and the "master copy" notice would be served on the relevant Landlord.

Section 99 of the Act contains provisions governing the signing of Initial Notices. Subsection (5) states:

"Any notice which is given under Chapter I or II by any tenants or tenant must

- (a) if it is a notice given under section 13 or 42, be signed by each of the tenants, or (as the case may be) by the tenant, by whom it is given; and
- (b) in any other case, be signed by or on behalf of each of the tenants, or (as the case may be) by or on behalf of the tenant, by whom it is given."

The fact that paragraph (b) states ...or on behalf of each of the tenants whereas paragraph (a) does not, makes clear Parliament's intention to ensure that Initial Notices are signed personally by tenants.

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Service of an Initial Notice has significant consequences and if the landlord accepts any of the proposals in the Initial Notice they become binding. The Act, therefore, was designed to ensure that tenants are under no misapprehension as to what they are involved in. In practice, this is achieved by requiring them to sign the offer.

The Landlord argued that the tenants, by signing blank signature sheets, had not signed the Initial Notice itself, as required by the Act.

In the Court of Appeal, all three Judges agreed that the participating tenants had done no more than give authority to their “agents” to serve the Initial Notice; they had not signed the Initial Notice itself. The result being that an Initial Notice had not been validly served.

The oft quoted case of *Cadogan v McGirk* [1996] 4 All ER 643 is regularly relied on by tenants seeking “fairness”. Tenants, however, often overlook the fact that licence is not given to the courts to interfere where Parliament have made their intentions clear, as in subsection (5)a. Whether or not that sounds “fair” to the layman is, unfortunately, a moot point but illustrates why professional advice should always be sought on this most complicated of Acts.

REMINDERS

Initial Notices:

- Must be signed personally by each participating tenant
- If there are joint tenants they must each sign
- Cannot be signed under a power of attorney or by an agent
- Must be signed by participating tenants who are aware of what they are signing and blank signature sheets where tenants are not aware of the terms of their collective offer will not suffice

NB - Looking forward, one simplifying hope is the anticipated amendment to the Act by section 122 of the Commonhold and Leasehold Reform Act 2002. Although there is currently no indication as to when this will come into force, its notion of participating tenants simply becoming members of an RTE (Right to Enfranchisement) company which serves the notice rather than the individual tenants seems sensible. It represents a simple way of circumventing the very real difficulties in getting large numbers of tenants to sign an Initial Notice.

This article offers general guidance on collective enfranchisement. It reflects the law as at September 2008. The circumstances of each case vary and this note should not be relied upon in place of specific legal advice.

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