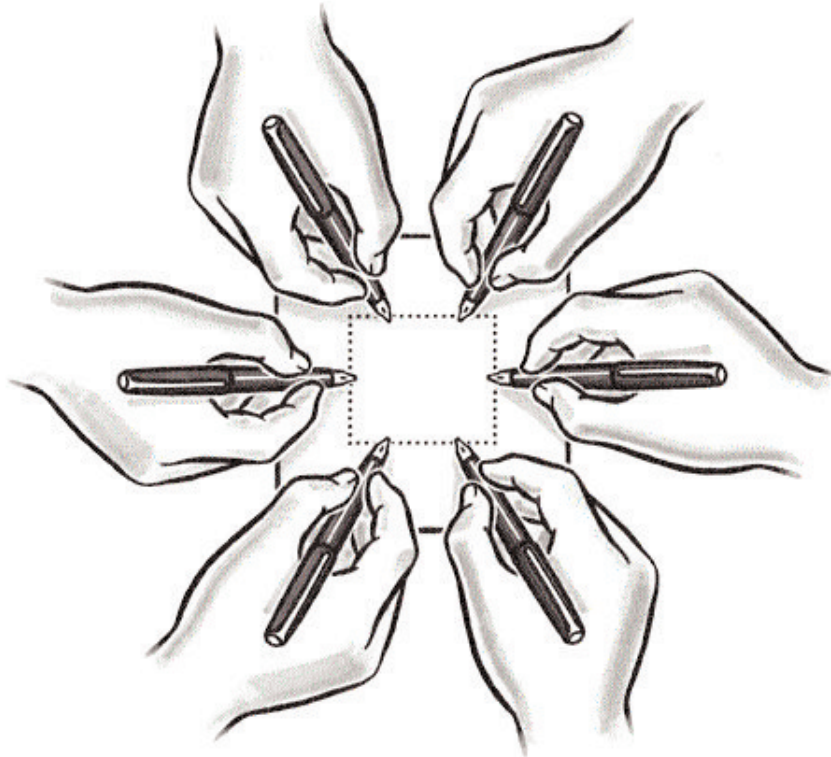




COMMONHOLD AND LEASEHOLD REFORM ACT 2002
PARTICIPATION AGREEMENTS



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This leaflet is not meant to describe or give a full interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties then seek specific advice.

Participation Agreements



A participation agreement is a contract between all the leaseholders participating together in the joint purchase of their freehold and provides a legal basis for the action. It may, on first consideration, seem a little drastic to need to bind everyone to the procedures, but it is, in the majority of cases, a sensible course of action.

A freehold purchase, or collective enfranchisement through the procedures of the Leasehold Reform Act 1993, is a co-operative venture working to strict time limits in which every person taking part depends on everyone else to perform. Everyone has to agree to provide a certain amount of money and if anyone fails in this obligation, or to fulfil it on time, then either the process will collapse or the remaining participants will have to make up the shortfall. A participation agreement can provide a contractual basis for ensuring the contributions and for controlling other aspects of what can be a complicated process.

While the legislation requires the participating leaseholders to be members of a Right to Enfranchise Company (RTE Company), it does not provide any guidance on how they should act together. Similarly, while this leaflet assumes purchase through the formal procedures of the 1993 Act, the acquisition may be through open-market negotiation where there are few rules or formal procedures; in such a case, a participation agreement can provide surety of arrangements for the participants in the purchase.

The purchase can be within or outside of the 1993 Act; this note assumes that the leaseholders are acting through the vehicle of a registered company, referred to below as 'the enfranchising company'

Working together

The period between the decision to acquire the freehold and the issuing of the Initial Notice is a crucial one. It is during this time that leaseholders must:

- *assess eligibility*
- *make a preliminary assessment of costs*
- *establish a cost fund*
- *arrange finance*
- *create the enfranchising company*
- *amass all required information (this can include service of Notices on the landlord)*
- *prepare the Initial Notice*

To accomplish all this, the leaseholders will need a high level of organisation and interdependence. They will need to be in a position to meet the costs and to be able to react, within the defined timescales, to the landlord's requirements for information. They must be sufficiently organised to be able to issue clear, unequivocal instructions to the enfranchising company for the conduct and successful conclusion of negotiations. To achieve this, there must be a firm basis of agreement, with responsibilities and duties identified and recognised, and a built-in assurance that members of the company will, at the end of the acquisition, put in their contributions.

An agreement is a contract between the members of the enfranchising company to govern the purchase of the freehold.

Why is it necessary?

To establish the rights and obligations of the members of the company as a group and as individuals, and those of the enfranchising company.

The principal reasons for a participation agreement are:

- **to provide certainty of the steps and decisions to be taken in the enfranchisement.**

The agreement provides a means for the participating leaseholders to formally instruct the enfranchising company to serve the Initial Notice, starting the purchase process. It is important that every participant should agree to proceed, as the service of the Initial Notice commences the liability for the landlord's costs.

It should also discourage any sudden withdrawal by any participant which could endanger the application. If an Initial Notice is withdrawn, then the members of the enfranchising company remain liable for the landlord's costs up to that point, and no further Notice may be served for a further 12 months.

- **to specify the duties and obligations of the enfranchising company and the members of the company.**

It is important to specify who is in control of the process on behalf of the participating leaseholders and who is authorised to give instructions to the professional advisers – the solicitor and the valuer. It will be confusing for the professionals, and will incur unnecessary extra fees, if individual participants are able to make direct contact with the advisers or issue conflicting instructions.

- **to make sure all the members of the company provide funds in the agreed proportions.**

Once the purchase price is agreed, or set by the Leasehold Valuation Tribunal, there is a timescale for completion of the procedures and it is imperative that there be no unnecessary delay in the provision of the monies to the landlord, as this could endanger completion.

The agreement should provide the means to determine the individual contribution to be made by each participant (as a proportion of the overall sum) at an early stage. It is potentially disastrous for delays to arise through argument over individual contributions at completion stage. Agreement on financial input must also cover contributions, in the agreed proportion, to the professional and other costs – legal and valuation – of both the landlord and the enfranchising company.

When should it be entered into?

It will be for the leaseholders to decide the point at which they should be contractually bound. In that the suggested format of the agreement includes provisions for the input of costs and the appointment of professional advisers, it makes sense that the agreement should be formulated at the very beginning of the enfranchisement process.

It is not always an easy matter to decide the appropriate point at which the process should be formalised. In most buildings, and particularly in large blocks, there will be uncertainty as to the potential number of leaseholders likely to take part, as individuals hesitate to commit themselves pending some firm information on potential costs. This can cause delays, as matters are unlikely to move further without the desired information.

In a situation like this, it is helpful to the process to be able to appoint the professional valuer to produce an initial assessment of costs.

One of the elements included in the agreement will be the condition of contribution to professional costs. At this stage, it may be useful for those participants already present to enter into the agreement, thereby themselves underwriting the initial costs of the valuer; the valuation can then be obtained and further participants recruited. Each new participant will be invited to enter into the agreement and so accept liability to contribute to the professional costs already committed and to be committed as the process continues.

Whatever route is chosen, it is most important that the agreement should be in place before service of the Initial Notice on the landlord.

What should it contain?

It is important that clauses covering the following should be included:

- *Obligations of the enfranchising company*
- *Matters concerning the Initial Notice*
- *Representations and warranties*
- *Covenants*
- *Default indemnity*
- *Qualifying tenants not party to the Initial Notice*
- *Professional advisers*

Other clauses useful in an agreement of this kind could be:

- *Interpretation*
- *Commencement*
- *Purpose of the agreement*
- *General*

In some cases, it may also be appropriate to include some provisions governing how the enfranchising company will deal with tax and stamp duty, should they arise. It is outside the scope of this booklet, and of LEASE, to advise on either issue and specialist advice should be obtained.

The way forward

It is suggested that, once the leaseholders have generally agreed to proceed with an application for collective enfranchisement, they identify areas of responsibility and formalise these through an agreement. At this stage, advice should be sought from a solicitor who will assist in the preparation of a suitable contract.

The following paragraphs cover areas that should be included in a participation agreement and other related issues.

The enfranchising company

Pursuant to the 1993 Act, it is required that an RTE company be created in order for the freehold to be acquired. The RTE company will initiate the acquisition of the freehold by serving the Initial Notice, deal with matters arising from that Notice and ultimately become the freeholder of the property. Clearly, with this sort of responsibility, the actions of the enfranchising company must be accountable to the members of the company.

The same accountability must also apply to any other company formed for the purpose of acquiring the freehold by negotiation outside the Act.

In order to assist the members of the company in arriving at a decision that is not only in their best interest but is also well-informed, the enfranchising company should be required to observe a duty of

disclosure – to reveal details of negotiations and all contact and correspondence with the landlord. This will ensure that the enfranchising company is, at all times, acting for and taking instructions from the participating leaseholders and not acting alone on information not shared with them. The agreement should specify the duties of the enfranchising company in the conduct of the negotiations, controls and procedures by which the participants will instruct it in negotiation and settlement. **It is most important that procedures should be laid down so that only the enfranchising company instructs the retained professionals; individual leaseholders should not be able to contact the professionals themselves.**

The observance of time limits is vital to the action. Failure of the enfranchising company to comply with time limits may result in the application being treated as withdrawn, resulting in the members of the company being liable for the landlord's costs. Provision should therefore be made in the agreement to ensure that members of the company understand that time is of the essence, and to provide for some legal recourse for any undue delays by the enfranchising company. Similarly, where the landlord requests information relevant to the Initial Notice under the 1993 Act, the agreement should commit the members of the company to provide the information to the enfranchising company, as soon as reasonably practicable upon receiving advice from the solicitor that it is required.

Upon becoming members of the enfranchising company, individual members must be prepared to delegate decision-making to the company. Provision can be made in the participation agreement, if desired, for a collective decision-making procedure, which will bind the members of the company. Not every decision will meet with unanimous approval – this would be far too difficult to achieve, for practical purposes; so, (except where an assignee is applying to participate), decisions should be based upon a defined majority agreement or delegated to a smaller group or committee. It may be preferable to specify certain matters as requiring the agreement of the individual members of the enfranchising company – for example, variations upwards in price – leaving all other procedural matters to be decided by the enfranchising company.

The Initial Notice

The Initial Notice is the formal method of disclosing to the landlord the desire of the members of the enfranchising company to acquire the freehold (and other intermediate interests). Although there is no statutory form, Section 13 of the 1993 Act is quite specific as to the contents of the Initial Notice.

The participation agreement should include a term stating that the members of the company have agreed the Initial Notice, and that they authorise the enfranchising company to serve the Initial Notice on the landlord. Further, the agreement should not only specify the price put forward by the members of the company in the Initial Notice, but, even more importantly, that members of the company agree that the eventual purchase price may be in excess of that amount, subject to agreed parameters or upper limits.

It should also be the duty of the enfranchising company to register the service of the Initial Notice with the Land Registry. Service of the Initial Notice represents the commitment of the members of the company to acquiring the freehold and it is important to secure their position against a subsequent purchaser of the freehold. (Registration can be either as a class C (iv) Land Charge in unregistered land or by a notice or caution where the land is registered).

Registration of the Initial Notice can protect the leaseholders against

subsequent dealings such as disposal or severing of the freehold. Section 19(1) of the Act has the effect of making such a disposal void.

Representations and warranties

Representations are statements of fact; warranties are terms of a contract where the breach leads to an action for damages but the agreement itself is not discharged.

Where the purchase is through the formal procedures of the 1993 Act, members of the company should represent and warrant that they rank as **qualifying tenants**. (For further information on this subject, see our leaflet *Collective Enfranchisement – Getting Started*). The significance of both is that a breach of this term will result in an action for damages against the offending participating tenant. A likely basis for the assessment of damages could be the shortfall in the purchase price having to be met by the remaining tenants as a result of the offending tenant's failure to qualify. A covering clause should prevent such an issue ever having to be considered.

Covenants

A covenant is essentially a promise to perform or to refrain from performing some act in the future, in the common interest.

In a participation agreement, examples of relevant covenants could include:

- to pay, within a specified time limit, the individual contribution to the agreed purchase price;
- to pay the individual contribution to the landlord's and the enfranchising company's professional fees;
- specifically to pay, upon acceptance of the purchase price, all arrears of rent and service charge. This is intended to ensure that the title is conveyed unencumbered and without a lien. (A lien is a charge on the land enforceable by foreclosure or by application to the court for an order for sale of the property. Under section 32(2) of the Act, the landlord would have a lien on outstanding rent and service charge. The right continues even after completion or after the landlord has parted with possession, or the title deeds, on completion and even though the conveyance contains a receipt for the whole price.)
- that the parties to this agreement will not be party to any other negotiation with or submit any other offer or tender to the landlord which relates to the purchase of the premises. This is simply to ensure that those parties to the participation agreement do not join an alternative application or bid for the freehold.
- to disclose any separate agreement of disposals. Section 18 of the Act requires that the landlord be notified of certain agreements that relate to the disposal of any interests in the premises.

Any agreement, of whatever nature, between the enfranchising company and a person other than a participating member, which provides for the disposal of an interest in, or in any part of, the specified premises, or any property specified in the Initial Notice, must be disclosed. In the absence of disclosure, the enfranchising company and the members of the company are obliged to compensate the landlord if it can be shown that an increased price would have been payable had this information been disclosed prior to the price being settled.

The requirement for disclosure does not extend to an agreement granting a security for a loan. Thus, if the members of the company decide to obtain a secured loan on the premises, this does not have to be disclosed to the landlord.

Default indemnity

As the title suggests, this clause is intended to ensure that the enfranchising company is indemnified for any loss resulting from the default of members of the company. The clause clearly puts the tenants on notice that they must compensate the enfranchising company in the event of their default. By doing so, it hopes to focus the minds of the members of the company on the consequences of default, thereby ensuring that there is no withdrawal due to some failure on their part. It is the enfranchising company which will be liable to pay the purchase price and the landlord's costs when the enfranchisement is complete.

Where there is a withdrawal – either a voluntary withdrawal or a deemed withdrawal – the members of the company are liable for the landlord's (and other intermediate landlord's) costs. A deemed withdrawal will arise where there has been a failure to comply with a procedural step or time limit.

The participation agreement should seek to indemnify the enfranchising company against liability for actions that are the responsibility of the members of the company, but also to reserve members' rights where the withdrawal arises from a default by the enfranchising company.

Assignees, personal representatives and qualifying tenants not party to the Initial Notice

The parties to the agreement will usually be those qualifying tenants who will be party to the Initial Notice and the enfranchising company. However, there are potential participants who may not have originally been party to the agreement or to the Initial Notice, who may wish to be so in the future. The more participating tenants, the further the costs can be spread, so it is in everybody's interest to include a clause allowing for such an action.

To ensure the agreed spread of costs, it may be considered advantageous to include in the agreement provision for the amendment of the wills of members of the company to require, in the event of their death, that their beneficiaries continue to participate as personal representatives and contribute to the costs.

Professional advisers

In that it is the enfranchising company that is conducting the negotiations, the solicitor and valuer should be appointed to advise the enfranchising company and take their instructions from the enfranchising company. The participation agreement should provide and make clear that where tenants are looking for advice on their individual position, they will not be able to consult the instructed advisers, thereby avoiding the possibility of a conflict of interest. Where tenants wish to seek advice on a matter personal to them, this should be obtained from solicitors or valuers independent of those instructed by the enfranchising company.

Costs

Members of the company will need to agree, in advance of the agreement of terms, how costs are to be apportioned to individual leaseholders. This will be of particular importance in cases where not everyone is participating in the purchase and a shortfall has to be made up in the total sum.

It is most important that a schedule of apportionment, based on prior discussion and agreement, be included within the participation agreement, to ensure:

- certainty
- payment of individual contributions

The schedule could include a provision that the company will not exchange contracts until all monies are available. **The directors should not commit the company to the contract until they are aware that the company can meet its financial commitments.**

The schedule can also specify the means by which the apportionment is to be actioned, agreed in advance to avoid disputes after the action is completed.

Other issues

While the above paragraphs will cover the main points of most participation agreements, there will be other areas specific to the particular building or circumstances. This leaflet can only serve as a general guide and expert legal advice should be obtained in the drafting of individual agreements.

Conclusion

As stated previously, a participation agreement is not a statutory requirement and many leaseholders buying a freehold manage without one. However, in view of the potential for disputes, delays or problems in meeting costs, it is suggested that such an agreement will be beneficial to the smooth running of the purchase.

Example of a participation agreement

The following draft is provided for purposes of example, to illustrate how the points previously covered may be included in a formal contractual agreement.

Leaseholders proposing to enter into such an agreement are strongly recommended to seek advice from a solicitor with experience of collective enfranchisement under the 1993 Act; LEASE shall not be liable for any actions or damages arising from use of the example agreement.

PARTICIPATION AGREEMENT

THIS AGREEMENT is made [*insert date*] BETWEEN:

- (1) [*insert name and address of company*] ('the Company'), and
- (2) each of the tenants named in the First Schedule hereto, each of whom is hereinafter referred to as a 'Tenant' and all of whom are hereinafter referred to collectively as 'the Tenants'.

INTERPRETATION:

In this Agreement:

- (1) 'the Legislation' means Chapters I and VII of Part I together with Part IV of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended by the Commonhold and Leasehold Reform Act 2002) together with the schedules thereto.
- (2) 'the Regulations' means The Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993 (S.I. 1993 No. 2407)
- (3)(a) 'enfranchisement' means the acquisition of such interests together with the grant of such rights as are specified in sections 1 and 2 of the Legislation.
- (b) 'exercising the right to enfranchise' or such similar expression as may be appropriate means the observance of the procedure laid down by the Legislation and by the Regulations within the time limits imposed thereby in order to achieve enfranchisement.
- (c) 'the claim' means the claim to achieve enfranchisement made in the Initial Notice to be served pursuant hereto.
- (d) 'the participating flat' in relation to each Tenant means the flat specified in the First Schedule hereto as being a flat in respect of which he is participating in the claim.
- (e) 'his proportion' in relation to each Tenant means the proportion specified as his proportion in the First Schedule hereto.
- (4) The following terms have the meanings conferred on them by the Legislation and the Regulations: qualifying tenant, reversioner, relevant landlord, and Initial Notice.
- (5) Where the context so requires words importing the masculine gender include the feminine gender or the neuter.
- (6) Where the context so requires words importing the singular include the plural.
- (7) Where a Tenant consists of two or more persons, any covenant made hereunder by a Tenant shall be deemed to be made by such persons jointly and severally.

*Example of
a participation
agreement*

WHEREAS:

- (1) The Company has been created by the Tenants in order to exercise the right to enfranchise and to achieve enfranchisement on behalf of its members for the time being participating in the claim in respect of the premises known as [*insert address and any necessary details to identify the property in respect of which it is intended that the right should be exercised*], ('the premises').
- (2) Each member of the Company is a Tenant.

IT IS HEREBY AGREED AS FOLLOWS:

1. Each and every Tenant warrants to every other party hereto (and to each tenant members of the Company) that on the date on which the initial notice is to be served pursuant hereto:
 - (1) he will be a qualifying tenant of the participating flat.
 - (2) he will be entitled to participate in the claim in respect of the participating flat and he is not aware of any reason why he may be prohibited from so participating.
2. Each and every Tenant agrees with every other party hereto (and with each tenant member of the Company) as follows:
 - (1) He will not cause or permit to be done any act or thing which will or may result in his being prohibited from participating in the claim in respect of the participating flat or which will or may result in the initial notice to be served pursuant hereto being or becoming invalid or which will or may prevent enfranchisement pursuant to the claim, including but without prejudice to the generality of the foregoing, he will not sign , prior to the service of the initial notice (a draft copy of which is annexed hereto and all necessary copies thereof) any other initial notice in respect of the whole or part of the premises.
 - (2) He will provide to the Company or its duly appointed agent within seven days of any demand by the same any documents necessary to deduce his title to the participating flat.
 - (3) He will comply with the obligations imposed on him by the Legislation and the Regulations in relation to the claim.
 - (4) He will not direct any enquiries in relation to the claim, the exercise of the right to enfranchise pursuant thereto or compliance with any of the obligations contained herein to any of the advisers at any time instructed by the Company in relation to the same.
 - (5) The Tenant will use best endeavours prior to the assignment of the flat during the course of the claim to obtain:
 - (a) a direct covenant by the assignee thereof with the Company and all the tenants for the time being participating in the claim to be bound on the said assignment by the Tenant's covenants contained herein in place of the Tenant; and
 - (b) the binding agreement of the assignee thereof to notify the Company within 14 days of such assignment that such assignment has taken place and that he is electing to participate in the claim; and
 - (c) the binding agreement of the assignee thereof to become a member of the Company.

Example of a participation agreement

3. Each and every Tenant further agrees with every other party hereto and with each tenant members of the Company as follows:
 - (1) In the event that enfranchisement pursuant to the claim is to be by completion following the making of a binding contract between the Company and the reversioner:
 - (a) He will pay to the Company or its duly appointed agent his proportion of the deposit payable by the Company on, or prior to, exchange of contracts between the Company and the reversioner pursuant to the exercise of the right to enfranchise, such sum to be paid [*insert time of payment*]
 - (b) He will pay to the Company or its duly appointed agent (after deduction of the amount paid by him under the last preceding sub-clause):
 - (i) all outstanding rent and service charge arrears and any other sums due under or in respect of the lease or leases of the participating flat (or any agreements collateral thereto) in respect of which a vendor's lien would otherwise exist following enfranchisement, such sum to be paid [*insert time of payment*]
 - (ii) his proportion of all other sums for which the Company is or may be liable by virtue of the Legislation or the Regulations in relation to the claim and of all sums in respect of which a vendor's lien would otherwise exist following enfranchisement, such sum to be paid [*insert time of payment*].
 - (c) He will pay to the Company or its duly appointed agent on demand by the same his proportion of all other sums which the Company reasonably has incurred or will incur in relation to the claim, exercising the right to enfranchise in relation thereto, enfranchisement pursuant to the claim, and complying with its obligations hereunder, including, but without prejudice to the generality of the foregoing, legal and valuation fees.
 - (2) In the event that enfranchisement pursuant to the claim is to be by virtue of a vesting order from the court he will pay to the Company or to its duly appointed agent such sums as are specified in sub-paragraphs (b) and (c) of sub-paragraph (1) hereof, [*insert time of payment*].
 - (3) In the event that enfranchisement pursuant to the claim cannot be achieved in circumstances where there is no default by the Company in complying with its obligations hereunder or under the Legislation or Regulations but due to act or omission by any tenant or tenants who have or has participated or are for the time being participating in the claim or any default by the same in complying with obligations under the Legislation or the Regulations or hereunder, he will pay to the Company or its duly appointed agent such sums as are specified in sub paragraphs (b)(ii) and (c) of sub-paragraph (1) hereof, [*insert time of payment*].
 - (4) In the event that the Initial Notice served pursuant hereto is withdrawn (whether deemed or otherwise) in circumstances where a joint and several liability for costs incurred by the reversioner or by any other relevant landlord in relation to the claim is imposed by the Legislation or by the Regulations on the members of the Company, he will pay his proportion of such costs to the reversioner or other relevant landlord in accordance with such obligation.
 - (5) He will pay to the Company or its duly appointed agent on demand by

Example of a participation agreement

the same the premium in respect of the life cover which the Company effects upon his life in accordance with the Company's obligation so to do hereunder.

- (6) Upon enfranchisement he will surrender the lease or leases held by him (and obtain the consent of any mortgagee in respect of the same to such surrender), details of which are set out in the Third Schedule hereto, and he will accept and execute the grant of a new counterpart lease or leases in the form of the draft copy or copies which is or are annexed hereto.
4. The Company agrees with every other party hereto (and with each member of the Company) as follows:
- (1) To prepare and to serve on *[insert when service to take place]* an Initial Notice (and requisite accompanying plan) in the form of the draft copy annexed hereto on the reversioner and a copy thereof on each of the relevant landlords.
 - (2) To register with due diligence the said Initial Notice as an estate contract under the Land Charges Act 1972 or to protect it by notice or caution under the Land Registration Act 2002, as appropriate.
 - (3) To comply with all obligations imposed by the Legislation and the Regulations on the Company (including, but without prejudice to the generality of the foregoing, the duty of disclosure imposed by section 18 of the Legislation), and to exercise the right to enfranchise in relation to the claim with due diligence in order to achieve enfranchisement.
 - (4) To effect appropriate and adequate life cover upon the life of each Tenant to take effect from the date the Initial Notice is served pursuant hereto (and to effect such cover to take effect when appropriate upon the life of any other tenant who is for the time being participating in the claim).
 - (5) That it has instructed *[insert name and address of solicitors]* and *[insert name and address of surveyor/valuer]* to advise the Company upon and provide all necessary assistance in relation to the claim and the exercise of the right to enfranchise pursuant thereto and enfranchisement pursuant thereto and in relation to compliance by the Company with its obligations hereunder, and it will not terminate such instructions or instruct any replacement advisers without the authorisation of *[insert majority of participating tenants required and the method by which such a decision is to be taken]*.
 - (6) To ensure that each tenant for the time being participating in the claim is kept reasonably informed of all matters relevant to the claim, the exercise of the right to enfranchise in relation thereto, enfranchisement pursuant thereto and compliance by the Company with its obligations hereunder, including, but without prejudice to the generality of the foregoing, any proposals for settlement in relation to the claim made by the reversioner or by its duly authorised agent.
 - (7) To take all reasonable steps to negotiate with the reversioner or such agent and to reach a settlement in relation to the claim *[in accordance with the decision of [insert majority of participating tenants required and the method by which such a decision is to be taken]*
as to what proposals for settlement should be made to the reversioner or such agent and as to whether any proposals for settlement made by the reversioner or such agent should be accepted].

Example of a participation agreement

- (8) To act in accordance with the decision of [*insert majority of participating tenants required and the method by which such a decision is to be taken*] as to whether any orders or determinations of the Court or of the Leasehold Valuation Tribunal or of any other relevant forum made in connection with the claim should be appealed or whether any appeal in respect of the same should be resisted.
- (9) Upon enfranchisement to accept the surrender of the leases details of which are set out in the Second Schedule hereto and to grant to each tenant for the time being participating in the claim a new lease or leases and to execute the originals of the same, draft copies of which are annexed hereto.
- (10) To comply with each of its aforesaid obligations hereunder in such a manner as to minimise so far as is reasonably possible the amounts payable by each of the tenants members of the Company under Clause 5 hereof and by virtue of the application of any provision of the Legislation or the Regulations.

5. This agreement does not constitute a partnership agreement.

[insert any other clauses relating to the grant and registration of the new leases to the participating tenants, any other matters in relation to which the nominee company should act on the instructions of the participating tenants etc]

FIRST SCHEDULE

[insert name of each participating tenant together with the address of the flat in respect of which he is participating and his proportion in respect of such flat of the sums payable by virtue of the claim]

SECOND SCHEDULE

[give details of the leases which are to be surrendered on enfranchisement]

Example of a participation agreement

NOTES

1. This agreement is drafted on the assumption that the Company is a company that has already been set up and in which the participating tenants have become members, directors appointed and the mechanism by which the Company will take decisions and act has been established. Further, it presupposes that the initial notice has been prepared and is ready for to be served on the reversioner. Thus, a considerable amount of preparatory work will have already been carried out, in particular obtaining valuation advice and checking eligibility of the participating tenants to submit the claim.
2. If any person is a participating tenant in respect of two flats then he should set out his name twice so that the tenant of each flat and the proportion of sums payable in relation to each flat are clear.
3. Clauses 3(6) and 4(9) are only appropriate if it is intended that on the acquisition of the freehold the tenants will receive new leases in substitution for their existing leases. It may be desired to insert further provisions relating to such new leases and the registration thereof.
4. It may be desired to omit the words in brackets at the end of Clauses 4(5) and 4(7) and to omit Clause 4(8) if it is preferred that all decisions in the process should be taken by the Company in accordance with the Company structure and procedures.
5. No express provision has been made in the agreement to allow for the possibility that a non-participating qualifying tenant, not being an assignee of a participating tenant, be permitted to participate once the initial notice has been served. Thus, in order to avoid the necessity of obtaining the agreement of all the participating tenants to the variation of the participation agreement to add such a new participant (and agreement to the consequent variations in the proportions payable), it may be preferred to remove the ability of each individual participating tenant to refuse the addition of such a new participant by inserting into the participation agreement a covenant by every participating tenant to agree to the inclusion in the claim of any such non-participating tenant who subsequently wishes to participate (together with a specification of how the proportions will be altered in that event), unless all the participating tenants agree at that time to the contrary.
6. Because of the difficulty in requiring the amendment of wills of the participating tenants, obliging their personal representatives to participate in the claim on the death of the tenant, clauses allowing for appropriate insurance cover to be obtained are an option to consider.
7. It is to be noted that the participation agreement does not make provision for the tenants to withdraw from the claim in the event of the amounts payable reaching a specified amount. The participation agreement is drafted on the premise that each participating tenant has obtained advice as to the likely amounts he will have to pay before agreeing become a member of the Company and understands that the price may be in excess of that proposed in the initial notice. The legislation of course provides a right for the Company to withdraw the claim, although the members of the Company will in that event incur liability for the landlord's wasted costs under the legislation and they will also be obliged under the participation agreement to pay the wasted costs incurred by the Company.

Useful addresses

Leasehold Valuation Tribunals

London

10 Alfred Place, London WC1E 7LR
Tel: 020 7446 7700

Northern

1st Floor, 5 New York Street, Manchester M1 4JB
Tel: 0845 100 2614 Fax: 0161 237 3656 or 0161 237 9491

Southern

1st Floor, Midland House, 1 Market Avenue, Chichester PO19 1JU
Tel: 0845 100 2617

Midlands

2nd Floor, Louisa House, 92-93 Edward Street, Birmingham B1 2RA
Tel: 0845 100 2615 or 0121 236 7837 Fax: 0121 236 9337

Eastern

Great Eastern House, Tenison Road, Cambridge CB1 2TR
Tel: 0845 100 2616

Wales

1st Floor, West Wing, Southgate House, Wood Street,
Cardiff CF1 1EW
Tel: 029 2023 1687

Other useful addresses

Association of Residential Managing Agents (ARMA)

178 Battersea Park Road, SW11 4ND
Tel: 020 7978 2607 Fax: 0207 498 6153
Email: info@arma.org.uk Website: www.arma.org.uk

Association of Retirement Housing Managers (ARHM)

Southbank House, Black Prince Road, London SE1 7SJ
Tel: 020 7463 0660 Fax: 020 7463 0661
Email: enquirers@arhm.org Website: www.arhm.org

The Royal Institution of Chartered Surveyors (RICS)

12 Great George Street, Parliament Square, London SW1P 3AD
020 7222 7000

The Federation of Private Residents' Associations

PO Box 10271, Epping CM16 9DB
Tel: 0871 200 3324 Email: www.fpra.org.uk

The Leasehold Advisory Service (LEASE)

31 Worship Street, London EC2A 2DX
Tel: 0845 345 1993 or 020 7374 5380 Fax: 020 7374 5373
Email: info@lease-advice.org Website: www.lease-advice.org



L E A S E

**THE LEASEHOLD
ADVISORY SERVICE**

31 Worship Street, London EC2A 2DX
Tel: 0845 345 1993 or 020 7374 5380 Fax: 020 7374 5373
Email: info@lease-advice.org Website: www.lease-advice.org