Property Notepad - July 2010

3. Flexible Enfranchisement - *The Craftrule*

The Leasehold Reform Housing and Urban Development Act 1993 (aimed at buying lease extensions for long leasehold flats or the freehold of a block of flats) has provided a steady source of referrals to the higher courts.

Amending legislation has simplified the qualification process for individual leaseholders to the extent that registration of a leaseholder's interest at Land Registry allows any new leaseholder the opportunity to join in and enfranchise (i.e. buy their freehold) with their neighbours. The lease extension qualification is now reduced to two years' registered ownership, although a vendor can assign the benefit of a notice of claim under section 42 to its purchaser.

In the recent case of Craftrule *Ltd v 41-60 Albert Palace Mansions (Freehold) Ltd*, the High Court considered the definition of a qualifying building under section 3 of the 1993 Act. The upshot of the case is that you can now have a qualifying self-contained part of a building for leasehold enfranchisement. The Court decided that "a self-contained part of a building", referred to in section 3, could mean part of a building even if that part would be capable of being subdivided into two or more further self-contained parts. This could have important consequences in some very common situations.

For example, a development of 30 flats, sub-divided into three stacks of 10 flats: this is effectively one building, but with three common parts, each independent of the other. Before Craftrule, to enfranchise the building(s) you needed to ensure qualification of each of the three stacks of flats. Qualification meant at least 50% of flat owners from each sub-building (i.e. at least 5 out of 10 in each stack). It also required three notices under section 13 and three sets of participation agreements.

However, now one notice will suffice for so long as, using our example, 15 out of the 30 flats participate. So now the mix could be, in each respective stack, 8 of the 10; 1 of the 10; and 6 of the 10. This is a completely different blend, and arguably one could even envisage a situation where there were no participants in one of the stacks.

The result is much greater flexibility for tenants. This could be crucial where the tenants of one of the two or more sub-buildings would otherwise fail to satisfy the requirement that the initial enfranchisement notice is served by "not less than one half of the total number of flats". For freeholders, this does however mean that another potential argument against an enfranchisement claim has been ruled out, and with only "hope value" being paid on the marriage value of non-participants, a substantial sum of money for the freeholder could also be at risk.

Thanks to Justin Bennett of Langley Byers Bennett Surveyors (020 7822 8850) for this article.

© 2010 Laytons Solicitors | Regulated by the SRA (no:76357) |