ENFRANCHISEMENT UNDER THE LEASEHOLD REFORM ACT 1967:

An overview and case law update

1. This article is intended to provide a brief overview on the law of enfranchisement under the Leasehold Reform Act 1967 ('LRA'), with an update on recent case law.

2. There are various regimes under which a tenant may have a right to buy the freehold or to extend a lease:

    a. LRA 1967: a qualifying tenant of a **house;**

    b. Leasehold Reform, Housing and Urban Development Act 1993 ('LRHUDA'): a qualifying tenant of a **flat**;

    c. Law of Property Act 1925: a right in respect of certain long leases to "enlarge the term of the lease into a fee simple";

    d. Landlord and Tenant Act 1987: a landlord cannot dispose of its interest in a building that consists of at least two **flats** held by qualifying tenants without first offering it to the tenants;

    e. Housing Act 1980: a secure tenant of a house where the freeholder is the council or one of a number other **public bodies**, has the right to buy the freehold.

3. This article is only concerned with the rights under the Leasehold Reform Act 1967 ('LRA'), in relation to a qualifying tenant of a house.

4. On 8 April 2020, the High Court was concerned with the case of ***Freehold Properties 250 Ltd v Field and others [2020] EWCH 792 (Ch),*** where the Court considered whether the right in the LRA 1967 to enfranchise a long leasehold applied to a lease where only part of the house was demised.

5. Before delving into this case, an overview of the rights under the LRA 1967, the conditions to satisfy and the applicable exclusions may be of assistance.

6. A qualifying tenant of a long lease of a house has the following rights:

    a. To acquire the freehold, a purchase price is payable;

    b. The grant of a new lease for the remainder of the existing term, plus a further 50 years. No premium is payable, but the lease can contain a modern ground rent, reviewable after 25 years.

7. These rights were introduced by the LRA 1967.

The right to buy the freehold

8. The tenant of a lease of a house may have the right to buy the freehold.

Exclusions

9. There are certain leases that are excluded from the right to buy. The main exclusions are:

    a. Leases where the letting of the house is ancillary to the letting of other land and premises (s.1(3)(a) LRA);

    b. Leases of an agricultural holding under the Agricultural Holdings Act 19868 or a farm business tenancy under the Agricultural Tenancies act 1995 (s.1(3)(b) LRA);

    c. Leases granted by a charitable housing trust for the purposes of its charitable functions (s.1(3) LRA);

    d. Leases where the freehold is part of the inalienable estate of the National Trust (s.32 LRA);

    e. Some shared ownership leases (s.33A LRA);

    f. Leases of Crown land (s.33 LRA);

    g. Certain leases where the landlord is a local authority or other public body and the land is needed for development (s.28 LRA)

Conditions

10. For the right to buy to arise, each of the following conditions must be satisfied:

    a. The lease must be of a house;

    b. The lease must be a long lease, which is a lease granted for a term of more than 21 years. Certain other leases also qualify (see below);

    c. In the case of an 'excluded tenancy', the rent payable must be a low rent;

    d. The tenant must have been the legal owner of the lease of the house for at least two years immediately preceding the service of the notice requesting the right to buy (the 'ownership test');

    e. There must be no undertenant who has rights under the LRA 1967 (the 'residence test');

    f. If the lease is a business tenancy to which Part II of the Landlord and Tenant Act 1954 applies, the lease must be for a term of more than 35 years and the tenant must satisfy a residency test;

    g. In the case of a house containing flats, which enjoy a collective right to buy or lease extension rights, the tenant of the house must satisfy a residency test.

The right to a lease extension

11. The right to a lease extension is a right to be granted a new lease, in substitution for the existing lease, for a term expiring 50 years after the term date of the existing least (s.1 and s.14 LRA).

Exclusions

12. There are certain leases that are excluded from the right to a lease extension. The main exclusions are:

    a. Leases where the letting of the house is ancillary to the letting of other land and premises (s.1(3)(a) LRA);

    b. Leases of an agricultural holding under the Agricultural Holdings Act 19868 or a farm business tenancy under the Agricultural Tenancies act 1995 (s.1(3)(b) LRA);

    c. Leases of Crown land (s.33 LRA);

    d. Some shared ownership leases (s.33A LRA);

    e. Leases granted by a charitable housing trust for the purposes of its charitable functions (s.1(3) LRA);

    f. Certain leases where the landlord is a local authority or other public body and the land is needed for development (s.28 LRA)

Conditions

13. A tenant has a right to a lease extension if each of the following conditions are satisfied:

a. The lease must be of a house;

b. The lease must be a long lease, which is a lease granted for a term of more than 21 years. Certain other leases also quality (see below);

c. The rent payable must be a low rent and the house must have a rateable value (or notional equivalent) below the prescribed limits;

d. The tenant must have been the legal owner of the lease of the house for at least two years immediately preceding the service of the notice requesting the right to buy;

h. There must be no undertenant who has rights under the LRA 1967;

i. If the lease is a business tenancy to which Part II of the Landlord and Tenant Act 1954 applies, the lease must be for a term of more than 35 years and the tenant must satisfy a residency test;

j. In the case of a house containing flats, which enjoy a collective right to buy or lease extension rights, the tenant of the house must satisfy a residency test.

The conditions

The lease must be of a house

14. A house is defined in s.2(1) of the LRA 1967:

> "..."house" includes any building designed or adapted for living in and reasonably so called, notwithstanding that the building is not structurally detached, or was not or is not solely designed or adapted for living in, or is divided horizontally into flats or maisonettes; and
>
> (a) where a building is divided horizontally, the flats or other units into which it is so divided are not separate "houses", though the building as a whole may be; and
>
> (b) where a building is divided vertically the building as a whole is not a "house" though any of the units into which it is divided may be."

15. There are various well-known authorities which seek to clarify the above definition.

'For living in'

16. In *Day and another v Hosebay Ltd; Howard de Walden Estates Ltd v Lexgorge Ltd* [2012] UKSC 41, the Supreme Court emphasised that the LRA 1967 is concerned with a house as a place to live, rather than as an architectural feature. It was not intended to confer statutory rights on tenants of entirely commercial buildings.

'Designed or adapted'

17. A building that had originally been designed for living in, will not satisfy the test if it had been subsequently adapted to a different use. A building originally designed for a commercial purpose, subsequently adapted for living in, may satisfy the test, subject to all other requirements being met.

18. The court in *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 1 WLR 1320, said that the words "designed or adapted for living in" was simply defining the current function and identity of a building as a house, regardless of whether that function and identity was derived from its original design or later adaptations.

19. In the more recent cases of, *Day and another v Hosebay Ltd; Howard de Walden Estates Ltd v Lexgorge Ltd* [2012] UKSC 41, the Supreme Court held that 'adapted' means effectively, 'made suitable'. It applies to the building itself, not the contents. The word 'adapted' did not require a great structural change, though some physical adaptation is likely.

A house "reasonable so called"

20. Under the definition at s.2(1), the property must be a house 'reasonable so called'.

21. In *Hosebay,* the Supreme Court held that where a building is put to an entirely commercial use, the building is not a house reasonably so called.

22. The Supreme Court agreed with the reasoning in *Grosvenor Estates Ltd v Prospect Estates Ltd* [2008] EWCA Civ 1281:

    a. There was a degree of flexibility when considering whether it was reasonable to call a building a "house"

b. The “overwhelming and decisive” feature, was the prescribed and dominant use;

c. Weight should be given to:
   i. The terms of the lease;
   ii. The actual use of the building;
   iii. The relative proportions of the mixed use.

d. It could not be right to say that the building could reasonably be called a “house” when no-one could lawfully live in nearly 90% of it.

23. Further guidance was provided in *Hosebay,* where it was held that the fact that the buildings might look like houses, and might be referred to as houses, was not sufficient to displace the fact that the use was entirely commercial.

Structure of the house

24. As the definition outlined in s.2(1) suggests:
    a. The house does not have to be structurally detached;
    b. It can be divided vertically from the adjoining house;
    c. The house can be divided into flats, however the flat will not constitute a house, but the building as a whole may.

25. As per s.2(2), a house will be excluded from the LRA 1967 where it comprises a building that is not structurally detached and a material part of the house lies above or below a part of the structure which is not included in the demise. The purpose of this, is to help where there is an overlap or overhang with other premises, for example, a basement or an entrance archway.

26. The test under s.2(2), is whether a substantial part of the property lies above or below a part of the structure not included in the lease of the house.

*Part of the house or the whole of the house? – **case law update***

27. In the recent case of *Freehold Properties 250 Ltd v Field and others [2020] EWCH 792 (Ch),* the High Court considered whether:
    a. The right in the LRA 1967 applied to a lease where only part of the house was demised;
    b. Whether the exclusion of structural parts is void under s.23(1) of the LRA 1967.

28. The tenants from multiple properties each served a notice claiming the right to enfranchise their house. They were leaseholders of purpose-built terraced or semi-detached properties, the properties were on the same development and were demised by leases in similar form.

29. The tenant's leases excluded the structural parts of the properties, such as the roof and foundations, from the demise. The tenant sought to acquire the freehold of the properties from their landlord under the LRA 1967. At first instance, the landlord argued that the houses were not houses for the purposes of s.2(1), by reason of the exception in s.2(2), namely, that a material part lies above or below a part of the structure not comprised in the house.

30. The Judge rejected this argument, and found that the properties were within the scope of the LRA 1967. The landlord appealed, arguing that the right to acquire the freehold only applied to a tenant of the whole of a leasehold.

31. In the appeal, it was submitted on behalf of the landlord that the right to enfranchise applied only to a tenant of the 'whole of a leasehold house' and due to the fact the structural parts were excluded from the demise, the tenants were tenants of only part of a house. The tenants argued that the phrase 'a tenant of a leasehold house', included a tenant of part of a leasehold house and the right would be limited to the extent of the demise. The tenants in the alternative, argued that the exclusion of the structural parts engaged the "avoidance" provisions in s.23(1) of the LRA 1967.

32. The High Court allowed the appeal, and held that:

    a. A tenant does not fall within the enfranchisement regime of the LRA 1967, unless they are the tenant "of substantially the whole of a leasehold".

    b. The "avoidance" provision in s.23(1) of the LRA 1967 is insufficiently wide to embrace a limitation on a tenant's demise. A limited demise does not affect a tenant's rights under the LRA 1967, it is simply that the property interest acquired is insufficient to give rise to a right under the LRA 1967.

33. If the tenant's argument had been correct, it could have led to the transfer of the freehold of part of a house, thereby creating a flying freehold. Parliament could not have intended that outcome, without clear wording in the LRA 1967. In addition, the obligation on the landlord is to transfer the "house", not that part of the house that was demised. This would result in tenants receiving a freehold interest that was of a larger physical area than the original demise.

34. The High Court recognised the potential for landlords to avoid the operation of the LRA 1967 by reserving part of a house to themselves. However, it was open to a buyer of a long leasehold interest to consider whether the extent of the demise had been artificially reduced, and such properties would be less attractive to potential buyers.

Practical points

- A conveyancer advising a buyer of a long leasehold interest in a house should be careful to check that the whole of the house is demised by the lease. If not, the buyer should be advised that they are unlikely to be able to exercise the rights in the LRA 1967.
- Landlords who artificially restrict the demise of a leasehold house to circumvent the LRA 1967, should be warned that this could have an impact on the value of the property.

Ancillary premises let with the house

35. The right to buy or extend the lease applies to any garage, outhouse, garden or yard which are let to the tenant and which satisfy the qualifying condition contained in s.2(3). The qualifying condition in s.2(3), is that at the date on which the tenant serves notice of their claim, the ancillary premises must be let to the tenant with the house. Put simply, the tenant must be the tenant of the ancillary premises from the landlord of the house.

36. The premises must have been let as part of the same transaction as the original lease, or by way of subsequent addition to the original lease, such as the grant of a supplemental lease for the residue of the original term *(Gaidowski v Gonville & Caius College Cambridge* [1975] 1 WLR 1066.

A qualifying lease

37. A lease will qualify for the right under the LRA 1967, if it comes within the definition under s.1.

38. Generally, the tenant must have a long lease, being a lease originally granted for a term of more than 21 years.

39. Other leases that will qualify include:

    a. A lease for a term of less than 21 years that contains a right of non-perpetual renewal, without a premium, that has been renewed, so that the term is 21 years or more;

    b. A lease for a term of less than 21 years that contains a right of perpetual renewal, unless it is a sublease and the superior lease has a term of less than 21 years;

c. A lease that terminates on death, marriage or an unknown date;

d. A shared ownership lease pursuant to s.143 of the Housing Act 1985, where the tenant owns 100% of the equity;

e. A lease pursuant to s.149(6) of the Law of Property Act 1925.

Low rent and rateable value

Low rent

40. The low rent test, no longer applies to the right to buy claims except in certain circumstances. It does however, apply to the right to a lease extension.

41. As per s.4 of the LRA 1967, a rent is a low rent if:

    a. **Tenancy entered into before 1 April 1990 which had a rateable value other than nil at the commencement of the tenancy or at any time before 1 April 1990:**
    An annual rent of less than two thirds of the rateable value of the property on the "appropriate day" or the first day of the term granted by the tenancy;

    b. **In all other cases:**
    An annual rent of £1000 or less for a property in Greater London, or £250 or less for a property elsewhere.

42. The "appropriate day" is 23 March 1965 (s.4(1)(a) LRA 1967).

Rateable value

43. To qualify for the right to buy, a house no longer has to have a rateable value or a notional equivalent below any limit.

44. To qualify for the right to a lease extension, the house must have a rateable value below the prescribed limits.

45. The rateable value limits vary, depending on the date of the grant of the lease.

Ownership and residence test

46. There is an ownership test, which must be satisfied if the tenant is to qualify for the right to buy or the right to a lease extension. There used to be a residence test also, but this was abolished by the Commonhold and Leasehold Reform Act 2002 ('CLRA').

Ownership test

47. The tenant must have been the tenant for at least 2 years immediately preceding the service of notice requesting to exercise the right.

48. Ownership is dependent on a transfer of the legal title so in the case of a registered lease, the two years is calculated from the date the tenant is registered as the proprietor of the lease at the Land Registry, not the date that the lease was actually granted or the date of assignment.

Residence test

49. The residency test was removed by s.138 of the CLRA 2002 for notices given after 26 July 2002.

50. The absence of this test means that corporate tenants and non-resident individuals can enfranchise.

51. The CLRA 2002, however, introduced further provisions to address the issues which arose as a result of the elimination of the residency test.

52. These further provisions are:

    a. **Undertenant:** (s.1(1ZA) of LRA 1967)

       The right to buy or extend the lease0 will not apply to a tenant if there is an undertenant of the house to whom the right to buy or right to a lease extension applies. It will be the undertenant who has the right, subject to the lease otherwise qualifying.

    b. **Collective enfranchisement:** (s.1(1ZB) of LRA 1967)

       If part of the house has been made into one or more flats, and the tenants of those flats have a collective right to enfranchise under LRHUDA 1993, or as an individual any of those tenants has the right to a lease extension, then the tenant of the house cannot enfranchise unless:

       i. That tenant has been in occupation of part of the house as their only, or main, residence for at least two years immediately preceding service of the notice; or

       ii. For at least two years in the ten years immediately preceding service of that notice.

c. **Business tenancies:** (s.1(1B) and s.1(1ZC) of LRA 1967)

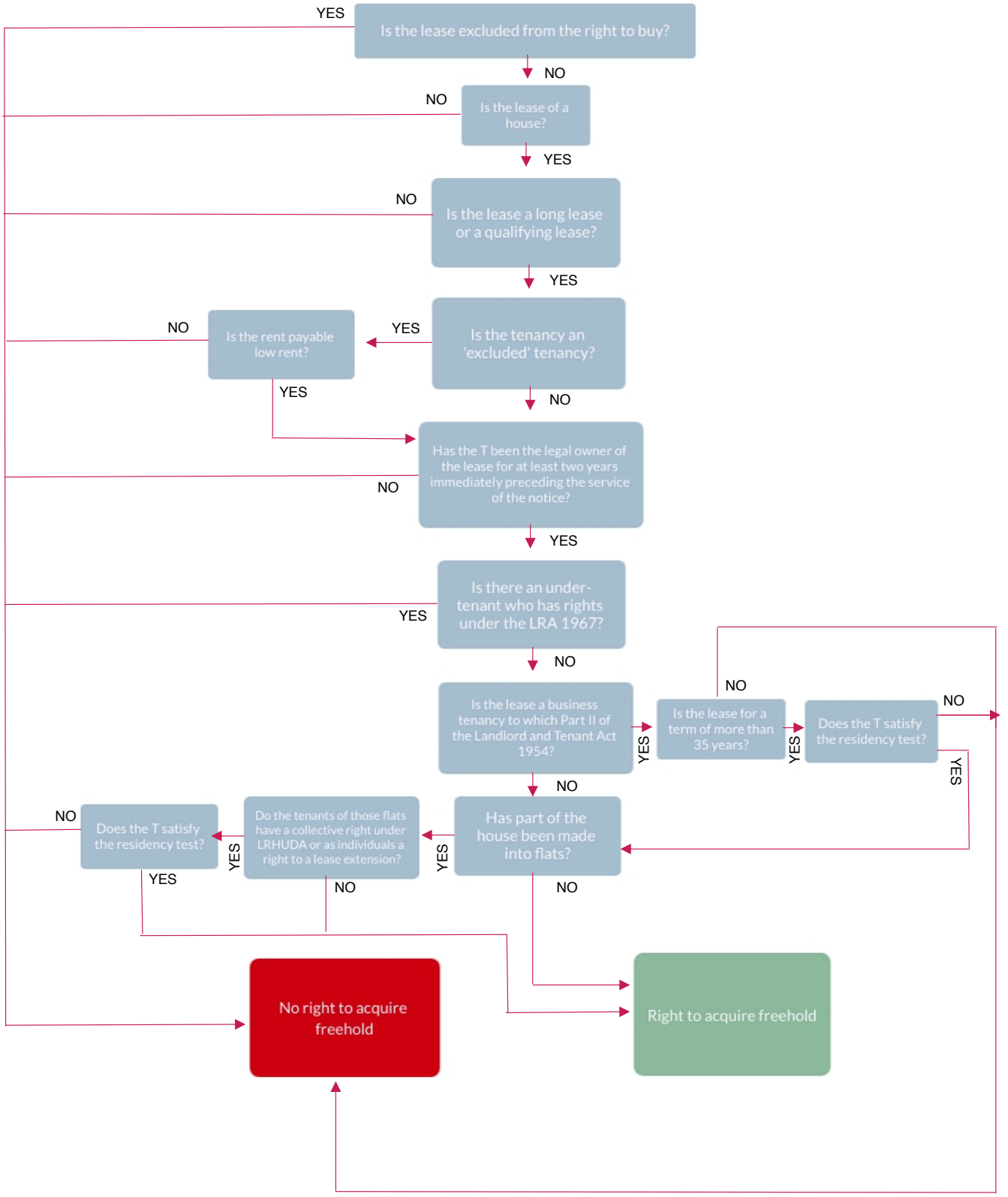
If Part II of the Landlord and Tenant Act 1954 applies to the tenancy of the house, the tenant can only buy the freehold if the tenancy was granted for a term of more than 35 years and:

i. The tenant has been in occupation of part of the house as its only or main residence for at least the two years immediately precedent service of the tenant's notice; or

ii. The tenant has been in occupation for at least two years in the ten years immediately preceding service of that notice.

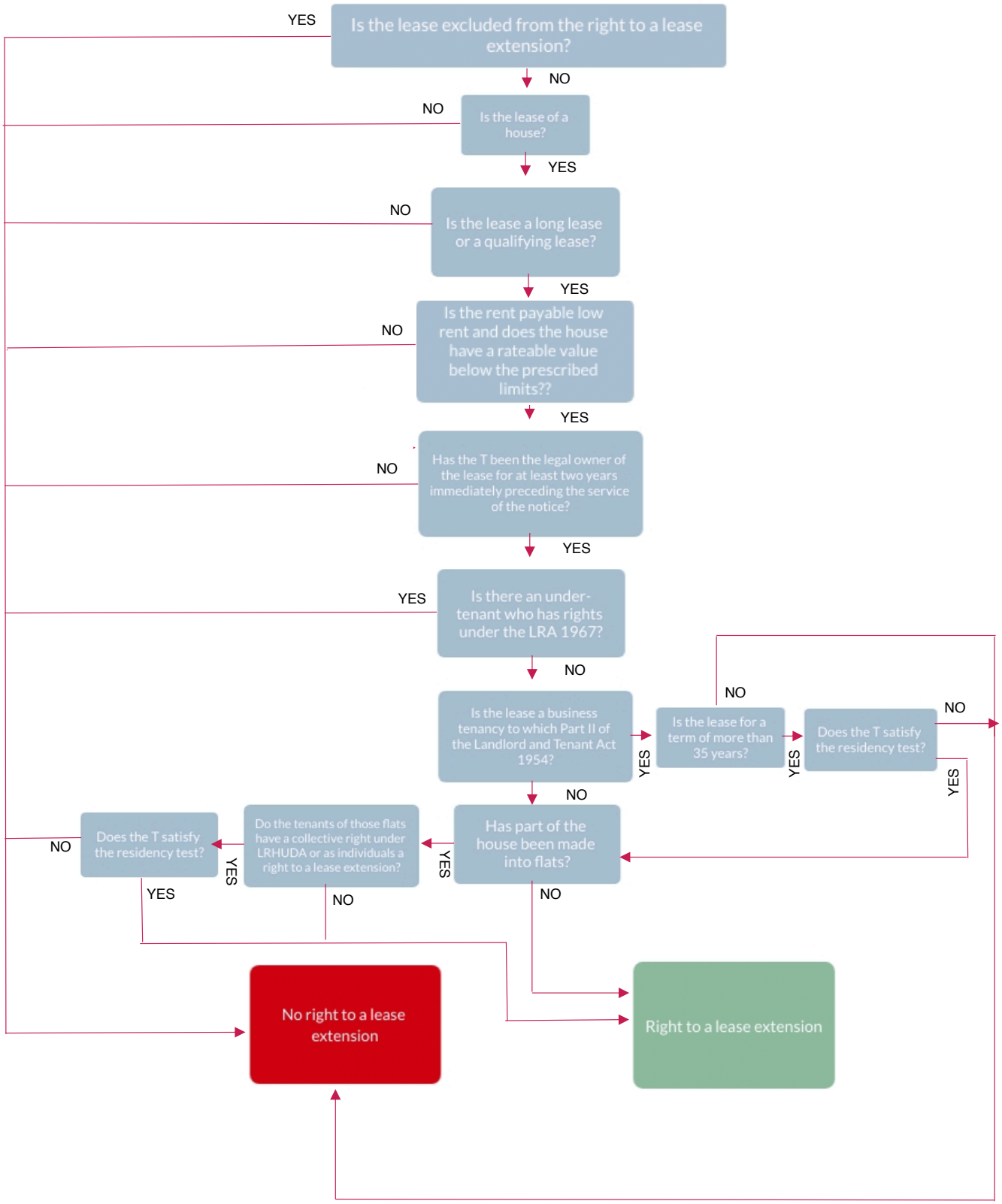
THE RIGHT TO ACQUIRE THE FREEHOLD

Step by Step Approach



THE RIGHT TO A LEASE EXTENSION

Step by Step Approach



Whilst every effort has been taken to ensure that the law in this article is correct, it is intended to give a general overview of the law for educational purposes. Readers are respectfully reminded that it is not intended to be a substitute for specific legal advice and should not be relied upon for this purpose. No liability is accepted for any error or omission contained herein.

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