

**FACT SHEET**

# Right of First Refusal Notices: What You Need to Know

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## What are Right of First Refusal Notices?

Right of first refusal notices are commonly referred to as "Section 5" notices as the requirement to serve them originates from section 5 of the Landlord and Tenant Act 1987. They are required when a landlord of a building which contains 2 or more flats wishes to transfer the freehold or another relevant interest in that building.

## Which Buildings are Caught by Those Requirements?

They apply to buildings:

- » which contain two or more flats where more than half of the total number of flats are owned by qualifying tenants (see below);
- » where more than half the internal floor area is residential; and
- » where the landlord is not an excluded landlord (e.g. a housing association, a resident landlord or the Crown).

## What is a Qualifying Tenant?

Individuals or companies who own a qualifying tenancy of a single flat forming part of the building. However, there are restrictions on the type of tenancies for example, business tenancies and assured tenancies are excluded as are tenants who own 3 or more qualifying tenancies of flats in the building or where their landlord is a qualifying tenant.

## What Does the Landlord Need to do?

- » The landlord must serve an offer notice on the qualifying tenants offering them the right to collectively take a transfer the freehold or other interest if a majority of the qualifying tenants wish to do so.
- » The notice must give the qualifying tenants at least 2 months to respond by serving an acceptance notice.
- » A further 2 month period must then be given for the qualifying tenants to appoint and provide details of a person or company which will take the transfer or other interest on their behalf.
- » There is no required format for the offer notice, but it must contain certain elements as explained below.

## What Does the Notice Need to Contain?

It must contain:

- » Particulars of the principal terms of the proposed transfer or other interest;
- » Specific details of the landlord's interest which is being dealt with, a plan is likely to be needed if the interest constitutes a part of a building or registered title;
- » The offer price; and
- » The necessary statutory statements regarding how the qualifying tenants can respond.

## What Happens After a Landlord Has Served an Offer Notice?

The majority of qualifying tenants can serve an acceptance notice within the 2 month period indicating that they wish to acquire the interest which has been offered to them.

## What Happens When an Acceptance Notice is Served?

- » The landlord must provide a contract to the qualifying tenants or their legal representative within one month of service of the acceptance notice.
- » The qualifying tenants then have a period of 2 months from receipt of the contract to pay the deposit and send the signed contract to the landlord's legal representatives with an offer to exchange contracts.
- » Contracts will then be exchanged in the usual way and completion will take place on the date agreed between the parties and referred to in the contract.

## What Happens if the Qualifying Tenants do not Comply with the Time Limits?

- » If the qualifying tenants do not comply with the limits referred to above, there will be a deemed withdrawal from the purchase, and the landlord can sell elsewhere during the period of 12 months from the expiry of the 2 month offer period provided that the transfer or other interest is offered on the same or no more favourable terms.

- » In some circumstances the landlord can claim its wasted legal costs from the qualifying tenants.

### What Happens if the Landlord does not Comply with the Time Limits?

If the landlord does not wish to proceed with the sale to the qualifying tenants it cannot be compelled to do so but will be unable to dispose of that interest for the period of 12 months from the date when it withdraws from the right of first refusal process.

### What Happens if the Landlord Does Not Serve Right of First Refusal Notices?

- » **Failure on part of the landlord to serve right of first refusal notices in circumstances where the landlord is legally required to do so is a criminal offence** on the part of individual landlords, companies and the directors of landlord companies.
- » The purchase price paid for the landlord's interest will be considered to be the proceeds of a crime.

It is vital that this procedure is carried out correctly and with care. Specialist legal advice should be sought on all relevant transactions.

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This fact sheet has been provided for information purposes only and should not be construed as legal advice. Whilst every effort has been made to ensure that the information in this fact sheet is correct (as at June 2025), it is intended as a guide only and should not be relied upon. Specialist legal advice should be sought so that all the factors specific to your circumstances can be taken into account.