



A guide for leaseholders and landlords

Deeds of Variation

Changing the terms of a lease
in England and Wales

Changing a lease after the event

A lease is a contract, and like any contract it can be altered if the parties agree. A deed of variation is the document that does it: the lease continues, and only the terms identified in the deed change.

They are needed more often than anyone expects. Ground rents that make a flat unmortgageable, service charge percentages that do not add up, buildings where nobody is obliged to repair the roof, rights that were never granted, alterations that quietly moved the boundaries of a flat — all of them are dealt with by variation.

This guide is written for both sides. It covers what a variation can and cannot do, where the Tribunal can compel one, what it costs and when a premium is payable, and the two traps that catch the unwary: the variation that is really a new lease, and the variation the landlord is not free to grant.

THE ESSENTIALS

Two	parties as a minimum — though a lender, an intermediate landlord or a management company is often needed too
s.35	the provision under which the Tribunal can vary a lease that fails to make satisfactory provision
75% / 10%	the consent needed, and the maximum opposition, to vary more than eight leases together
100%	the service charge total that must be exceeded or undershot before the Tribunal can intervene
None	the obligation on a landlord to agree a variation voluntarily
Registered	every variation should be noted at HM Land Registry, or it may not bind a successor

This guide concerns long residential leases of flats in England and Wales. Different considerations apply to commercial leases and to short tenancies.

And what it is not

Four documents are routinely confused with one another, and choosing the wrong one wastes weeks or produces a result nobody intended.

Document	What it does	When it is right
Deed of variation	Alters identified terms; the original lease survives	Ground rent, service charges, covenants, rights, defects
Licence	Permits something the lease prohibits, without changing it	One-off alterations, subletting, a pet
Surrender and regrant	Ends the lease and grants a new one	Extending the term, or adding land to the demise
Deed of rectification	Corrects a document that never recorded what was agreed	Genuine drafting errors, not changes of mind

The distinction that matters most

A licence gives permission. A variation changes the bargain permanently and binds successors — so it appears on the title, a buyer's solicitor will read it, and it affects the value of both the lease and the freehold. Landlords sometimes offer a licence where a variation is needed, and leaseholders sometimes ask for a variation where a licence would do. Establishing which is required is the first question, not a detail.

Rectification is not a soft option

Where a lease genuinely fails to record what the parties agreed, rectification may be available — but it requires evidence of the common intention, and if the other party will not co-operate it means an application to the court. It is not a route to improving a bargain that was simply a poor one.

WHAT A VARIATION CANNOT DO

It cannot bind anybody who is not a party to it. A variation of your lease does not alter your neighbour's, and it cannot impose an obligation on a leaseholder who has not signed.

It cannot override statute. A variation cannot contract out of the service charge protections in the Landlord and Tenant Act 1985, and it cannot remove a statutory right to extend a lease or to participate in a freehold purchase.

When a variation is really a new lease

This is the single most expensive mistake made in this area, and it is made by drafting a document that says "deed of variation" at the top when the law treats it as something else entirely.

A variation that extends the term of the lease, or that increases the extent of the demised premises, operates in law as an implied surrender of the old lease and the grant of a new one. It does not matter what the parties call it. The old lease ends; a new lease comes into existence on the date of the deed.

Why that matters

- **The lease date changes.** Priority, registration and the position of any guarantor all follow the new lease, not the old one.
- **Ground rent may be caught.** A new long residential lease granted since June 2022 must be at a peppercorn rent for the extended term. A landlord intending to preserve an income stream can lose it by agreeing to what looked like a variation.
- **Tax follows the new lease.** Stamp duty land tax on a surrender and regrant is calculated differently from duty on a variation, and overlap relief may or may not be available.
- **Statutory rights are affected.** A new lease resets the position for enfranchisement purposes, which can matter a great deal to both sides.

How to tell which you have

- **Does it touch the term?** Any extension of the length of the lease is a surrender and regrant, however it is described.
- **Does it change what is demised?** Adding a loft, a store, a parking space within the demise or a strip of garden is a surrender and regrant. Granting a right to use land the landlord keeps is not.
- **If neither, it is a true variation.** Rent, service charge, repairing obligations, user covenants, insurance provisions and rights over retained land can all be varied without disturbing the lease itself.

None of this is a reason to avoid a surrender and regrant. It is often exactly the right document. The mistake is arriving at one by accident, in a deed drafted as a variation, without anyone having considered the rent, the tax or the registration consequences.

What they are used for

In practice the instructions divide into four broad groups. The first is by far the most urgent, because it usually arrives with a transaction attached.

01

Making a flat mortgageable

An escalating or doubling ground rent, a short residue, or a defect a lender will not accept. Most lenders now decline ground rents that double at intervals, and a variation capping or extinguishing the rent is often the only way a sale completes.

02

Repairing a defective lease

Service charge percentages that do not total 100%, no obligation on anyone to repair the structure, missing insurance provisions, no reserve fund, no mutual enforcement covenant, or no right of entry to inspect.

03

Rights, boundaries and alterations

Parking spaces, bin and bike stores, access rights that were never granted, plans that do not match the building, and alterations already carried out that have effectively moved the extent of the flat.

04

Use and behaviour

Relaxing an absolute prohibition on pets or subletting, or — increasingly, at the landlord's or the other leaseholders' request — tightening a lease to control short-term lettings.

And a fifth: putting right what somebody else did

A good proportion of our variation work is regularising something a predecessor did — alterations consented to informally and never documented, a parking space used for thirty years but never granted, or a flat whose boundaries no longer match the plan attached to the lease. The current leaseholder inherits the problem and usually discovers it on a sale.

GROUND RENT: THE COMMONEST SINGLE INSTRUCTION

A doubling ground rent can render a flat unsaleable, and the leaseholder discovers it when a buyer's lender declines. A variation is one answer. A statutory lease extension is often the better one, because it removes the ground rent as of right and does not depend on the landlord agreeing to anything — see page 12.

What actually goes wrong

Most of the defects we are asked to fix were built into leases drafted decades ago, then replicated across a whole block. They surface when a building needs money spending on it.

Service charge defects

- Percentages that total more than 100%, so the landlord over-recovers, or less than 100%, so somebody must fund the shortfall – usually the landlord, or in practice nobody.
- No mechanism to vary apportionments when a flat is added, subdivided or converted from commercial use, except if deemed unreasonable.
- No power to collect in advance, so the building cannot fund major works without borrowing.
- No reserve fund, or one the lease does not permit the landlord to hold on trust properly.

Repair and insurance defects

- Parts of the building – the roof, the foundations, a walkway, a boundary wall – that no party is obliged to repair.
- Repairing obligations that do not match the extent of the demise, so a leaseholder is liable for something they do not own, or nobody is liable at all.
- Insurance provisions that name a party who no longer exists, or that do not oblige anybody to insure to full reinstatement value.

Structural defects in the scheme

- No covenant by the landlord to enforce other leaseholders' covenants, so a leaseholder suffering from a neighbour's breach has no route to a remedy.
- Rights of access, services or support that were never granted, or granted over land the landlord no longer owns.
- Leases in the same block that have drifted apart over the years, so the building is governed by several inconsistent schemes at once.

How defects usually come to light

Rarely on a quiet afternoon. They surface when a building needs major works and the money cannot be collected, when a buyer's solicitor reads the lease properly for the first time in twenty years, when a lender declines, when a new managing agent audits the apportionments, or when an insurance claim reveals that nobody was obliged to insure the part that failed.

The statutory route

A landlord is under no obligation to agree a variation. Where agreement cannot be reached, Part IV of the Landlord and Tenant Act 1987 provides a limited but valuable route to the First-tier Tribunal.

Section	What it allows	The test
35	Any party to a lease may apply to vary it	The lease fails to make satisfactory provision on one of the listed matters
36	A respondent may ask for other leases to be varied too	So that the building is not left with inconsistent leases
37	Two or more leases varied together by majority	Fewer than nine leases: all, or all but one, must consent. More than eight: at least 75% consent and no more than 10% oppose
38	The Tribunal orders the variation	And may order compensation for loss or disadvantage caused by it

The grounds under section 35 are a closed list

The lease must fail to make satisfactory provision for the repair or maintenance of the flat, the building or the installations in it; for insurance; for the provision of services reasonably necessary; for the recovery of expenditure by one party from another; or for the computation of the service charge. Nothing outside that list will do — so section 35 cannot be used to shorten a ground rent, extend a term or change a user covenant, however unreasonable the provision may be.

Counting the majority under section 37

The parties concerned are every leaseholder plus the landlord. In a block of one hundred flats there are one hundred and one parties, so seventy-six must consent and no more than ten may object. The landlord has a vote like anybody else, which in a leaseholder-owned building is worth remembering.

When nobody can simply agree it

Two constraints surprise people. One limits what the Tribunal can do. The other limits what a landlord is free to agree, even where it wants to.

If the percentages already total 100%

The service charge ground bites only where the aggregate of the proportions across the building exceeds or falls short of the landlord's expenditure. Where the percentages total exactly 100% but are distributed unfairly — a large flat paying the same as a small one — the Tribunal has no jurisdiction to intervene, however inequitable the split. The answer then is agreement under section 37, or nothing.

The same limitation bites where a landlord has manipulated its own apportionment to bring a block back to 100%. The arithmetic is satisfied; the unfairness is not a ground.

Where a lease obliges the landlord to enforce covenants in the other leases, the landlord may not be free to agree a variation at all. A landlord who permits one leaseholder to do something the leases prohibit may itself be in breach of its obligations to everybody else in the building — a point established in litigation that reached the Supreme Court, and one that a landlord asked for an accommodating variation must consider before agreeing to it.

What that means in practice

- **For landlords.** Check the mutual enforcement covenant before agreeing anything that relaxes a prohibition. A variation given in good faith can expose you to claims from other leaseholders.
- **For leaseholders.** A landlord's refusal may be principled rather than obstructive. Where that is the position, the route is a variation of all the leases in the building rather than of yours alone.

The other constraints

- **Mortgagees.** A lender may simply decline, and a variation completed without its consent breaches the mortgage and may be unenforceable against it.
- **Superior landlords.** Where your landlord holds a headlease, it can only agree what the headlease permits it to agree.
- **Prejudice to others.** The Tribunal will not make an order that would substantially prejudice a respondent or a person who is not a party, and may order compensation where a variation causes loss.
- **Leaseholder-owned freeholds.** The company is the landlord, and its directors owe their duties to the company. A variation favouring one member's flat needs a proper price and a minuted decision.

From request to registration

An agreed variation between willing parties takes six to twelve weeks. A contested application to the Tribunal takes considerably longer, and should be a last resort rather than an opening position.

01

Establish what is actually wrong

1 TO 2 WEEKS

We read the lease, the title and — where the defect affects the building — the other leases in it. Many apparent defects turn out to be questions of construction that can be resolved without varying anything, which is cheaper and quicker.

This is also the point to establish whether a variation is the right document at all, or whether a licence, a rectification or a surrender and regrant is required.

02

Approach the other side

2 TO 4 WEEKS

A proposal setting out precisely what is sought and why, with the draft deed where the point is straightforward. Landlords respond better to a specific request than to an open invitation to negotiate.

Expect to give an undertaking for the other side's reasonable costs, and expect the question of a premium to arise where the variation transfers value.

03

Identify everyone who must join in

IN PARALLEL

Any intermediate landlord, any management company that is a party to the lease, and every mortgagee of every party. A variation completed without a lender's consent can be unenforceable against that lender and is a breach of the mortgage conditions.

WHAT A GOOD OPENING PROPOSAL CONTAINS

The lease and title references, the defect or change identified precisely, the reason it matters, the wording proposed, confirmation of who else will need to join in, and an undertaking for reasonable costs. A proposal in that form is frequently agreed without negotiation; an open request to "discuss varying the lease" rarely is.

Documenting and completing

04

Drafting and negotiation

2 TO 4 WEEKS

The deed should identify the lease precisely, state exactly which provisions are varied and from what date, confirm that the lease otherwise continues unchanged, and deal with costs. Where the variation affects the service charge, the arithmetic across the building should be checked rather than assumed.

05

Completion

ON EXCHANGE OF THE DEED

The deed is completed by all parties, any premium and costs are paid, and the lender consents are held. Where the transaction is in fact a surrender and regrant, the new lease is granted and the old one is surrendered on the same occasion.

06

Registration

DO NOT LEAVE THIS UNDONE

The variation must be noted against the leasehold title, and where it affects the landlord's obligations against the freehold title too. An unregistered variation may not bind a successor, and an unnoted deed is the reason a buyer's solicitor raises an enquiry ten years later that nobody can answer.

THE DOCUMENT A FUTURE BUYER WILL READ

A variation lives with the lease for the rest of its term. Assume that the person reading it most carefully will not be the other party to the negotiation but a buyer's solicitor in fifteen years, with no knowledge of the circumstances and no patience for ambiguity.

What it costs, and who pays

There is no statutory formula. Who pays what is a matter of negotiation, and the answer depends largely on who wants the variation and who benefits from it.

01

Professional costs

Your own solicitor, and ordinarily the other side's reasonable legal costs as well, secured by an undertaking at the outset. Where a valuation is needed to price a premium, a valuer's fee too. A landlord's costs are usually payable whether or not the variation completes.

02

A premium

Payable where the variation transfers value: extinguishing a ground rent, extending a term, adding land or rights. It is calculated by capitalising what the landlord gives up and, commonly, sharing part of the gain to the flat. A valuer should advise rather than a landlord simply naming a figure.

03

Tax and registration

Stamp duty land tax may arise on a premium, and is calculated differently on a surrender and regrant. Add Land Registry fees, official copies and the cost of any consents. None is large individually; together they are worth budgeting for.

04

The Tribunal route

An application fee and a hearing fee, and each party ordinarily bears its own costs whatever the outcome — so the sum in dispute has to justify the exercise. The Tribunal may order compensation where a variation causes loss or disadvantage.

TWO POINTS WORTH PRESSING

A charge made by a landlord for considering or granting a variation is an administration charge in a long residential lease, and its reasonableness can be challenged in the First-tier Tribunal. A schedule of costs is not beyond question because it was presented as a condition.

Where the variation cures a defect that prejudices the landlord as much as the leaseholder — a service charge that under-recovers, or an unrepaired roof — there is a fair argument that costs should be shared. It is worth making early, before an undertaking has been given for the lot.

Is a variation the right answer?

The commercially important question is often not how to obtain a variation but whether to seek one at all. There are frequently two routes to the same outcome, and they are not equally good.

Ground rent: variation or statutory extension?

A leaseholder facing a doubling ground rent can ask the landlord to vary it, and pay whatever the landlord asks — or can serve notice under the 1993 Act and obtain a ninety-year extension at a peppercorn rent as of right, with the price fixed by statutory formula and determined by the Tribunal if it is not agreed.

The second route does not depend on the landlord's goodwill, and where the lease is short it often costs little more. Where the lease is long and the only problem is the rent, a variation may well be cheaper. The point is that the choice should be made on figures rather than by default.

QUESTIONS WE ASK BEFORE RECOMMENDING EITHER

How long is the unexpired term, and how close is it to eighty years? What does the ground rent do over the remaining term? Is there a transaction driving the timetable? Is the landlord co-operative, absent or obstructive? And does the building have other defects that would be better dealt with in one exercise than in three?

Where a variation is clearly the better route

- A long lease whose only defect is the ground rent, where a statutory extension would cost more than the problem is worth.
- A defect affecting the whole building, which no individual statutory claim can cure.
- Rights a lease extension would not supply — a parking space, a store, an access right that was never granted.
- A co-operative landlord and a modest price, where agreement is quicker and cheaper than a statutory process.

For landlords and management companies

Where a defect affects a whole block, dealing with leases one at a time as flats are sold produces an estate governed by inconsistent documents and a growing problem. A single programme — agreed variations where possible, an application under section 37 where not — is more work at the outset and very much less thereafter.

Why instruct Arcadia Law

Variations look like short documents and behave like long ones. The value is in identifying what is really required, who must join in, and what it should cost — before a deed is drafted.

Arcadia Law is a specialist leasehold practice. We act for leaseholders seeking variations and for landlords, management companies and freehold companies asked to grant them, including block-wide programmes and applications to the First-tier Tribunal.

How we work

- **We identify the right document first.** Variation, licence, rectification or surrender and regrant. Getting this wrong is the commonest and most expensive error in this area, and it is avoidable in the first conversation.
- **We watch the surrender and regrant trap.** Anything touching the term or the extent of the demise is considered for its rent, tax, registration and enfranchisement consequences before it is drafted, not afterwards.
- **Tribunal applications.** Sections 35 to 38, including the evidence a Tribunal expects and the counter-applications a respondent may make. We are experienced in contested applications as well as agreed variations.
- **Block-wide work for landlords and RMCs.** Auditing the leases in a building, identifying the defects that matter, and putting a single consistent scheme in place across every flat.
- **Lenders and registration.** Consents obtained and the deed properly noted at HM Land Registry, so that the variation binds successors and does not become an enquiry on a future sale.

WHAT CLIENTS MOST OFTEN TELL US AFTERWARDS

That the useful part was not the deed but the advice about whether to seek it. A variation that transfers value to a leaseholder will be priced accordingly, and there is frequently a statutory route that achieves the same result without asking the landlord for anything. That comparison is worth doing before the negotiation, not after it.



Arcadia Law is a member of the Association of Leasehold Enfranchisement Practitioners.

Where to start

Send us the lease and tell us what the problem is. Most variation questions are answered by reading the document.

01

Send us the lease

A SHORT CALL, AT NO COST

The lease and the title, and a note of what you are trying to achieve. Landlords: the request as it reached you, and the leases of the other flats if the point affects the building.

02

We tell you what is needed

WITHIN A FEW DAYS

Which document is required, who must join in, whether the Tribunal route is available, and whether a premium is likely — or whether a statutory claim would serve you better.

03

We deal with it

FROM THAT POINT ON

Drafting, negotiation, lender consents, completion and registration — or the Tribunal application where agreement cannot be reached.

SPEAK TO US

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General information only, reflecting the law of England and Wales as at 26 July 2026, and not legal advice — what a lease permits, and what a variation should say, depends on the wording of the particular document. Take advice before agreeing or refusing a variation. Nothing in this guide is tax advice. Arcadia Law Ltd is a private limited company registered in England and Wales, company number 10043933, registered office 15 Approach Road, London SW20 8BA. Authorised and regulated by the Solicitors Regulation Authority, SRA number 629605. © Arcadia Law Ltd 2026. The ALEP name and logo are the property of ALEP and are reproduced under licence to member firms.