

THE RIGHT TO MANAGE

The purpose of this outline is to explain "The Right to Manage". It is to highlight a few important aspects of the right to manage so that flat owners are fully aware of the right which they now have to manage their own building (subject to certain criteria).

What is the Right to Manage?

With most buildings which are divided into flats the freehold owner is usually responsible for carrying out repairs to the building, insuring the building and collecting a service charge. Now flat owners have the right to take over the management responsibility themselves. This is particularly useful if a freeholder is neglecting management responsibilities or charging disproportionately high fees for doing so.

What is the advantage of applying for this right?

Quite simply the flat owners gain control over the management of their building without the capital cost of acquiring the freehold. The main disadvantage of exercising the Right to manage as an alternative to freehold enfranchisement is that each flat owners lease continues to become shorter and will need to be extended at some point (at capital cost to that flat owner). Also ground rent continues to be payable.

We have highlighted in bold a few points that need your attention urgently before the statutory notice can be served.

This information sheet is not meant to describe or give a full interpretation of the law or cover every case. You will need to contact us with particular queries relating to your matter.

Overview

- The Commonhold and Leasehold Reform Act 2002 provides the right to manage ("RTM") for flat owners to force the transfer of the Landlord's management functions to a special company set up by them, the Right to Manage Company.
- The RTM is only available to flat owners. It is not available to house owners holding a lease of their house.
- The process is relatively simple. The Landlord's consent is not required. No court order is necessary. Bad management does not need to be proved. A payment is not payable to the Landlord. However, you have to pay the Landlord's costs for the costs incurred in responding to the Notice and providing the information sought. You will of course incur fees with your own advisers.

Qualification Criteria

- The building must be self contained (or if part of another building be capable of being re-developed independently).
- The building must include at least two flats.
- At least two thirds of the flats must be let to qualifying flat owners (meaning a flat owner who has a Lease originally granted for more than 21 years – the normal scenario being that you hold your flat on a 99 year Lease). Flat owners do not need to live in their flats to qualify.
- The building can contain commercial parts i.e. shops, but they must not exceed 25% of the total internal floor area of the building.
- Owners of at least half of the total number of flats in the building (not half the number of participating Flat owners holding flats) must be members of the RTM Company.
- The right operates on a building by building basis so with an estate with several blocks each block will need a separate RTM Company and to serve a separate Notice.
- The RTM can only be exercised by and RTM Company with sufficient numbers of the qualifying Flat owners as members.

The Procedure

- Flat owners form an RTM Company and registered it at Companies House (each of the flat owners become members of that Company which is limited by guarantee as opposed to shares being issued).
 - You need to decide on the address of the registered office and who are to become the initial Company Directors and Company Secretary.
 - This normally takes two weeks.
- The RTM Company serves a Right to Information Notice (if needed). The Landlord has 28 days to respond. This is necessary where ownership of the freehold title or other reversionary interest is unclear.
- The RTM Company serves an Invitation Notice upon each of the flat owners in the building who have not already become members of the RTM Company inviting them to become members of the RTM Company. You cannot ignore particular flat owners
- You have to specify whether you intend instructing a management company to act for the RTM in carrying out its management duties so you need to decide at this stage whether you wish to do this and if so provide the management company's contact details to be stated in the notice.

- The RTM Company serves notice exercising the RTM (not less than 14 days after service of the above invitation to participate). In this notice the Landlord must be given at least one month to serve a counter- Notice and the proposed date for takeover of management must be at least three months after that counter- Notice reply date making a total period of four months at least.
- The RTM Company or the Landlord can serve a Notice requiring access to the premises for inspection (if needed). The other party has to respond within 10 days.
- The Landlord may serve a counter-Notice accepting or disputing the claim. Where not accepted the process can be delayed while an application to the Leasehold Valuation Tribunal is made.
- Landlord must serve Contractor Notices and Contract Notices on the date specified in the RTM Notice as the date for the transfer of management to the RTM Company (or as soon as reasonably practicable after that).
- The RTM Company can serve a notice requiring management information etc from the Landlord giving the Landlord at least 28 days to respond. This can be served before the date management is to transfer but the Landlord is not obliged to provide the information before that transfer date.
- Liability for the Landlord's costs of dealing with the procedure – each member of the RTM Company is liable jointly for the Landlord's reasonable costs arising from the service of the Notice and the exercise of the Right to Manage.
- Absent Landlords – this will not prohibit you from exercising the right. You can apply to the Leasehold Valuation Tribunal (LVT) for an order entitling the RTM Company to acquire the RTM. You first have to take all reasonable steps to find the missing Landlord i.e. advertise in press local to the last known address for the Landlord and you must put the other Flat owners in the building on notice of your intention to apply for the order. The LVT may require you to carry out further investigations before it will grant the order.
- Withdrawal of the RTM Notice – you can withdraw before the management transfers to you but you will be liable for the Landlord's costs incurred to that date.
- Once the right to manage has been acquired the Landlord is entitled to membership of the Company. There are complex rules as to the voting rights the Landlord acquires which are designed to reflect the percentage which any flats or commercial parts of the building held by it bear in relation to the building as a whole.

Points to note

1. The RTM Company will be required like any other Landlord to comply with the Government approved code of management practice i.e. that produced by the Royal Institute of Chartered Surveyors (RICS). You cannot ignore the obligations on the Landlord's part in the flat owners Leases to repair and insure the building.

Although compliance with the above codes is not mandatory failure to do so is one of the grounds which justify an application to the Leasehold Valuation Tribunal to appoint a new manager or to end their right to manage.

2. In anything but the smallest blocks it is recommended to strongly consider appointing Managing Agents. You must specify in the Invitation to Participate Notice to the other flat owners in the building whether you intend appointing a Management Agent. We recommend that you should interview a few companies before deciding.

For a standard guide to the formation and running of Residential Management Companies see "Running a Flat Management Company (4th Edition)" by Nigel Cox published by Jordans (www.jordanspublishing.co.uk).

We also suggest you read "How to Manage Your Own Block of Flats" by John Cumming and Richard Hickie published by the College of Estate Management – O118 986 1101.

3. The officers of the RTM Company have all the normal responsibilities of Company Directors as well as the responsibility for implementing the Company's obligation to carry out the Landlord's functions for the property.

Companies House have on their website useful information setting out directors and secretary's obligations and explaining how the Company functions. You will need to have regular (but not necessarily frequent) meetings.

Companies House produce several free explanatory leaflets i.e.

- (a) Directors and Secretaries Guide (GBA1)
- (b) Annual Returns (GBA2)
- (c) Resolution (GBA7)
- (d) Accounts and Accounting Reference Data (GBA3)

Contact the Registrar of Companies, Companies House on 0870 333 3636 (www.companies-house.gov.uk).

4. The RTM Company must remain solvent so you will have to fund the shortfall where the flat owners don't pay up on time. You should set up a fighting fund well in advance of the date you are to take over management to help fund initial expenses such as insuring the building and appointing essential contractors (the effect of the Right to Manage Notice is to sever on the takeover date any existing contracts the Landlord has i.e. insurance of the building/contract for the maintenance of a lift). We advise that you collect funds prior to starting the procedure so that you limit the risk of the RTM immediately failing due to insolvency on the transfer date.

5. Contact details for non participating Flat owners – it is essential that you provide contact details for non resident flat owners who are to be served with the Invitation Notice as they must be served with a copy at such different address as they have notified you of previously.

The importance being that the Landlord often uses bad service of the Invitation Notice as grounds for setting aside the Right to Manage Notice subsequently so it is essential that the Notice is properly served and will help you if you can obtain evidence from each served Flat owner of satisfactory receipt by them of the Invitation Notice. You must note as members of the Company any Flat owners who respond to the Invitation Notice asking for membership.

6. Obtaining information from the Landlord – it is essential that you consider carefully what information you need from the Landlord on the date of the transfer of management to effectively run the building from then on yourselves. A few items we request as standard from Landlords are set out below. Please confirm at this stage if there are any other items you believe the Landlord will hold which will be helpful to you.
 - a. The current arrears position (service charge, insurance and ground rent).
 - b. The insurance arrangements for the building.
 - c. How the building is presently managed. Where the building is managed by an agent the name and address of the Managing agent.
 - d. Details of all contracts presently in force for the maintenance of the building or fittings and for the provision of services.
 - e. The overall state of repair of the building and any identified requirements for major works repairs or improvements including copies of any recent survey reports

You may want to instruct your own survey before the Right to Manage takes effect so that you can get on and start the statutory consultation procedure for major works that need to be undertaken urgently.

7. Gathering management information – as the Landlord is not obliged to supply full replies to the requested management information until the date of handover it will help if you liaise direct with them or their Managing Agents during the process to try to obtain as much information as possible direct. This will also save you costs of requesting the same via solicitors. Anything you think you need but can't obtain you should confirm for inclusion in the Information Notice to be served on the Landlord (if needed). The Landlord has a statutory obligation to provide the information requested where it is “reasonably required in connection with the exercise of the right to manage” but is not obliged to volunteer information so you need to be as clear and precise as possible in the Information Notice we serve for you (if required).

8. Plans and budgets – you are not required to produce or submit to the Landlord any business plan or budget or action plan for maintenance but if is sensible to do this perhaps in conjunction with your new Managing Agent and to involve the members in the decision making process.
9. Reserve fund – the Landlord is obliged to hand over all unspent sums including the reserve fund to the RTM Company on the date you take over management. Again it will help us move handover and to limit your costs if you can try to investigate and agree this figure with the Landlord prior to the management being transferred to the RTM Company. If a dispute occurs then the LVT can be asked to decide the matter.
10. The management functions acquired – all duties reserved to the Landlord under the Lease including all functions regarding provision of services repairs maintenance improvements insurance and management. This can include responsibility for (dependent on the exact terms of the flat owners' leases):
 - a. Repairs, redecorations and maintenance of the structure of the building and common parts including cyclical maintenance of plant and facilities i.e. lifts and central heating boilers (depending on the wording of the Lease).
 - b. Improvements to the building.
 - c. Provision of services i.e. lighting to common parts heating cleaning and maintenance care taking and portorage.
 - d. Arranging insurance for the building.
 - e. Collection of service charge and provision of accounts and other statutory information.
 - f. Compliance with all statutory requirements relating to the management and fabric of the building.
 - g. The day to day management of the building.
 - h. Approvals and enforcement of the covenants under the Lease.

The exact obligations of the Landlord you are taking on will be specified in the Flat owner's Leases of their individual flats.

The Landlord retains the right to collect ground rent direct and to exercise the ultimate sanction of forfeiture of a flat owner's lease for non payment. The Landlord retains the management of any non residential parts of the building or any non qualifying flats i.e. those held by the Landlord in the freehold title or which they hold separate Leases.

11. The power to issue approvals i.e. for subletting or assignment of the Lease or to make alterations to the flat passes to the RTM Company. The RTM Company must before giving such approval put the Landlord on notice of the application (30 days notice is required for approvals relating to assignment, subletting, parting with possession, making structural alterations or improvements to a flat). Other approvals require 14 days notice. The RTM Company does not require the specific consent of the Landlord so if it does nothing in response to the notice then the RTM Company can grant approval. If the Landlord objects then the RTM Company would have to go to the LVT before being able to give the approval.
12. The RTM Company has to keep the Landlord informed of all breaches of the Flat owner's Leases. It is obliged to review Flat owner's compliance with their covenants and to take steps to remedy any breaches. Any non remedied breaches must be reported to the Landlord.
13. Termination of the RTM – this occurs:
 - a. By agreement with the Landlord.
 - b. Through collapse of the RTM Company i.e. if it becomes insolvent or is struck off by Companies House.
 - c. Through the appointment of a manager (either flat owners in the building or the Landlord can apply to take over and run the building). Grounds for an application include the RTM Company being in breach of its obligations under the Lease, demanding unreasonable service charge or failing to comply with an approved code of management practice.

Our aim is that this information helps you exercise the Right to Manage smoothly by anticipating future problems

i.e. by dealing with them prior to starting the procedure.

Whatever you do as flat owners you will need to satisfy yourselves that there is a group among you who have sufficient interest in the long term interests of the building to take on the management responsibility. No-one can assume that if they sell their flat their buyer will want to take over their responsibility. Having said that the fact that the building is managed by the flat owners may enhance the sale price of any flats being sold (or at least make it less likely that a sale could fall through as a consequence of increasingly high service charges or management fees).

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Authorised and Regulated by the
Solicitors Regulations Authority
SRA Number 510618