

The Right to Manage: Qualification and Procedure

Qualification Criteria

- The building - It must be self-contained or, if it forms part of another building, it must be capable of being re-developed independently amongst other things.

The right operates on a building by building basis so separate claims would need to be made in respect of an estate containing several blocks.

The building must include at least two flats. The building can contain non-residential parts i.e. shops, as long as they do not exceed 25% of the total internal floor area of the building broadly speaking.

- Flat owners - At least two thirds of the flats must be let to qualifying flat owners being those who hold leases originally granted for a term exceeding 21 years.

Flat owners do not need to live in their flats to qualify.

- Participation - Owners of at least half of the total number of flats in the building (not half the number of flats held by qualifying flat owners) must participate.

The RTM Company

- Participating flat owners must form a RTM Company. The Company is limited by guarantee as opposed to shares. The participants will be members. The company constitution is in a prescribed form.

Right to Information and access

- The RTM Company can obtain information required to make the claim for example where ownership of the freehold title or other reversionary interest is unclear.
- The RTM Company or the Landlord can serve a Notice requiring access to the premises for inspection (if needed).
- The RTM Company can require the landlord to supply certain management information.

Management company

- Participants must decide whether their RTM company will instruct a management company to carry out its management duties or to undertake management themselves.
- In anything but the smallest blocks it is recommended to strongly consider appointing managing agents.
- 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).
- You may also find "How to Manage Your Own Block of Flats" by John Cumming and Richard Hickie published by the College of Estate Management – useful.

Notices and timetable

- The RTM Company must invite each of the qualifying flat owners in the building who have not already become members of the RTM Company to participate. Particular flat owners cannot be ignored.
- Not less than 14 days after service of the above invitation to participate the RTM Company can serve notice exercising the RTM (the "RTM Notice"). The Landlord must be given at least one month to serve a counter-notice and the proposed date for management to vest (the "Acquisition Date") must be specified being at least three months after that counter-notice reply date.
- The Landlord may serve a Counter Notice accepting or disputing the claim. A dispute would cause delay and be costly as an application to the Tribunal must be made by the participants.
- On the Acquisition Date:
 - The management functions transfer to the RTM company.
 - Landlord must notify its contractors of the RTM and give certain information about those contracts to the RTM company.
 - Landlord must supply certain information sought by the RTM company.
 - Any uncommitted service charge must be paid to the RTM Company.

Other issues

- Liability for the Landlord's costs – each member of the RTM Company is liable jointly for the Landlord's reasonable costs arising from the service of the RTM Notice.
- Absent Landlords – The right is still available by application to the Tribunal. The RTM has to demonstrate that it has taken all reasonable steps to find the Landlord such as writing to all known addresses for the landlord and advertising in press local to the last known address for the Landlord and in the Estates Gazette. All flat owners must be notified in

advance of the application. The Tribunal may require further investigations before it will grant the order.

- Withdrawal – The RTM Notice can be withdrawn prior to the Acquisition Date. The RTM participants are liable for the Landlord's costs incurred to that date.
- Once management has vested, the Landlord is entitled to membership of the RTM 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.
- 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); and
 - The obligations on the Landlord's part contained in the flat leases, i.e. 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 Tribunal to appoint a new manager or to terminate the Right to Manage.

- The officers of the RTM Company have all the normal responsibilities of Company Directors as well as the responsibility for meeting the Company's management obligations.

The Companies House website contains useful information setting out directors and secretary's obligations and explaining how a company functions. You will need to have regular (but not necessarily frequent) meetings.

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

- The RTM Company must remain solvent so a fighting fund will be required to meet the shortfall where flat owners don't pay on time. This will need to be in place in advance of the

Acquisition Date and be sufficient for expenses such as insuring the building and appointing essential contractors.

- Obtaining information from the Landlord – careful consideration needs to be given to the information to be sought from the Landlord to effectively run the building. A few items we suggest be requested are set out below.
 - 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 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

The RTM Company may want to obtain a survey so that it is aware of works required to be undertaken and, if needs be, the statutory consultation procedure for major works can be planned for.

As the Landlord is not obliged to supply full replies to the requested management information until the Acquisition Date you should liaise 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. 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.

- Plans and budgets – The RTM company is not required to produce (or submit to the Landlord) a business plan or action plan for maintenance but it is sensible to do so perhaps in conjunction with new managing agent and to involve the members in the decision making process.
- Reserve fund – the Landlord is obliged to hand over all unspent sums including any reserve fund to the RTM Company on the Acquisition Date. It will help smooth the handover and limit costs if the figure is investigated and agreed in advance. If a dispute occurs then the Tribunal can be asked to decide the matter.
- The management functions acquired – all duties reserved to the Landlord under the Lease including the provision of services, repairs, maintenance, improvements, insurance and management. This can include responsibility for:
 - 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.
 - b) Improvements to the building.
 - c) Provision of services i.e. lighting to common parts heating cleaning and maintenance care taking and portage.
 - 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 are specified in flat owner's Leases.

The Landlord retains the right to collect ground rent (and to exercise the ultimate sanction of forfeiture for non-payment) and 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.

- The power to issue approvals i.e. for dealings with the lease of a flat (such as subletting or assignment) or to make alterations to the flat passes to the RTM Company. A procedure applies.
- 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.
- Termination of the RTM – this occurs when:
 - 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 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, demanding unreasonable service charge or failing to comply with an approved code of management practice.

This is only a summary. There are complex and grey areas of the legislation. While the concept of the right is straight forward there are a number of traps for the unwary reflected by the high volume of cases around entitlement and validity of claims.

For further information, please contact:



MARK VINALL

Partner, Lease Extension
and Enfranchisement
T: 020 7593 5163
E: mvinall@wslaw.co.uk