BRIEFING

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The pitfalls of right to manage claims and how to avoid them

The Upper Tribunal has made it clear in its recent decisions that it will show no sympathy for tenants' procedural mistakes in right to manage (RTM) claims. The Upper Tribunal has issued stark warning for tenants seeking to acquire the right to manage their building that the statutory procedures are not difficult to comply with and so you must get it right.

It can however be tricky to navigate around the statutory requirements and tenants either going it alone or appointing inexperienced representatives are at risk of getting caught out on what may at first appear to be a trivial mistake.

The right to manage is simple in concept but fraught with potential problems in practice such as:

- Does the building qualify?
- What about an estate situation?
- Which external parts will you be responsible for managing and can you recover the cost of this?
- Who must you invite to participate and how?
- What about freeloaders and cash flow?
- What voting rights will the landlord(s) have?

So you need to tread carefully to limit the risks. If an error is made in the exercise of the RTM you will have to start again wasting both time and money. Even if an error is not made, the landlord may give a negative counter notice and force you to incur the cost of a tribunal hearing.

It is vital to use an experienced professional from the outset of a right to manage claim. While there are many who purport to know the system there are multiple cases of tenant's representatives or self-represented tenants making mistakes which are fatal to their claim. An RTM claim is a statutory process for acquiring many of the rights and obligations akin to acquiring the landlord's property. Parliament has set out specific steps to be taken in order to acquire those rights and obligations. Those steps should not be missed and nor can an omission or flaw in taking those steps be overlooked by the tribunal.

Mistakes in the Notice of Invitation to Participate (NOITP)

There are two cases involving the landlord Assethold Limited which demonstrate the fatality of the RTM company serving insufficient NOITPs or claim forms.

In the case of Assethold Ltd v 13-24 Romside Place RTM Co Ltd [2013] UKUT 603, 13-24 Romside correctly served a NOITP, but it incorrectly stated the Landlord's name. The Tribunal held that by stating the wrong name on the notice this was a failure to give the information required and that this could not be saved by

section 78(7)of the Commonhold and Leasehold Reform Act 2002, which states that not all inaccuracies are necessarily fatal to the claim. The Tribunal deemed the mistake to be a complete omission of the required information and not simply an inaccuracy. This could have been easily remedied by thorough research in to the correct landlord rather than relying on rent demands alone. However this is something an experienced professional would pick up on and guide you through.

Mistakes in the Claim Form

In a second Assethold case (Assethold Limited v 15 Yonge Park RTM Co Ltd 2011 UKUT 379), the RTM company's claim failed because the claim form gave the wrong registered office address for the RTM company. Like the first Assethold case discussed above, the registered office of the RTM company was entirely wrong, this amounted to an omission rather than an inaccuracy and so could not be saved by section 81(1) of the Commonhold and Leasehold Reform Act 2002. An experienced advisor would have known to ensure that the registered office was entered on to the claim form correctly.

Mistakes serving the Claim Form

In Gateway Property Holdings Limited v Ross Wharf RTM Company Limited [2016] UKUT 97, the tribunal were asked to consider whether a claim notice was served in error. The RTM Company had previously served a claim notice on the landlord's registered address and the landlord had responded that its address for service was to be its solicitor's office. The RTM Company withdrew its first claim (for unspecified reasons) and served a second claim notice on the landlord's registered address. The landlord contended that this claim notice was not valid as it had not been served on the address it had previously provided for service. The Upper Tribunal did not agree with the landlord on this occasion and determined that the address supplied related to the first claim notice only.

However it was in this case that the Upper Tribunal issued a warning to tenants that it was wrong to take a lenient approach to statutory compliance.

Mistakes as to the law

The case of Triplerose Limited v Ninety Broomfield Road RTM Co Ltd [2015] EWCA Civ 282, demonstrates the risk of legal flaws in the claim notice. The Court of Appeal held that the RTM company Ninety Broomfield Road could not acquire the right to manage more than one self-contained building or part of a building. This was a question of legal interpretation and the decision reversed the finding of the Upper Tribunal. It is important for tenants wanting to gain the right to manage of an estate or multiple buildings to be properly advised on the extent of the claim to the building and its appurtenant property and the proper planning for joint management of areas communal to more than one building.

It is highly advisable to seek the advice of a specialist and experienced solicitor at the outset of a right to manage claim. Serving a defective NOITP or claim form not only runs up unnecessary costs but they may also leave participating tenants compromised if the procedure is later challenged by a landlord or non-participating tenant.

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