

The Right to Manage

Background

Under the Commonhold and Leasehold Reform Act 2002 certain leaseholders of flats are given the right to take over the management of the building in which their flat is situated. This is not related to any need to prove fault or to compensate the landlord for the loss of the management function.

Qualification

The right to manage (RTM) can be exercised in respect of a self-contained building or part of a building and where appropriate can include "appurtenant" property. There must be a minimum of two flats held by qualifying tenants and the total number of flats held by qualifying tenants must not be less than two thirds of the total number of flats contained in the building itself.

Qualifying tenants must hold leases for more than 21 years of their flats.

Procedure

Once the criteria for claiming the RTM have been settled it is then open to the tenants to embark on the RTM procedure. The steps involved are:-

1. The formation of the RTM company which will take over the management.
2. The RTM company must, when it takes over the right to manage, represent the owners of at least half of the qualifying long leases in the building.
3. The RTM claim notice allows a month for the landlord to serve a counter notice disputing the right to manage. Any counter notice can only be served on the grounds of the absence of qualification of the RTM company to meet the requirements of statute. No question of merit arises.
4. If a counter notice is not served then the management function transfers to the RTM company on the date specified in the notice which must be at least three months later. If the landlord does issue a counter notice then the RTM company has two months to apply to the Leasehold Valuation Tribunal to determine the issue and if no application is made then the RTM application is cancelled.
5. An RTM claim notice must specify the premises for which the right to manage is claimed, the names and flats of each qualifying tenant who is participating in the RTM procedure, sufficient particulars of their title to enable the landlord to check the validity of the notice, the company's details and the notice dates for counter notice and transfer of functions. There is a saving provision that will prevent a claim notice being invalidated if there is any inaccuracy in any of the particulars.
6. An RTM company can demand information with regard to the operation and management of the maintenance functions of the property as part of the process of acquiring the right to manage and obtain details of all deposits held by the landlord against maintenance and service charge functions, maintenance contracts the landlord may have let and other pertinent information. Company representatives also have rights of access to the premises on notice to ensure that these rights are not frustrated.
7. The RTM company is liable for the reasonable costs of a landlord in consequence of the claim to transfer the management functions.

Transfer of the Management Function

Management contracts are contracts between an existing manager of the property (which could be the landlord or a professional manager) and a third party under which management services are provided. There are procedures to terminate existing management contracts from the point of handover by service of the appropriate notices. The same thing applies to sub contracts. Generally the obligation to serve the appropriate notice is on the existing manager of the contract prior to the hand over of functions.

When an RTM company takes over the right to manage a building it has the right to perform the functions of managing the property and collecting service charges. Lease provisions in this respect are overridden.

Management functions are functions with regard to services, repairs, maintenance, improvements, insurance and management. They cover the whole or any part of the property but they do not include functions with respect to a matter concerning part of the property exclusively where that property is not held under a long lease. The RTM company has no rights with regard to re-entry or forfeiture.

There are transitional provisions with regard to landlord's costs incurred prior to the transfer of functions to ensure that the landlord is paid up-to-date with regard to any obligations that he may have incurred under the previous management regime.

There are special provisions with regard to insurance of the property. Where insurance is a management function, it is for the RTM company to place the insurance in the future but there is nothing to stop the landlord or indeed anyone else insuring the whole or any part of the premises at his own expense notwithstanding.

Where any management functions involve dealing with ownership or the structure of the building (eg. responding to a tenant's request for alterations to the property or consent for any assignment or subletting), the RTM company is the point of first contact for any tenant seeking such consent. Because the provisions of the lease stipulate the landlord has to give consent, the RTM company must not grant approval without first giving the landlord 30 days notice of their intention to do so and waiting to see if there is an objection from the landlord. The validity or otherwise of any objection is measured by the same rules as would apply to an application direct to the landlord under the old law.

The landlord may enforce tenant's covenants in the lease although they cannot pursue enforcement to the lengths of forfeiture and repossession. The RTM company must report any failure to comply with a tenant covenant to the landlord within three months of becoming aware of the breach, although the obligation to report is released if the failure has been corrected.

Where the landlord owns flats that are not let on long leases, the landlord can participate as an RTM company member once the company is up and running. The landlord is also responsible for the relevant proportion of management costs appropriate to such flats.

Note:

This information sheet is provided for your general information only, and does not seek to set out the legislation in this area in detail or to provide specific advice.

If you have any queries, or wish to discuss specific circumstances, please contact a member of the commercial property team based at Guildford or Woking.

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