

Leasehold Property - Right to Manage

Introduction

This guide is aimed at Lessees who may be interested in taking over the day to day management of the Building of which their flat forms a part of. It is designed to illustrate the requirements and process involved in the Right to Manage (RTM) and is designed to be a summary of the points to consider rather than detailed technical advice. This guide should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Briefing Note

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Summary:

A guide and summary of the requirements and process involved in the Right to Manage

Author: Melanie Verth

For detailed advice on all leasehold property matters please contact:

Melanie Verth
Partner

01323 435900

mjv@gabyhardwicke.co.uk

1. Background

Under the provisions of the Commonhold and Leasehold Reform Act 2002 ('the Act') owners of residential flats can force the transfer of the Landlords management functions to a special company set up and run by them. There is no need for the lessee's to prove any bad management or default on the part of the Landlord or any managing agents.

There is a statutory procedure to follow to ensure that the RTM is exercised correctly. This procedure includes the preparation and service of notices upon the Landlord and any other interested party.

Strict time limits are provided for within the statute and these must be adhered to if the notices are to be effective.

The advantages of the RTM are far reaching with the most common incentives being:-

- To enable management and improve maintenance of the building
- To secure your investment in the property
- To decrease liability for service charges
- To increase the potential value of your property
- To determine the choice of managing agent

2. Qualification for Participation

Before proceeding with the RTM it is essential that the qualifying requirements set out by the Act are considered and can be met:-

- The building must be self contained and include at least 2 flats
- No more than 25% of the building can be used for commercial space
- At least 2/3^{rds} of all of the flats in the building must be let to 'qualifying tenant' (whether or not participating)
- At least 50% of the leaseholders must participate, or 100% if the building consists of 2 flats only.

Once it is established that all of these conditions have been satisfied the RTM process can begin.

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3. Preliminary Considerations

Before exercising the RTM there are many considerations including:-

- **Setting up a Right to Manage Company (RTM Company)** – the RTM can only be exercised by a RTM Company. This is a specialist company, limited by guarantee and which comprises a sufficient number of qualifying tenants. The required minimum number of qualifying tenants must be equal to at least half the total number of flats in the building. It is compulsory for the RTM Company to be set up prior to the Notice of Claim being issued.
- **Identifying the Freeholder and other Relevant Parties** – Official Copies of the title to the freehold should be obtained from the Land Registry so that the identity of the relevant freeholder can be confirmed. Confirmation of the identity and addresses of any managing agents and third parties will also need to be identified.
- **Obtaining Information in relation to the Current Status of the Building** – a notice should be served on the landlord requiring any information necessary for inclusion on the Initial Notice to be forwarded
- **Plans and Budgets** – It may be advisable to look ahead as to what will want to be achieved by exercising the RTM. A new managing agent may need to be discussed and a planned maintenance program put in place. Quotes and details of management packages should be investigated.
- **Service of the Invitation to Participate** – once the requisite amount of qualifying tenants have become members of the Company it is important to ensure that Invitations to Participate have been served on all other qualifying lessee's. This notice will inform them of the name of the RTM Company, detail the anticipated new managing agent and invite them to become members of the same, becoming involved in the management. All qualifying tenants must be invited and you should also note that after completion of the RTM the Landlord will also be entitled to membership of the Company.

4. The Notice of Claim

Once all of the preliminary matters have been considered everything will be in place for the Notice of Claim to be served. The Notice must be served on the landlord, any intermediate landlords and any other parties to the lease, such as management companies etc. the Notice sets out the following:-

- Details of the property and confirmation as to how these comply with the RTM qualification
- The name and registered address of the RTM Company
- Details of the qualifying tenants participating and who are members of the RTM Company
- Details of the leases belonging to the qualifying tenants

The notice will specify a date of no less than 1 month from the date of the notice, by which the freeholder and other parties must have responded by giving a counter-notice. An acquisition date will also be specified, at least three months after the date for the counter-notice, on which the RTM will acquire the RTM.

The Landlord will at this point be advised to serve a Contractors Notice and a Contract Notice which will give details of all contracts in relation to the management of the Building. This will enable the RTM to consider which contracts to retain, if any.

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At any time in the process the RTM Company can serve a notice on the Landlord requesting them to provide information in relation to the contracts and documents they want to see and that are 'reasonably required in connection with the exercise of the right to manage'. The Landlord is not obliged to act on the notice before the acquisition date and it is likely that the documents will be handed over on or after completion. We would seek to serve the request for information 28 days before the acquisition date so that the information is handed over on completion.

5. The Counter Notice

The freeholder has the right to accept or reject the lessee's claim to the RTM within the time period specified in the Notice of Claim.

The Counter Notice given by the freeholder must do one of two things:-

- Admit that the RTM Company is entitled to exercise their RTM
- Allege that the RTM Company is not entitled to the RTM and give reasons which are limited to:-
 - The building does not qualify
 - The RTM company does not comply with the legislative requirements
 - The members of the RTM company do not represent half of the flats in the building

If the Landlord admits the right or fails to serve a counter notice then the management will pass to the RTM Company on the acquisition date given in the Notice.

If the Landlord disputes the right the RTM Company will be able to apply to the First Tier Tribunal for determination of the points.

6. Application to the First Tier Tribunal (FTT)

Application to the FTT must be made within two months of the date of the Landlords Counter Notice. If no application is made then the RTM is deemed withdrawn.

The FTT will consider the matter and determine whether or not the RTM Company is entitled to manage. If it is in favour of the RTM Company the acquisition date will be three months after the determination becomes final.

The FTT can also consider any disputes in relation to management funds to be handed over after acquisition.

7. The Acquisition Date and Preliminary Matters

The acquisition date is the date upon which the RTM Company takes over the management of the Building.

The following steps will need to be dealt with before this date:-

- **The Landlords membership of the RTM Company** – on the acquisition date the Landlord will become entitled to membership of the RTM Company. The Landlords voting rights will depend upon whether the Landlord owns any flats in the building. He will get one vote for every flat and in the event that he does not own a flat he will be given one vote as Landlord.

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- **Management Contracts (s92 Notice)** – the Landlord will probably have contracts in place for the current running of the building. The RTM will need to be aware of these and make arrangements as to whether they will continue with the benefit of the same. Once the Landlord has received the Notice of Claim they will be responsible for informing the RTM Company of all relevant contractors and further for informing all contractors of the RTM Company. This must be done by the date which is specified in the Notice of Claim as the final date for the service of the Counter Notice. This should give sufficient time for the RTM Company to deal with the services that they want to keep and the service which they want to end.
- **Obtaining Existing Management Information from the Freeholder (s93 Notice)** – this may include obtaining contracts, accounts, proposals for future works, maintenance schedules etc.
- **Arrangements for the Transfer of Funds** – it is advisable for the RTM Company to set up a bank account for the payment of service charges. The Landlord must also hand over any service charges which have been collected in advance and any sinking fund contributions. This should be discussed in advance of the acquisition date so that any problems can be foreseen.

8. The Rights to be Transferred

The RTM Company will take over the management functions under the Lease. These are defined in the legislation as 'functions with respect to services, repairs, maintenance, improvements, insurance and management'. These will be individual to each property and will be reported on before the acquisition date.

The RTM Company will not be responsible for management of any non residential parts of the building nor for imposing any claims for forfeiture or possession.

If there are clauses in the leases affecting the property that require approval i.e. for assignment, sub letting or alterations, then the power to issue such approvals passes to the RTM Company. If a request is received then the RTM company must inform the landlord of the request and wait at least 30 days before giving final approval to the applicant.

9. How long will it Take?

There is no set time frame in relation to the RTM. The set up, legal advice and organisation all of the participating lessee's may take up to 3 months.

The time scale from this point could vary between a few months, if the freeholder accepts the claim, to a longer period, if there is a dispute in relation to the RTM claim or complications. Additional time should be anticipated if applications to the FTT or County Court are necessary.

If you would like to know more about this topic or our legal services, please contact Melanie Verth on 01323 435900 or mjv@gabyhardwicke.co.uk

Gaby Hardwicke
33 The Avenue
Eastbourne
East Sussex
BN21 3YD

Tel: 01323 435900
Fax: 01323 435901
www.gabyhardwicke.co.uk