



ACCESSING THE

RIGHT TO MANAGE

A LEASEHOLDER'S GUIDE

Residential Leasehold - Right to Manage

Leaseholders' Right to Manage (RTM)

Want to take back control over the management of your block of flats? As a leaseholder you have the right to do this, subject to certain criteria.

Following a procedure, you can transfer the management functions to a Right to Manage Company. This right is enshrined in the [Commonhold and Leasehold Reform Act 2002](#), commonly referred to as Right to Manage (RTM).

The Right to Manage empowers leaseholders to take responsibility for managing the property. After all, leaseholders typically hold the majority of value in the development. The RTM company will inherit any existing management structure as set out in existing lease

Who is eligible?

Only 50% of the leaseholders in the block need to participate in the Right to Manage process. But 50% or more leaseholders who wish to exercise this right cannot compel the others to join in against their will. These are the qualifying criteria:

- *The premises must be a self-contained building (or part of a building)*
- *Two or more of the flats must be held by qualifying tenants i.e. someone who holds a flat under a long lease (21 years or more)*
- *The total number of flats held by qualifying tenants must be not less than two-thirds of the total number of flats in the premises*
- *The participating tenants must be from not less than 50% of the total number of flats (at the date the Claim Notice is served)*
- *A tenant can participate regardless of the number of flats they own in the building*
- *Not more than 25% of the building can be non-residential/commercial.*

Other criteria may arise in unique circumstances. Any qualifying tenant that does not participate will not be a member of the RTM company. So they will have no direct say in the management of the premises. Any qualifying tenant who does not participate is entitled to join the RTM company as a member at any time.

Procedure

Right To Manage is available whether management has been good, bad or indifferent:

- *you don't need the landlord's consent*
- *you don't need a court order*
- *you don't need to prove mis-management.*

You exercise your right by serving a formal Claim Notice. After a set period of time, the management transfers to an RTM company incorporated by the leaseholders. Once RTM has been acquired, the landlord is also entitled to membership of the RTM company.

The Right to Manage Company

Right To Manage is exercised by the RTM company – not the individual leaseholders. It is the RTM company which obtains the right and then takes responsibility for the management. Over the years, individuals owning interests at the premises may move out or sell up – but it is intended that the RTM company remains in place.

Statutory requirements

The RTM company must be set up in accordance with statutory requirements. It must:

- Be a company limited by guarantee
- Be registered with the Registrar of Companies at Companies House
- Have a Memorandum and Articles of Association ('Memo & Arts') which govern its purpose and operation.

The Memo & Arts are prescribed by law. An RTM company will not be deemed valid under the Act if it does not match these provisions. Once the RTM company has been registered, officers and members must be appointed. Then the RTM company must offer those leaseholders who have not joined a chance to do so (by serving Invitations to Participate).

Invitation to Participate

All qualifying tenants are entitled to become members of the RTM company. No-one may be excluded for any reason. The Invitation to Participate must be in writing and in the prescribed form.

It must be served on all qualifying leaseholders who are not (at time of service) members of the RTM company or who have not already agreed to be members. All qualifying leaseholders who respond to the invitation and ask for membership must be enrolled as members of the RTM company. Membership must be noted in company records.

Notice of Claim

The Notice of Claim must not be served until 14 days after service of the Invitation to Participate. If some owners elect to join in after service of the Invitation to Participate, it can delay service of the Claim Notice until:

- Money has been collected from them
- They have been made members of the company.

Right To Manage is exercised by service of a Notice of Claim.

The form for the Notice of Claim is prescribed by statute. It will specify:

- A date (at least one month after date of service of the Notice of Claim) by which the person given the notice may respond with the Counter-Notice
- A date (at least three months after the date for the Counter-Notice) on which the RTM company intends to acquire the Right To Manage.

It is this Notice of Claim which brings the exercise of the RTM into being. It sets the date for the RTM company to take over the management. By setting their own date, RTM company members can plan ahead and prepare for the transfer.

The Counter-notice

A counter-notice may be served no later than the date specified by the RTM company in the Notice of Claim. The counter-notice can do one of two things:

- Agree to the RTM
- Allege reasons why the RTM company is not entitled to proceed. The counter-notice does not provide an opportunity to raise queries or to dispute the RTM on any other grounds.

If the RTM is admitted or the freeholder (or current manager) fails to serve a counter-notice, the management will pass to the RTM company on the date specified in the Notice of Claim.

Enforcement of Covenants

The enforcement of the leaseholders' covenants (obligations) under the lease becomes the responsibility of the RTM company. The RTM company must ensure leaseholders comply with all covenants. The RTM company must alert the freeholder to any non-observance/compliance.

Management Contracts

The existing manager will probably have a number of contracts in place relating to the premises. It is important that the RTM company is aware of them and that the relevant contractors are given adequate warning of the impending transfer of management. Contracts may be with the managing agent for the overall management of the building, for the maintenance of boilers etc. The freeholder is obliged to serve the RTM company (and any contractors) with Contract and Contractor Notices giving that information.

As all responsibility for management passes to the RTM company, the freeholder will no longer be able to fulfil its part of the contract. So the RTM company will need to decide whether to renew the contracts or look elsewhere.

Duty To Transfer Funds

The existing manager may have collected service charges in advance but not yet spent them all. If so, they will be holding the remainder on trust. They must hand over all unspent sums to the RTM company.

These will include not only unspent service charges but also any reserve account or sinking fund. This may take some time. The existing manager may need to consider the accounts and fulfil existing contractor duties before handing these over.

Approvals

Most leases contain provisions requiring consent to certain actions/omissions. These can include:

- sub-letting
- assigning the lease
- making alterations to the flat.

Power to issue such approvals passes to the RTM company but it must keep the freeholder informed. Before granting any such approval, the RTM company must notify the freeholder and give them time to respond if appropriate.

Freeholder & Management Company Costs

The RTM company must reimburse the existing manager for costs they have incurred in the process, subject to:

- Relevant criteria/regulations
- The costs being reasonable.

The RTM company has the ability to challenge any costs at a tribunal.

Have questions about the Right to Manage?

Get in touch and discuss your situation today

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