

LACEYS GUIDE TO THE RIGHT TO MANAGE
AS OF 1 JANUARY 2006
INTRODUCTION

1. What is the Right to Manage?

This is the right for flat owners on long leases to form a company to take over the management of their block of flats without purchasing the freehold. Previously the right was only available on application to court where the landlord was at fault, but changes in the law mean that there no longer needs to be a complaint.

As with enfranchisement, leases and other agreements cannot exclude the Right to Manage provisions.

2. How does this new right tie in with enfranchisement?

This new right is not intended to replace the existing right to purchase the freehold (known as collective enfranchisement). Flat owners who are unhappy with the running of their block can now choose between owning and managing the freehold and managing the block. Exercise of a Right to Manage only will affect the payment of service charges and not ground rent.

The qualifying conditions are generally the same and the legal process is similar although Right to Manage is simpler. Right to Manage may be preferred where the funds can not be raised to purchase the freehold.

3. What properties are affected?

There are several qualifying conditions for a Right to Manage to exist:

- a. At least two thirds of the flats in the building must be held on long leases of which there must be at least two.
- b. The participating flat owners must hold the leases of at least half of the flats in the block-if there are only two flats they must both participate.
- c. The proportion of the building in non-residential use must not exceed 25 of the floor area.

4. Are there any properties excluded from the right?

There are exclusions for the following types of property:

- a. Where there has been a conversion of a single property into up to 4 units AND the landlord (or an adult member of his family) lives in one of those units and has done so for the previous 12 months.
- b. Where the landlord is a Local Authority or charitable housing trust.
- c. Where the Right to Manage has been exercised and lost for whatever reason within the last 4 years (unless the permission of a leasehold valuation tribunal is obtained).
- d. Where an initial notice has been served to enfranchise the premises.

5. What happens where the block is part of an estate of properties?

If a block of flats is part of an estate of properties, several blocks may enjoy a

number of common facilities. The company will become responsible only for the management of the block for which the Right to Manage had been exercised and responsibility for the management of the common facilities will remain as allocated under the lease. There is some legal debate whether one

RTM company can exercise the right in relation to more than one building in respect of which guidance is awaited from the Court of Appeal.

PROCEDURE

6. What are the stages involved in exercising the Right to Manage?

Stage 1 - set up a Right to Manage ("RTM") Company

One needs only the tenants of two flats to do this initially.

An RTM Company is a company limited by guarantee, with certain provisions in its memorandum and articles suited to the purpose of managing a building. It must have as its objects the acquisition and exercise of management functions in relation to the block.

Each qualifying tenant has a right (but is not required) to be a member of the RTM Company. Once the Right to Manage has been exercised then the landlord is also entitled to become a member and there are complex rules in relation to voting rights if he chooses to do so.

Stage 2 - invitation to participate

The RTM Company will then serve a Notice of Invitation to participate on all qualifying tenants who have not yet signed up to be members of the Company to do so, sending out relevant information such as a copy of the Memorandum and Articles of the Company. This is a detailed document and takes some time to prepare and must be validly served. The RTM Company is then required to wait for at least 14 days following the service of the invitations before it can serve the "Claim Notice".

Stage 3 - Claim Notice

The Claim Notice is a formal legal document served by the RTM Company once it has at least 50 of the flat owners as members. It must contain a statement that all of the qualifying conditions for the Right to Manage have been met, together with certain prescribed particulars including the deadline for the recipient to serve a counter notice. It specifies a date for the take-over of management which must be at least 4 months after the notice.

The Claim Notice must be served not only on the landlord but on all qualifying tenants and a court-appointed manager (if any).

Where none of the landlords on whom a Claim Notice should have been served can be found, the RTM Company can apply to the county court for consent to exercise the Right to Manage.

Once a claim notice is issued by the RTM Company it is registrable at the Land Registry in order to protect the right against any change in ownership of the freehold or intermediate leasehold interest.

Stage 4 - Counter Notice (if applicable)

Each landlord has a fairly short time in which to serve a counter notice either accepting or denying the Right to Manage and is able to recover from the RTM Company the reasonable costs incurred in dealing with the Claim and Counter Notice.

Stage 5 - Dispute

If the landlord and the RTM Company cannot agree that the conditions above have been complied with, we would advise the parties to resolve the dispute without reference to formal proceedings. If the parties cannot agree, however, then the Company should apply to the Leasehold Valuation Tribunal within only two months of the counter notice. The landlord cannot recover the costs arising from such a dispute either in proceedings or through the service charge.

Stage 6 - Taking Over

Where the RTM Company takes over responsibility then the landlord is required to pass to it all papers relating to the management, maintenance and insurance of the property (including copies of all relevant leases). This must be done within 28 days of the acquisition. The Company can apply to court to enforce these obligations and the landlord has an ongoing duty to hand over any further documents which come into his possession.

The landlord is also required to hand over reserves and monies held in trust on behalf of leaseholders immediately on the acquisition date.

EXISTING CONTRACTS

8. What is taken over?

The legislation has complex rules as to the "management functions" which are taken over. In essence the following are included:

- services
- repairs
- maintenance
- improvements allowed under the leases
- insurance
- management

9. What is not taken over?

Again there are complex rules in relation to this but examples include:

- management functions relating solely to units which are not flats let on long leases
- management of parts of the building that have commercial tenants
- the right to forfeit leases
- the receipt of ground rent
- the statutory right to be consulted by the RTM Company in respect of requests for approvals or assignments, underletting, charging, parting with possession, the making of structural alterations or improvements or alterations of use by flat owners (disputes are referred to the Leasehold Valuation Tribunal)

10. What about on-going service contracts?

The landlord or existing manager must serve a "Contractor Notice" on all existing contractors providing details of the RTM Company and the take over date to give those contractors an opportunity to re-negotiate existing contracts.

There is no automatic right provided by the Act which entitles contractors to be re-engaged and it is generally thought that the original contracts will be subject to the doctrine of frustration (where a contract comes to an end because neither party is able to perform its obligations because of an external event beyond their control) although it might be decided by the court that the landlord is in breach of that contract in some situations. Persons employed by the existing manager in relation to the particular building, such as a caretaker or porter, are likely to have their employments transferred automatically to the Company under the existing Transfer of Undertakings Regulations.

The manager must also serve Contract Notices on the RTM Company giving details of existing contracts and contractors.

11. What if there is an existing manager appointed under the lease or by the court?

The RTM Company can exercise the right to manage regardless of any manager appointed in the lease or by the court. The Company takes on the management functions both of the landlord and of the appointed manager.

LANDLORD'S OBLIGATIONS

12. What happens to the landlord's obligations under the leases?

If the right to manage is exercised, it is not intended to override any aspect of the lease other than to transfer relevant repair and management functions or responsibilities to the RTM Company. Nor is it intended for the exercise of a Right to Manage to affect the ownership of any interest in the building.

COMPANY'S OBLIGATIONS

13. What are the Company's obligations towards the landlord?

The Company must monitor whether the leaseholders observe the obligations placed upon them under the lease and advise the landlord of any breaches of covenant, so that the landlord can decide whether he wishes to take any action to remedy the breach.

14. What are the Company's obligations towards the tenants?

Leaseholders will have the same rights in relation to consultation and control of management costs against the Company as they would have had against the landlord. The Company will of course become legally obliged to carry out the management functions that it takes over within the terms of the lease and either the landlord or the tenant can take action against the Company if it does not do so.

TENANT'S OBLIGATIONS

Leaseholders who exercise the Right to Manage have continuing obligations to the landlord, to each other and any other tenants in the buildings.

REVERSION OF RIGHTS

15. Can the landlord reassume the Right to Manage?

The rights and obligations transferred under the Right to Manage provisions will revert back to the landlord in the following circumstances:

- a. By agreement between the RTM Company and the landlord
- b. Where the RTM Company is the subject of a winding-up order or struck off the register
- c. Where the RTM Company is the subject of any insolvency proceedings
- d. Where the Company ceases to be an RTM Company (i.e. through a change of Memorandum or Articles where the Company is to be used as a vehicle for enfranchisement)
- e. Where the court appoints a manager on the basis of the RTM Company's inability to manage appropriately

WHY CHOOSE LACEYS?

Laceys has a specialist team headed by two partners. Some of the benefits are:

- Specialist knowledge avoids technical mistakes in this difficult and rapidly changing area of practice.
- Our development of efficient systems means we are able to spend less time doing the work and so reduce the cost to you (solicitors usually charge on a time basis for this type of work).
- Whenever possible the partners supervise the other members of the team in doing the work so that much of it is done at a lower hourly rate (ask for our terms of business to see the rates).

- We can do our work quickly and so keep the momentum going in the process to help drive the matter through to a conclusion; it is difficult enough for you to manage your group through the process without having a solicitor who delays.

For further advice and a more detailed estimate of our fees, contact us:

Laceys Solicitors
5 Poole Road
Bournemouth
Dorset BH25QL

Telephone: 01202557256
Fax: 01202551925

Partners:

Harvey Reid

Email: h.reid@laceyssolicitors.co.uk

Mark Timberlake

Email: rn.timberlake@laceyssolicitors.co.uk

Warning; This is a complex and developing area of law and procedure in respect of which this is a brief guide which must not be relied upon without seeking specific advice from us based upon your particular circumstances.