

FREEHOLD BLOCK MANAGEMENT

Tenants taking control – Right to
manage



TENANTS TAKING CONTROL – RIGHT TO MANAGE

Leaseholders who are unhappy with the management of their building have a number of options which enable them to take control of this themselves. The two most common options for tenants are:

- Collective enfranchisement in accordance with the Leasehold Reform, Housing and Urban Development Act 1993 (“LRHUDA”); and
- Right to manage in accordance with the Commonhold and Leasehold Reform Act 2002 (“CLRA”).

This guide aims to provide freeholders and managing agents with a brief overview of the second of these two procedures – Right to Manage – including when it applies and what to do if leaseholders serve notice under the CLRA.

Refer to guide: [Tenants taking control – collective enfranchisement](#) for more information on the first procedure, collective enfranchisement.

WHAT IS RIGHT TO MANAGE?

In summary, right to manage or “RTM” enables a group of leaseholders to take over the management functions for the building in which their flats are situated – i.e. the provision of services, repair and maintenance responsibilities, improvements and insurance. However, unlike collective enfranchisement, the leaseholders do not actually acquire the freehold, which remains with the freeholder, along with the right to collect the ground rent.

The criteria which must be met in order to exercise the right are similar to the criteria for collective enfranchisement, i.e.:

- The building must be self-contained.
- It must contain two or more flats held by “qualifying tenants”. A qualifying tenant is one who has a lease which is granted for at least 21 years or more.
- At least two-thirds of the flats in the building must be held by qualifying tenants.
- If the building is mixed use, the internal floor area of the non-residential parts (not including any common parts) must amount to 25% or less of the total internal floor area of the Premises.
- If the freehold is owned by a resident landlord (i.e. one who also lives in the building), RTM will not apply if the building contains four flats or fewer; the building is not a purpose-built block but was converted into flats; the same freeholder has owned the building since before it was converted, and the freeholder occupies one of the flats as their only or principal home within the last 12 months.

WHO CAN BRING THE CLAIM?

Assuming the building qualifies for RTM, a claim can be brought by a group of qualifying tenants who together own at

least half of the total number of flats in the building.

Providing the above criteria are met, a freeholder cannot resist a claim for RTM and it is not necessary for the leaseholders to show that the freeholder has been mismanaging the building or is in breach of the leases.

WHAT IS THE PROCEDURE?

If the building qualifies and sufficient numbers of qualifying tenants wish to participate, the procedure for exercising RTM is as follows:

- The participating tenants must set up a special type of company known as an RTM company, in which they are all members. This must be a company limited by guarantee, and must have a prescribed set of Articles of Association.
- The RTM company must serve notice on all qualifying tenants in the building, inviting them to participate in the RTM company. This must include information about the RTM company, information about its powers and obligations, and information about the costs consequences of participating in an RTM.
- At least 14 days after service of the notices of invitation to participate, the RTM company can serve a claim notice on the freeholder. This must contain details of the building over which the right to manage will be exercised, an explanation as to how all of the relevant criteria are met, the names and details of the qualifying tenants, and the date on which the RTM company intends to take over management of the building, which must be at least three months from the date of the notice.
- The freeholder must respond to the notice by serving a counter-notice by the date specified in the initial notice,

which must be at least one month after it is served. The counter-notice must state whether the freeholder admits the leaseholders have the right to manage. If the freeholder admits the leaseholders' right to manage, or if the freeholder does not respond, the RTM company will take over management of the building from the date specified in the claim notice.

- If the freeholder does not admit the leaseholders have the right to manage the building, either party must apply to the First-Tier Tribunal (Property Chamber) within two months in order for it to determine whether the right exists.

WHAT ABOUT COSTS?

Leaseholders who serve a claim notice will be liable for the freeholder's costs of:

- Investigations into whether the building qualifies for RTM;
- Investigations into the qualifying tenants' titles to their flats;
- Accountancy costs incurred in providing accounts, transferring service charge funds and records etc.

However, freeholders will not ordinarily be able to recover the costs of First-Tier Tribunal proceedings, if the right to manage is not admitted. In the First-Tier Tribunal, the usual rule is that parties bear their own costs, unless very unreasonable behaviour on the part of one of the parties can be shown.

HOW CAN THE FREEHOLDER PROTECT ITS INTEREST IN THE BUILDING?

The freeholder is entitled to be a member of the RTM company and can, in this way, continue to participate in management decision.

LEGAL SUPPORT

Please contact our property litigation team if you need assistance with:

- Advice on whether the right to manage applies.
- Setting up an RTM company.
- Serving notices or advice on receipt of a notice.



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