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The Right To Manage

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Long Leaseholders are given the Right to Manage their leasehold blocks by virtue of the Commonhold and Leasehold Reform Act 2002. Exercising the Right to Manage (RTM) gives leaseholders a much greater input into the daily management of the block, and the right to employ a managing agent of their choice if appropriate.

This right often saves leaseholders having to pay, sometimes, large sums as a result of the freeholders' choice of agent, and in many cases the premiums paid for regular expenditure such as insurance can be reduced when leaseholders get the opportunity to "shop around" and manage their own budget.

The Right to Manage is a fairly straight forward procedure which involves a series of notices being served on both co-leaseholders and the landlord, and on occasion other third parties. However the procedure laid down in the 2002 Act must be followed strictly so as to avoid technical defences by the landlord if they wish to try and avoid a management take over.

Right to Manage is a no-fault based procedure and the landlord's consent is not required.

1.Pre-Conditions

If you wish to exercise the Right to Manage certain requirements must be met:

- Interested leaseholders must form at least 50% of all leaseholders.
- The total number of flats let on a long lease must be to two-thirds of the total number of flats in the building.
- Your leases must generally be long leases i.e. originally granted for more than 21 years.

There are some exceptions which include situations where the building has a commercial element or where the landlord is a resident.

2. Procedure

If you wish to proceed with a Right to Manage claim the first thing to do is to seek the support of your fellow leaseholders. Once you have 50% of the leaseholders willing to proceed, the next stage of the process is to set up the RTM company. You should seek our advice before doing this, as the legislation provides for this to follow a particular format.

Once the RTM company has been incorporated, Notices of Invitation to Participate must be served on non-participating leaseholders. At this stage you may then find other leaseholders wish to join in. All leaseholders who wish to proceed will be given membership of the RTM company, giving each leaseholder one vote per flat.

Once 14 days have passed, a formal Notice of Claim is served on the landlord and all the leaseholders. The Notice of Claim will specify a date by which the landlord must give a counter-notice if they wish to dispute the Right to Manage. As stated above, the landlord can only avoid the claim on technical grounds. It is for this reason that it is imperative all steps are complied with properly.

If there is any dispute following the landlords counter-notice, these are normally referred to a First Tier Tribunal of the Property Chamber.

Assuming there is no valid dispute, management handover will then take place on a date specified in the Notice of Claim, usually 4 months after service of it. Most RTM companies appoint their own managing agent during this period, and we will put the old and new managers in contact well before the handover date so that practical matters can be attended to.

The landlord and any non-participating leaseholder can elect to become a member of the RTM company at any time, and will obtain a vote as a member if they do join in. The landlord joining in does not normally affect day to day management, as such decisions are undertaken by the Directors of the RTM company. The whole process can take between 6-8 months from the date we are instructed to the management handover.

3. What costs are involved?

Our costs are normally about £150 plus VAT per flat, subject to a lower limit of £750 plus VAT. On top of our fees you will need to budget for Land Registry search fees of £3 per flat, and fees to set up the RTM company which are usually in the region of £85.

We will also need to register the benefit of the RTM claim on the landlords title at the Land Registry, to ensure any purchaser of the landlords interest in the building is aware and bound by the claim. This attracts a further Land Registry fee currently of £40.

The RTM company is also responsible for the landlords reasonable legal costs.

4. Once the RTM company has taken over the management it can:

- Appoint its own managing agent or manage the property via the leaseholders;
- Make decisions about the upkeep of the building and be responsible for its own budget;
- Manage the property in the interests of its members.

5. RTM company obligations

It is important to remember that once management handover has taken place the RTM company will take over the landlords obligations under the lease. This will include obligations such as dealing with consents required under the lease on behalf of the landlord and ensuring that all insuring and repairing obligations are complied with properly. The RTM company may therefore require the ongoing support of its own managing agents or solicitors. These are the most important obligations but the majority of obligations pass to the RTM Company which must therefore be fully conversant with the lease and statutory matters.

The officers of the company will have their own obligations, and the RTM company will need to deal with yearly administration such as the filing of accounts (if necessary) and the annual return. Directors' liability insurance can be obtained fairly cheaply.

A RTM company is also obliged to ensure that service charges are demanded and dealt with in accordance with the relevant legislation, and it should be remembered that a RTM company is just as vulnerable to facing non-paying leaseholders as landlords are.

Please note that this leaflet is for guidance only and gives a general outline of the procedures and qualifying requirements. It is not a substitute for legal advice which should be sought before embarking on a RTM claim.

If you have any questions, would like a formal costs estimate, would like further advice on any aspect of this leaflet, or wish to set up a meeting with us then please contact:

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Each are specialist Landlord & Tenant Solicitors at Dean Wilson LLP.

