



INTRODUCTION

This Fact Sheet sets out details relating to the right to manage positions for leaseholders of flats. These rights are contained in the Commonhold and Leasehold Reform Act 2002. These rights are separate to the right to appoint a Manager to run a block of flats or to carry out certain management functions which are contained in the Landlord and Tenant Act 1987 (where you have to show that the Landlord and/or Manager appointed by the Landlord is in default or in breach of the obligations to one or more of the tenants) and which are not covered here.

We have tried to make this Fact Sheet easy to understand but we have not attempted to cover every aspect of the legislation. It is not intended, therefore, for this Fact Sheet to be a substitute for professional advice.

RIGHT TO MANAGE (RTM)

In general, and subject to certain conditions, a group of leaseholders can take over the management of the building in which they live without having to prove that their Landlord/Manager is at fault and without having to make a payment for taking over this obligation. The building itself must qualify; there must be an appropriate number of qualifying tenants; an appropriate company must be set up to make the application and the correct procedure must be followed. To qualify, a leaseholder must hold a lease which was originally granted for a period exceeding 21 years. It does not matter if a lease has less than 21 years left to run and you do not actually have to live in the premises to qualify.

THE BUILDING

- There must be two or more flats held by qualifying tenants in the building. If there are only two flats, both must participate.
- At least two thirds of the total number of flats must be let to qualifying tenants.
- The premises must consist of a structurally detached building or consist of a self-contained part of a building (which can include other property enjoyed by qualifying tenants, such as gardens and garages).
- The building will not qualify if more than 25% of the internal floor area is in non-residential use.
- The total number of tenants participating must equal at least one half of the flats in the block.

For example, in a block of 12 flats at least eight flats must be held on long leases and at least six long leaseholders must participate in the right to manage process. There are also a number of exceptions set out in the Act which must be checked before proceeding further.

THE COSTS

Before exercising the right to manage, it is important to understand that certain costs will be incurred. These include the costs of forming and registering a RTM company at Companies House. The RTM company will also be liable to meet the costs of the Landlord and any head lessee dealing with the claim. The RTM company itself will also incur its own costs in obtaining professional advice and estimates of these costs should be obtained at the earliest opportunity so that you can ensure that you and the other qualifying tenants are in a financial position to proceed before starting the process.

THE RTM PROCESS

Once you have met all the qualifying conditions and set up the RTM company, the procedure is as follows:

1. A Notice of Invitation to Participate must be served on all qualifying tenants who are not members of the RTM company. This Notice informs all qualifying tenants that a RTM company has been set up and that they are entitled to join in the proceedings themselves, should they wish to do so. They are given 14 days in which to indicate whether they wish to participate and before the next step is taken.
2. A Claim Notice must then be served on the Landlord and anyone else who is a party to a lease of any part of the property. Copies must also be served on all qualifying tenants as at the date of service of the Notice.
3. Anyone who receives a Claim Notice can give a Counter Notice to the RTM company within one month from the date of service. This Counter Notice must contain a statement either admitting that the RTM company is entitled to acquire the right to manage or stating that the company is not entitled to do so. There are only two grounds on which the Claim Notice can be disputed namely that the building does not qualify or that there are insufficient participating qualifying leaseholders. If the Notice is disputed, the RTM company must then make an application to the Leasehold Valuation Tribunal within two months for the issues to be determined.
4. If the Claim Notice is not disputed then the RTM company will be entitled to take over the management of the building on the date specified in the Claim Notice itself (being not less than four months from the date of service). If the Notice is disputed and the issues are determined by the Leasehold Valuation Tribunal, then the RTM company is entitled to take over the management three months after such determination.
5. The existing Landlord/Manager must, in addition, serve various Notices in relation to contracts entered into concerning the management of the property so that due consideration can be given as to whether the RTM company takes over such contracts. The RTM company should also liaise with the Landlord/Manager so that it is in a position to take over the management of the building in an orderly way.

For further information or to arrange a FREE, no obligation initial meeting please call a member of our team on Exeter 01392 285000 or Cullompton 01884 33818.

Dunn & Baker – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.