

April 2008 IN YOUR OWN HANDS – MANAGING YOUR BLOCK OF FLATS

Complaints about poor landlords are all too frequent, but the cost of buying the freehold can be prohibitive. There is an alternative – to set up your own management company under the Right to Management (“RTM”) provisions in The Commonhold and Leasehold Reform Act 2002.

Before going too far into the process you do need to check that your building qualifies for the management to be taken over. At least two-thirds of the flats have to be let on leases for a term of more than 21 years, and any non-residential part of the building must not exceed 25% of the total floor area.

You need to be aware that the setting up and the process of taking over the management of the building is not an expense which can be charged to all of the flat owners through the service charges. There is, therefore, the possibility of a number of flat owners having a "free ride" by not joining in until later when the expenses have been incurred. It is best to involve as many people as possible at the outset and to create a "fighting fund" by asking them to pay a sum into an account which is set up for the purpose for you to use. If at the end of the process there is a surplus, a proportionate part will be returned or, by agreement, used to offset service charges payable by the flat owners who participated.

Points you need to consider are:

1. Check the registered titles affecting the property in order to ensure that all the participating flat owners are eligible to be members of the RTM company.
2. Set up the RTM company with the appropriate voting rights, taking into account any non-residential parts.
3. Draft and arrange for the service of the statutory notice inviting all qualifying flat owners to join.
4. Request information from the existing managing agents and the landlord (some information the landlord is not required to disclose until the management is handed over).
5. Tendering for managing agents and agreeing the contract for services (you would be brave, and need lots of time if you do not appoint managing agents).
6. Drawing up and serving the notice of claim on the Landlord and any superior landlords. It is vital that this is done absolutely correctly to be valid.
7. You may receive a counter notice from the landlord.
8. Agree a procedure for the handover of the management and the assignment of any contracts for the building. Check that there are no employees (such as a caretaker or cleaners) who are employed for your building. If there are, you need to consider whether you are obliged to take over their contracts of employment.
9. Transfer all supply contracts to the RTM company and deal with the reconciliation of accounts.
10. Try and avoid ending up in the Leasehold Valuation Tribunal because of the additional expense and the delays this causes.
11. Ensure that you have the support for dealing with applications for consents, enforcing compliance with the covenants of the leases and recovery of service charges, and the procedure for making service charge demands which is compliant with the statutory procedures.
12. You need on-going support to comply with the Company Act procedures, if necessary being the company secretary and the registered address for the RTM.

Remember that you will have to pay the Landlord's costs as well as your own.

Asma Shamim

asmashamim@cartercamerons.com