



G H W Crofts & Co Limited

LANDLORD & TENANT | COMMERCIAL

The Right to Manage – A client's guide

The Right to Manage process can be long and complicated. This guide lays out the process in full allowing you to understand where you are in the process and what the next steps are.

Initial Steps

Initial consultation and legal advice as to eligibility of you and the lease for exercising the Right to Manage.

If you do not know who your freeholder is, or do not have enough information to begin the process, you have the right to serve notices on any person with an interest in the property to ask for the details.

Participation

You will need a core of at least 50% of owners to proceed. Once you have the requisite majority, you should let us have the names and contact detail of all participating flat owners.

You will normally need at least two volunteers to be directors.

Company Formation

The Right to Manage is exercised by a Right to Manage Company. This is formed and all participating flat owners become members. Directors are appointed. The Director role during the purchase is to feedback information to the group; we keep cost down by updating the directors who then are charged with updating the wider group and disseminating information. Post completion, the director will look after the day to day management of the company and block.

Notice Inviting Participation

All qualifying flat owners are entitled to become members of the RTM company and you must formally invite everyone before proceeding. The invitation must be in writing and in the prescribed form and is served on all flat owners who are not yet members of the company.

Anyone who responds to the invitation and asks for membership is enrolled as members of the company. Stragglers may be more willing to join once you have the requisite number needed to proceed and they know this will happen with or without them.

Notice of Claim

The Notice of Claim triggers the legal process for the taking over the management of your block. You are liable for the freeholder's reasonable costs from the date they receive the Notice of Claim. The notice lays out the date (at least one month after date of service of the Notice of Claim) for a reply by way of Counter-Notice and sets the date on which the Right

to Manage Company intends to acquire the Right To Manage (at least three months after the date for the Counter-Notice).

Counter Notice

The freeholder's Counter Notice will state whether the freeholder accepts that you have the Right to Manage. The freeholder can only object on procedural grounds (e.g the block does not qualify, the company has been formed incorrectly or does not have at least 50% of the flat owners participating).

No other queries or issues may be raised as a defence to the exercise of the Right to Manage.

If the claim is admitted, or the freeholder fails to serve a counter notice, the Right to Manage Company takes over on the date specified on the Notice of Claim.

Resolving Disputes

If the right is not accepted, The right to Manage Company must make an application to the Tribunal within two months of the date of the Counter Notice. If the application is not made within this time, the claim is deemed to be withdrawn. The Tribunal determines whether the Right to Manage Company is or is not entitled to the right to manage.

Information

Normally, a freeholder has various contracts in place relating to the maintenance and management of the block. Examples include the contract with any managing agent for the overall management of the building and contracts for: the maintenance of any lift, boilers and central heating, door-entry system, cleaning, gardening, caretaking or other direct services, or for the provision of supplies.

The Right to Manage Company has to be aware of these contracts and the contractors need to be informed of the impending transfer of management to the Right to Manage Company.

It is the freeholder's duty to ensure that all interested parties are made aware and the freehold must:

Served a notice detailing all contracts and contractors on The Right to Manage Company who must then decide whether they want to keep these contractors or look elsewhere for the services.

Served a notice on all contractors letting them now that the Right to Manage Company will be taking over management of the block, giving them the date of the take over and asking them to contact the Right to Manage Company if they want to continue to provide services to the building.

In addition, the Right to Manage Company can ask the freeholder to hand over any information which is in their possession or control and which the company reasonably requires in connection with the exercise of the Right to Manage. The freeholder can only be compelled to give this information after has taken over the management.

Take Over (Acquisition Date)

This happens on the date specified in the Notice of Claim or, in cases where the right is disputed, three months after Tribunal Decision or agreement reached with freeholder. From this day onwards, the Right to Manage has the responsibility and control of the block.

Where the freeholder has collected service charges in advance but not yet spent them, the remainder is meant to be held in a trust account. The freeholder is obliged to hand over all the unspent sums including any reserve account or sinking fund on the Acquisition Date or as soon after that date as is reasonably practicable.

Post Take Over

Immediately upon the Right to Manage Company taking over on the acquisition date, the freeholder becomes entitled to membership of the company, with full voting rights.

Having exercised the Right to Manage, the company now has all of the management duties for the block. The company is responsible for services, repairs, maintenance, improvements, insurance and management. The Company can continue with the existing contractors or can select new providers.

Moving forward, it is the Right to manage Company that grants any consent needed under the leases in the block. This can include sub-letting, assigning or selling the lease and making alterations to the flat. The company must keep the freeholder informed and give notice of consents given.

The enforcement of the obligations under the leases is now the responsibility of the Right to Manage Company. The Company must ensure flat owners comply with all covenants and must alert the freeholder to any breach.

Our service does not end when you take control. We work with our clients to assist with the smooth running of their block and Right to Manage company. We are always on hand to assist with post completion questions or issues whether these arise in the first weeks or years down the line.