

Number 20

New Statutory Rights for Residential Leaseholders

On 30 September 2003 some of the remaining provisions of The Commonhold and Leasehold Reform Act 2002, which received Royal Assent in May 2002, will come into force.

A summary of the new provisions

- Long leaseholders of flats will have the right to manage their building collectively and take over the management of the block from their landlord, subject to their satisfying certain qualifying rules.
- Changes to the definition of service charges and leaseholders' rights to challenge these charges.
- An opportunity for leaseholders to be consulted over matters affecting them and over which they are obliged to meet the cost.
- The right of leaseholders to challenge other charges under leases as well as charges in relation to estate management schemes.
- Changes to the provisions relating to requests for insurance information from the landlord.
- The application of various landlord and tenant provisions to Crown Land.
- The extension of the jurisdiction of leasehold valuation tribunals and consolidation of the provisions relating to their procedures.

The new right to manage

The new right to manage will be available even if there is no fault on the part of the landlord as far as the current management of the building is concerned.

The right would be exercised by the leaseholders as members of a "right to manage" company which would be a private company limited by guarantee.

Leaseholders who opt for the right to manage would have more control over the level of service charges to be set, the choice of managing agents and insurers to be appointed.

Qualifying conditions for the right to manage

- A leaseholder must be a tenant of a flat under a residential lease for more than 21 years.
- The premises must be a self-contained building, or part of a building, two or more flats must be held by qualifying tenants and the total number of flats must be not less than two thirds of the total number of flats in the building.

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The procedure to be followed to obtain a right to manage

- A “right to manage company” must be formed and give notice to all other qualifying tenants who are not members of the company inviting them to participate.
- A claim notice must then be served on the landlord giving at least three months’ notice of the date on which the company intends to acquire the right to manage.
- If a landlord serves a counter-notice opposing the claim, the company will not acquire the right to manage unless a leasehold valuation tribunal determines the matter in the company’s favour, or the landlord consents.
- The acquisition date for the right to manage would either be the date specified in the claim notice or if the matter has been determined by a leasehold valuation tribunal, three months after that determination becomes final.

Exercising the right to manage

- The “right to manage” company would perform the functions of managing the premises and collecting the service charges.
- The company would arrange for the performance of repairs, maintenance and obtaining insurance.
- Upon giving 30 days’ notice to the landlord the company would be responsible for dealing with requests for licences to assign and underlet. If the landlord were to object, the matter would be determined by a leasehold valuation tribunal.
- The company must report failure of the leaseholders to comply with their covenants within three months.
- The landlord would have a remedy against the company if it failed to perform its obligations.
- If the company were to become insolvent or otherwise unable to perform its obligations, it appears that this responsibility would revert to the landlord.

The reforms are intended to create a fairer balance between the rights of landlords and leaseholders as well as giving leaseholders greater control over the management of their homes. The right to manage is one of the main elements of the reforms and has significant implications for both parties.

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September 2003

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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