



# APPOINTING A MANAGING AGENT

*The need for a managing agent, their selection  
and working with them*



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This guide is for people living in blocks of flats, whether a small conversion or a large purpose-built unit, where they are leaseholders subject to the payment of service charges. It aims to provide basic guidance on what is involved in managing the building, what options there are for the management and how to go about appointing and employing a managing agent.

## Introduction



Flat-owners may acquire management responsibilities in different ways: through acquisition of the freehold of the building, through the statutory Right to Manage (RTM) or simply by delegation of the management responsibilities from the landlord. Whatever the route, the management is normally exercised through some form of resident management company (RMC).

The RMC will assume responsibility for the management and repair of the building, and for compliance with the obligations of the lease and the wide range of relevant statutory requirements. It will have to assess how best to achieve this, through self-management or by the appointment of a professional managing agent.

This guide has been produced as a joint publication by ARMA, the Association of Residential Managing Agents, ARHM, the Association of Retirement Housing Managers and LEASE, the Leasehold Advisory Service.

ARMA is the leading trade body in England and Wales that focuses exclusively on matters relating to the block management of residential property, whether for landlords or resident management companies. Members agree to adopt and comply with the principal objectives of the Association and undertake to follow the Codes of Practice issued by the Royal Institution of Chartered Surveyors. The Association promotes and encourages consistent standards of practice by its members and provides a platform for developing and contributing to public debate on new legislation concerning management issues.

ARHM, the Association of Retirement Housing Managers, is the body for managers and landlords of leasehold schemes for retired people, including resident management companies. Its members agree to comply with its Code of Practice for private retirement schemes and to offer leaseholders access to an independent ombudsman scheme.

LEASE provides free advice and guidance to leaseholders and landlords on all aspects of leasehold law, including problems with service charges, forfeiture and rights to lease extension and freehold acquisition. LEASE is funded by the Department for Communities and Local Government and the National Assembly for Wales.

### This guide aims to help you to:

- understand the role of a managing agent;
- be able to make an informed choice between self-management and the employment of a managing agent;
- know what to look for when appointing a managing agent.

It is intended as a general guide only and is not a substitute for legal advice; specific problems should be referred directly to any of the contributory organisations as appropriate; where they cannot assist, you are recommended to seek advice from a solicitor.

## *Can you manage without an agent?*

Many leaseholders do manage their buildings themselves competently and successfully, preserving the value of their investment in the flats and saving in management fees. However, before they decide, leaseholders considering this strategy should give serious thought to the work to be done and the obligations arising.

## *Restrictions*

A resident management or RTM company is subject to exactly the same legal duties as any other commercial landlord. These duties are owed not only to the leaseholders who are members and participants in the management company, but also to those who are not involved and who may have different views and objectives for the management of the building, including the freeholder. The rights of individual leaseholders are not in any way diminished or suspended simply because the management is through a resident-controlled company.

Leaseholders proposing self-management should appreciate that this will not necessarily give them the expected freedom to manage the building exactly as they might choose; they must be closely aware of the restrictions and requirements both of the lease and the relevant legislation and codes of practice when making management decisions.

## *Organisation*

The task of management is ongoing and a long-term commitment, it should not therefore be left to one or two individuals alone, or embarked upon without due regard to the future. Are there sufficient members already, willing, able and available to keep an effective management team running indefinitely? Positions held in the management company are generally unpaid and rely upon a few hard-working members. Problems can arise when a key director moves on, leading to sudden skills gaps which could cause management chaos. Disagreements arise from time to time and sudden and unplanned resignations cannot be discounted where, for example, management team proposals prove unacceptable, or where complaints arise as to the way in which individuals fulfil the duties of their office.

## *Duties and obligations*

Management of a residential block of flats is a largely practical exercise and demands considerable effort, time, organisational skills and care. The physical fabric of the building must be regularly inspected, maintained and redecorated to the required standard and at the required times. Assessment of any necessary work may require professional expertise. Monitoring and approving the finished job may demand a qualified surveyor. Work will not always be properly executed and some members or lessees may well refuse to meet the costs at the expense of the company, which can cause friction and dispute as well as put pressure on cash flow.

Systems must be put into place to estimate and to collect the money required for works and services and the company will need a full understanding of how the lease permits the charges to be raised, in advance or arrears. There must be sufficient accounting procedures in place to provide final accounts and the annual statutory summaries to the leaseholders. Although the company is the landlord, the accounts must clearly distinguish between the financial affairs of the company and those of the landlord; for example, the company cannot pay corporation tax from the leaseholders' service charge account.

In cases where a resident is in default of his or her lease, in non-payment or arrears of rent or service charges or in breach of a clause of the lease

controlling the use of the flat (subletting, for example), the manager will be required to take action; this can include threat, or ultimate use, of forfeiture and possession proceedings. Resident management companies may feel uncomfortable in direct action against a fellow leaseholder and consider such actions better carried out by an independent professional.

However, having made these points, residents should not feel that there is no credible alternative to the employment of agents or that they cannot do the job to the same high standards as those of a professional manager. Leaseholders should choose self-management only where they have a complete understanding of the scope of the manager's role and the facilities and resources to undertake the task properly. The building is, after all, the joint capital investment of many; profitable investments demand careful handling.

### *Do you need a professional agent?*

There are many benefits of professional management, which must be balanced against the fees which member and non-member leaseholders will have to bear. Professional managing agents will bring an organised approach to the planning and collection of the service charges and reserve funds, the timetables for redecoration and repairs and inspection and supervision of works. Their assessment of what must be done, and when, will be independent of private interests and preferences and based solely upon their duty to all residents to keep the premises in good repair. The process of collecting funds and the responsibility for taking steps to recover unpaid charges will be removed from the individual directors of the company. A managing agent should be geared up to handle the mundane and time-consuming administration, and may handle it more efficiently through better facilities for storage and retrieval of records and documentation essential for accounting purposes.

Issues and disputes can be dealt with impartially by an arms length agent to limit the animosity and division, which could arise, where personal issues become the business of neighbours and colleagues.

The agent distinguishes between the needs and duties of the company under the Companies Acts and the needs and duties of the company in its separate role as landlord under the leases and the relevant Landlord and Tenant legislation.

Management is a full-time affair and a managing agent should have the essential infrastructure to deal with the management of leasehold property efficiently and expeditiously. Full-time staff employed for that sole purpose, purpose-bought IT for account-handling and ready access to lawyers, professional bodies and colleagues are some of the resources which the self-managing lessees may not be able to match. Fidelity insurance cover to protect client funds is a significant advantage over self-regulation of funds by individual members. The agent's separate professional indemnity cover is a further protection against negligent acts or incompetence. Resident management companies acting on their own will find it difficult to obtain such cover.

Finally, it is worth emphasising a point that may not be immediately appreciated by those who have past experience of poor management: the professional managing agent will follow his employer's instructions and objectives. Those objectives may sometimes differ according to the landlord's and tenants' viewpoint. Previous bad management may not necessarily be laid at the managing agent's door, who may have been

restricted in his actions by poor instruction from an incompetent or unco-operative landlord. The same agent might provide a very different service in response to proper instruction from well-organised leaseholders.

### *Why does a building need to be managed at all?*

A building will not manage itself, and there is much to be done if the leaseholders are to receive the services promised in the leases and the building kept in good repair; insurance needs to be put in place and renewed on time; bills need to be paid and services maintained; local authority and legal requirements must be met. The leaseholders' capital investment in their flats must be maintained and their individual rights of enjoyment of the flats ensured.

No matter who manages the building, there are certain tasks to be carried out; there is little variation in these whether the building is a house converted into a few flats or a substantial purpose-built block or estate. Many of these are set out in Appendix 3.

Careful forward planning is necessary in terms of major works of repair, both in the specification and pricing of the work and, perhaps more important, in the financial provision for them. The terms of the leases providing for collection of service charges may not necessarily be compatible with the immediate funding needs of the management company or the building. Accurate planning and collection demands an assessment of the needs for the year ahead, some months in advance of that year's beginning, when shortages of money for urgent works can be serious.

Whoever is responsible for the management of the building – whether it is the actual landlord or the leaseholders in the form of a resident management company or Right to Manage company acting in the landlord's place – will have significant duties and responsibilities under the lease and under legislation. It is essential that the manager fully understands and appreciates these responsibilities if the residents are to receive the services due to them and the building is to be maintained.

**These responsibilities arise in three areas: covenants in the lease, statutory requirements and codes of management practice.**

### *Covenants in the lease*

The lease sets out both the relationship between the landlord and the individual leaseholder and the rules and obligations to be observed. The leaseholders participating in the management company may agree mutually convenient arrangements between themselves for the collection of service charge monies, rent and timetables for repairs and maintenance. However, if these arrangements are in any way contrary to the lease, they cannot be imposed or otherwise relied upon if a single leaseholder objects; in a dispute, the specific requirements of the lease must prevail, no matter how much more convenient the management company's arrangements might be. It is most important, therefore, to ensure that the management company fully understands the terms of the lease and makes no irreversible decision which might be inconsistent with the lease; this may lead to loss to the company or action against it or against individual directors. Those leaseholders in a position to make decisions for the company must appreciate these restrictions, both in their fiduciary duty to the company as directors, and to the individual leaseholders as the landlord.



- **Landlord's covenants often include:**
- **Insurance** – obtaining and arranging the insurance at the building.
- **Repairs, maintenance and major works** – upkeep of the structure of the building, to maintain it in a proper condition for the residents.
- **Provision of services** – heating, lighting in common areas, cleaning, grounds maintenance etc; caretaker, scheme manager or porterage services. Particular care needs to be exercised in the employment of staff who will have statutory employment rights.
- **Enforcement of tenants' covenants** – regulation of the use of the flats, application of covenants against sub-letting, business use etc, enforcement of lessees' rights of quiet enjoyment (peaceable occupation) in the event of disturbance by other residents.

Each lease will set out the particular covenants applying. Leases are often complex in form and language, and not readily accessible to the lay person. There is no general standard model lease and leaseholders looking to manage their own buildings should seek advice to ensure a full understanding and application of the landlord's covenants.

Breach of the landlord's covenants can lead to legal action by the lessees against the defaulting landlord.

## Statutory requirements

The company will need to be fully aware of the requirements of the Landlord and Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002) upon the manager relating to information to be provided to flat-owners, reasonableness of costs and formal consultation procedures and be able to put them into practice. Even where there appears to be a general consensus of support by the flat-owners to the company's proposals, say in a vote at a meeting, *this will not remove the obligation for compliance with the statutory procedures.*

- **Provision of information to the lessees** – under the Landlord and Tenant Acts 1985 and 1987 (as amended) the landlord must, on the lessee's request, provide summaries of service charge costs and details of the insurance arrangements, and make available for the lessees' inspection all relevant invoices, documents etc, including the insurance policy.

Departure from these duties of information can render the landlord liable to litigation and even to criminal prosecution.

Under further amendments made by the Commonhold and Leasehold Reform Act 2002, but not commenced at the date of this publication, the RMC will be required to issue summaries of service charges to all leaseholders on a yearly basis, whether requested or not. In case of failure to provide the summary, the leaseholder has a statutory right to withhold payment of the service charge. If the RMC is unable to comply with this requirement, it will thereby endanger the future service charge income.

As from 1st October 2007, all demands for service charges must be accompanied by a prescribed summary of leaseholders' rights. The demand will not be valid without the statement and, again, the leaseholder will legally be able to withhold the payment. (This provision also applies to administration charges).

- **Consultation on proposed service charge expenditure** – the landlord or management company must formally consult the lessees where the landlord, or the company, proposes to carry out works resulting in a charge to any flat of more than £250, or to let

a contract for a term of more than 12 months which will cost any flat-owner more than £100 a year. The consultation is a formal process, set in legislation, and the landlord must generally invite comment and observations on the proposals from the lessees and give reasons for the final decision made. Failure to comply with the process can result in the landlord being unable to collect any more than the statutory amounts, whatever the actual cost of the works or the contract.

- **Service charge monies to be held on trust** – all money collected from the leaseholders in respect of any service charge are required by law to be held as a trust; provisions of the 2002 Act will require these funds to be held in designated accounts to which the leaseholders have full rights of information and inspection. It is most important that service charge funds are kept separate from money belonging to or chargeable to the RMC as a company; the costs arising from running the company may not be deducted from service charge monies unless expressly provided for in the lease.
- **Demands for rent** – whatever the terms of the lease, the ground rent is not recoverable unless properly demanded, in the prescribed manner. The RMC will have to make satisfactory arrangements for the issue of these demands if the rental income stream is not to be affected.
- **Reasonableness of service charges** – any service charges levied by the landlord must be reasonable, in terms of both cost and standards. Collection of the charges is not legally enforceable in the event of either being found not to be reasonable by a court or tribunal. Inability to collect service charges in respect of works done or services provided under contract can have disastrous consequences for resident management and Right to Manage companies operating without substantial cash reserves.
- **Health and Safety** – the landlord has responsibilities in complying with a very wide range of Health and Safety requirements, with serious consequences if they are neglected. The common parts of the building become a place of work for purposes of H&S regulation when there is a workman on the premises and this introduces compliance requirements well beyond the landlord's contractual responsibilities under the lease. There will be a need to maintain an asbestos register, to carry out inspections and testing of electrical equipment and other machinery in the building and to provide H & S information to contractors. This is an area requiring specialist input.

Statutory requirements go beyond the issues highlighted above and are likely to include the environment, Disability Discrimination and many more.

### *Codes of management practice*

Management of residential leasehold property should be in accordance with approved Codes of Practice.

The Government has, to date, approved two Codes of Practice, one produced by the Association of Retirement Housing Managers (ARHM) relating to retirement housing schemes and one by the Royal Institution of Chartered Surveyors (RICS) relevant to all tenants paying variable service charges not on retirement schemes.

While departure from the codes is not, in itself, a statutory offence, it can provide grounds for residents to challenge the management or the service charges.



When appointing an agent, always ask the manager to confirm that he complies with the relevant code.

## *Making the right choice of management*

In deciding how to proceed, you will need to weigh up the options as to what you wish to achieve in the management of the building:

- what duties or responsibilities do the leaseholder managers wish to retain?
- which duties can usefully be delegated to a managing agent?
- what arrangements are to be made for instructing the managing agent?

Managing agents usually offer a range of services. You can choose to leave everything to them according to your set policy and expenditure controls, or you can elect to have them take on specific tasks such as collection of service charges and issue of payments. You can decide, for example, whether the tenants will share the duties of cleaning or gardening, or whether the agent should arrange this through a contractor.

The agent will be directly answerable to the leaseholders acting as manager, that is, to the board of directors, who have full powers of 'hire and fire', although you should avoid frequent changes of manager which will disrupt continuity of service provision.

## *Appointing a managing agent*

### *Specification*

You should be clear what tasks you want the agent to carry out. It is prudent to set these out in the form of a specification, to be evaluated by prospective agents as a tender. If the leaseholders have become the manager of the building through a process of collective purchase, it is likely that they will have employed a surveyor for purposes of valuation; if not, it may be appropriate to consult a surveyor experienced in property management. The surveyor can, under your instruction, draw up a formal specification of duties, for discussion with prospective agents.

In cases of small buildings, the input of a surveyor may not be justifiable, but you should then agree the basic list of tasks before interviewing agents. Where the leaseholders are taking over responsibility for management for the first time, for whatever reason, it will be sensible to arrange for a structural and condition survey of the building, in order to be able to assess future repair, maintenance and improvement obligations. This can be carried out in advance of the appointment of the agent, or it could be one of the tasks included in the specified tasks.

### *Agents' qualifications*

There is only one specific qualification for a managing agent, that of the Institute of Residential Property Management, although some managers will be members of the Royal Institution of Chartered Surveyors, or, in the public sector, the Chartered Institute of Housing. However, many agents are members of the Association of Residential Managing Agents, or those who specialise in the management of retirement schemes may be members of the Association of Retirement Housing Managers. The advantages of the appointment of an ARMA or ARHM member is that they will have had to satisfy an independent body of their competence and, as a condition of their membership,

will be required to abide by a code of practice and a complaints and disciplinary procedure. Therefore, the management company and individual flat-owners will also have recourse to ARMA or ARHM in the case of complaint about one of their members.

### *Agents' insurances*

It is most important to confirm the prospective agent's professional indemnity insurance. If the agent is a member of a professional or trade association, professional indemnity insurance will be an automatic condition of membership. However, the existence of the cover, and its extent, must be checked. Where a resident management company delegates tasks to a managing agent, the residents' company will remain legally answerable for any neglect, omission or mistake by the agent and must be sure that the agent has the means for compensation or damages.

### *References*

Experienced managing agents should be able to provide references from the manager, or the residents' association, of other buildings they manage or have managed. You should seek references in respect of buildings similar to your own. You should seek agents that have previous experience in managing similar schemes to your own.

### *Procedures*

To start with, you should write to a selected group of agents inviting them to tender for the work. You may know some local agents or you can consult the list of agents available from ARMA, ARHM or LEASE. Unless you are really unhappy with your present managing agent, it may be worth considering them. Ask yourselves how efficient they have been in dealing with your complaints; did they act promptly on minor repairs? Allowing for the fact that they were given instructions by the landlord, did they behave in a reasonable manner where your problems were concerned? You may find that their service will be fully acceptable when they are answerable to you.

It is most important that you invite prospective agents to the building, to see it and to meet the management committee. Ideally, in the course of discussion, try to meet the person who will actually be managing the building – the personal relationship is an important element in property management. Similarly, try to visit other buildings presently managed by the prospective agent yourselves, and judge their competence on the ground.

When you interview prospective agents, do not be afraid to ask questions and to negotiate fees. For example:

- what arrangements does the agent have for general maintenance inspections?
- how are minor repairs responded to and in what timescale?
- how are service charge monies collected and what are the agent's banking arrangements – what arrangements are made regarding interest?
- how are contractors chosen?
- what arrangements are to be provided for emergency out-of-hours callouts?
- what commissions would the agent be entitled to receive from any contracts arising out of the services to you? A good agent should declare all such commissions to you.

The agent chosen may provide a draft contract or the management company's solicitor may draw one up; alternatively, the Royal Institution of Chartered Surveyors have produced two standard contracts, one for

purpose built blocks of flats and one for other properties, and the Association of Retirement Housing Managers has a standard contract for retirement schemes. The Association of Residential Managing Agents also provides guidance to its members on drafting a suitable contract.

*Always seek independent legal advice before entering into the contract.*

## Documentation

Documentation should include:

- a draft letter inviting tenders (*set out in Appendix 1*);
- the letter should include a checklist for your building (*see Appendix 2*);
- a specification of services, or, if this is not appropriate, a simple list of tasks (*see Appendix 3*);
- plus, you should ask for details of qualifications, experience and references in respect of blocks presently managed (*see Appendices 4 and 5*).

## Getting the best from your managing agent

The agent cannot work in a vacuum and it is critical to future management arrangements to establish at the outset:

- what responsibilities and authorities that agent will have;
- standards of work demanded;
- response times and other timescales for action;
- the authorised lines of reporting and communication.

Both the individual leaseholders and the agent must be clear as to from whom instruction is to be received. The usual and most effective arrangement is for the agent to attend, and report to, meetings of the Board of the residents' company. By treating the agent as a form of general manager, he or she will provide useful input to policy and take overall responsibility for day-to-day affairs. Meetings should be properly organised and the Board's instructions to the agent clearly minuted. The Board should set clear lines of communication, understood and observed by both sides. The agent should not need to interpret unclear instructions, nor should they receive differing instructions from individual members of the Board.

Remember that the agent cannot take instructions from the Board that would put him in breach of any landlord and tenant law, code of practice or other statutory guidance, eg Health & Safety legislation.

The Board should also establish how the agent is to respond to questions from individual residents and his accountability to those individuals.

The residents should be clearly informed by the Board of the identity of the agent, his duties and the limits of his authority. Although the agent will be working for the residents as a whole, his employer is the Board, and the residents must be clear that he carries the authority and support of the Board in all his actions. The agent should not be placed in any position of ambiguity in dealing with individual flats-owners and, of course, cannot take instructions from them.

## Appendix 1

### Sample covering letter inviting tenders

Addressee

*(Company or association's letterhead with contact address and phonelfax numbers and, if to be used, email address)*

Date

Dear.....

Re: *(Name and address of block)*

We are in the process of reviewing the appointment of a managing agent. Descriptions of the property and services required are enclosed (for guidance only) along with a questionnaire; these will be used to evaluate tenders on a like-for-like basis (please note that the cost of your service will be a key element *or* the quality of the service provided will be considered as important as the cost).

If you would be interested in applying, could you let me know when you would be available for an initial meeting; it would be most helpful if you could let me know in writing not later than *(date)*. Subsequently we may wish to visit the offices of shortlisted applicants.

Any further information you require may be obtained from *(name)* at the above address.

We look forward to hearing from you shortly.

Yours sincerely

*(Signature)*

*(Name and position)*

## Appendix 2

### Property description checklist

*(There may be other items you wish to add)*

#### THE PROPERTY

- Full address;
- Age of property and basic construction;
- Number and size of units;
- Number of adjacent blocks;
- Communal services provided.

#### OWNERSHIP

- Full name and address of freeholder (and/or head lessee);
- Structure of any freehold company;
- Structure of any management company and its obligations;
- Length of leases;
- Contents of leases (main covenants) or enclose a sample lease;
- Non-participating lessees;
- Tenants (i.e. those in occupation without long leases).

#### MANAGEMENT

- Structure of the board or association and their officers, and whether they are paid or volunteers;
- Financial year-end;
- Current management arrangements (are the current managing agents proposing to tender?);
- Expected date of new appointment and details of any transitional period;
- Expected length of initial term of appointment (but remember the statutory consultation requirements for any contract of more than one year);
- A copy of the existing managing agent's contract or the intended future version;
- Staff employed (if any) and duties;
- Contractors employed and any present contracts in force;
- Current state of day-to-day finances (budgets and actual);
- Current state of any sinking fund;
- Arrears situation;
- Other known major problems.

## Appendix 3

### *Checklist of possible services required from managing agents*

#### FINANCIAL

- Preparation of a reserve fund plan relating to cyclical maintenance;
- Annual service charge estimation;
- Weekly/monthly payment of wages and other invoices;
- Regular billing and collection of service charges, including management fees;
- Provision of a periodic budget report of income and expenditure and cash flow;
- Annual preparation of draft accounts in anticipation of audit and subsequent liaison with the auditors;
- Preparation and distribution of the notices for the AGM/EGMs;
- Arrears collection management;
- Provision of advice on block insurance and any other appropriate cover(s).

#### RELATIONSHIP WITH RESIDENTS

- Attend to routine enquiries from lessees and residents;
- Respond to solicitors' and lessees' enquiries regarding assignments and licences;
- Attendance at general meetings of residents (there are x per year held at ..... normally between x am/pm);
- Administration of insurance claims.

#### REPAIR AND MAINTENANCE MANAGEMENT

- Preparation of a cyclical maintenance and repair plan;
- Deal with day to day repairs and maintenance promptly and efficiently;
- Preparation of maintenance plans and contracts for plant and machinery;
- Advise on major contract work and the use of specialist professionals and contractors.

#### LEASE COMPLIANCE

- Ensure compliance with the terms of leases and policy agreed with the Board and where necessary, subject to landlord authorisation, instruct solicitors in relation to breaches.

#### LEGAL STRATEGY AND CONTROL

- Formulate a safe and effective strategy within current legislation and in accordance with current best practice;
- Liaise with the company's solicitors;
- Represent the landlord at County Court level, arbitration and Leasehold Valuation Tribunals;
- Maintain adequate record-keeping;
- Risk management and Health and Safety compliance;
- Company secretarial work (NB – not all managing agents will be willing to offer this service).

#### STAFF MANAGEMENT

- Prepare job descriptions for employees and specifications for contractors and go to competitive tender;
- Supervise any employees and regular contractors such as cleaners etc on behalf of the employer;



- Ensure appropriate training and compliance with Health and Safety and employment legislation.

#### **LANDLORD AND TENANT ADVICE**

- Advise the Board on residential landlord and tenant procedures, including statute and practice.

#### **BOARD SUPPORT**

- Advise the Board on a suggested management policy;
- Attend Board Meetings and be responsible for producing minutes (there are x per year held at ..... normally between x am/pm);
- Provide a status report of financial, maintenance and legal matters;
- Report on significant lessee communications;
- Document management procedures and issues;
- Produce a periodic newsletter to residents and other circulars;
- Keep Board informed of status of agreed actions.

## Appendix 4

### *Possible agent's experience and skills*

#### EXPERIENCE REQUIRED

- Proven record in rebuilding confidence and caring for lessees;
- Experience in working and negotiating with any superior landlord;
- Working with a lessee managed block;
- Proven record in arrears reduction;
- Cash flow management;
- Legal experience e.g. obtaining Counsel's advice; County Court representation; working effectively with solicitors; in-house legal skills;
- Successful record in managing and reducing legal disputes;
- Freehold purchase experience;
- Leasehold standardisation experience;
- Operating a management company that will stay within agreed budgets.

#### PERSONAL SKILLS REQUIRED

- Ability to formulate effective strategies to guide the Board or association;
- Ability to provide written and oral reports and keep detailed records;
- Ability to discuss and agree policy with the Board or association;
- Efficient in following up agreed actions;
- Self-motivated to continually improve and maintain good management;
- Proactive problem-solver;
- Skilful communicator and negotiator, both written and verbal;
- Positive energy to inspire confidence and boost morale.

## Appendix 5

### *Checklist of questions to ask prospective managing agents*

- Please provide all relevant company details including the names and qualifications of all directors and a list of proprietors if not a quoted company.
- Will your fees carry VAT?
- How close are your offices to our property?
- How many years have you been in the property management business?
- How many staff in your company are involved with management?
- How many blocks do you manage, and how many units therein?
- Please supply three references for blocks you manage. Ideally these should be similar to our own property and in our area.
- Please supply name and telephone number of chairman/secretary of the residents' association or board of directors of those blocks.
- What is your fee structure?
- How can you convince us that you can offer a quality service at a fair cost?
- How comprehensive a panel of contractors do you have?
- Do you charge a fee for contractor selection and/or a percentage of their charges:
  1. Contractors chosen by you?
  2. Contractors chosen by us?
- What selection criteria do you use for contractors on your panels?
- How often does a representative from your company visit blocks you manage and check on how your contractors fulfil their obligations?
- What IT facilities do you have and what information can you record and keep updated? Are you registered under the Data Protection Act?
- Where and how do you keep service charge monies, and how are they administered and who receives any interest?
- Can you supply an example of the format of financial information you will use for our block?
- How do you deal with unpaid service charges – what procedures are in place to deal with non-paying lessees?
- How do you deal with lessees in breach of their leases?
- How do you deal with complaints?
- Do you offer an out-of-office-hours service for emergencies? If so, please provide details.
- What length of notice period do you require?
- List all those of your staff we are likely to liaise with and their qualifications.
- List any professional or trade bodies to which your firm belongs.
- Provide full details of your professional indemnity insurance.
- Provide proof of your financial probity
- Provide a copy of any standard contract you use.

## Appendix 6

### Codes of Practice

The two Codes of Management Practice approved by the Government under the terms of S87 of the Leasehold Reform, Housing and Urban Development Act 1993, produced by the ARHM and the RICS, are too large to reproduce in this leaflet. However, set out below for readers is a layperson's guide to the intentions of these Codes – but it must be emphasised that it is the Codes themselves that are the ultimate benchmarks.

#### CONTRACTUAL DUTIES

- To agree, in writing, the terms of engagement to manage a client's property, in as detailed a form as is reasonably possible, and to make clear the fee structure and the categories of other services for which additional fees may be charged.
- To manage the client's property in compliance with all the current applicable legislation, terms of leases, contract documentation and good business practice.
- To provide as cost-effective a service as is reasonably possible within the constraints of prudent and planned maintenance and to enquire as to whether contractors preferred or selected by clients or lessees have suitable references and, where contracted to do so, that all final work is checked and signed off before funds are released.
- On request, to provide guidance to the client as to the insurance requirements under the lease terms and, where required by the client, to supply an appropriate level of insurance cover, based on an independent valuation, sufficient to meet the client's obligations.

#### FINANCIAL DUTIES

- To ensure that client's money is kept separate from office accounts at all times and that client accounts can be individually identified. Funds in any one client account will not be used to finance another client's property. Funds shall be held in a recognised bank or building society in a clearly designated client account.
- To maintain a current insurance policy adequately indemnifying the firm against proven professional negligence claims.
- To ensure that clients' money is properly and regularly accounted for and that any funds or monies required for specific future works are placed on deposit in an appropriate interest-bearing account to earn interest to the credit of that account.
- To keep detailed records of all transactions relating to client's property with all expenditure made from the client's account suitably authorised.
- To ensure that annual or other required periodic accounting is carried out promptly, ensuring adequate supporting information is provided or available for inspection.
- To concertededly endeavour, where so required, to provide all the necessary information for the audit of any end-of-period accounts so that the audit can be carried out with the minimum of delay.

## STANDARDS OF SERVICE

- To extend courteous and professional service to lessees and tenants and to members of the public. As far as is possible, to ensure that, in all their dealings, there is no bias and that all are treated equally.
- To maintain adequate records of all leases and tenancies and deal expeditiously with enquiries, particularly where information is required to assist in a sale.
- To be aware, as far as is reasonably possible, of the terms of the leases and tenancies applicable to the property concerned and the effect of legislation and any other relevant documentation, and to deal with lessees and tenants both in the spirit of the legal requirements as well as in the letter of the law.
- To ensure that procedures are in place to deal with repairs within an appropriate time scale having regard to the urgency of the matter and the availability of funds.
- To actively and regularly consult with Residents' Associations and to encourage them to become part of the decision-making process.
- To discuss and consult with Residents' Associations, where major works are contemplated, and to meet to the statutory requirements.
- To have appropriate regard to views of representative groups of lessees and tenants, even where they are not a formally recognised Residents' Association.
- To manage the premises by enforcing covenants for the common good, fairly and without favour where so instructed.
- To disclose in writing to relevant parties any existing conflict of interest, or any circumstances which are likely to give rise to a conflict of interest.
- To declare any interest in any contractor or business employed to provide services at the property that may be associated with the managing agent.
- To ensure, where there is a change of managing agent, that all pertinent information is handed over with the minimum of delay to the new agent.
- To place the fullest emphasis on any matter relating to health and safety and environmental legislation, bringing to the urgent attention of landlords and/or residents any areas of concern.
- To use all reasonable efforts, both in the interests of landlords and tenants, to settle disputes by mediating and negotiating with all relevant parties.

## *Useful addresses*

### **The Leasehold Advisory Service (LEASE)**

31 Worship Street, London EC2A 2DX  
Tel: 0845 345 1993 or 020 7374 5380  
Fax 020 7374 5373 [www.lease-advice.org](http://www.lease-advice.org)

### **Association of Residential Managing Agents (ARMA)**

178 Battersea Park Road, SW11 4ND  
Tel: 020 7978 2607 Fax: 0207 498 6153  
Email: [info@arma.org.uk](mailto:info@arma.org.uk) Website: [www.arma.org.uk](http://www.arma.org.uk)

### **Association of Retirement Housing Managers (ARHM)**

Southbank House, Black Prince Road, London SE1 7SJ  
Tel: 020 7463 0660 Fax: 020 7463 0661  
Email: [enquirers@arhm.org](mailto:enquirers@arhm.org) Website: [www.arhm.org](http://www.arhm.org)

### **The Royal Institution of Chartered Surveyors (RICS)**

12 Great George Street, Parliament Square, London SW1P 3AD  
Tel: 020 7222 7000

### **The Federation of Private Residents' Associations (FPRA)**

PO Box 10271, Epping CM16 9DB  
Tel: 0871 200 3324  
Email: [info@fpra.org.uk](mailto:info@fpra.org.uk)

## *Useful publications*

### *How to Manage your own Block of Flats*

John Cummings and Richard Hickie,  
The College of Estate Management  
Whiteknights,  
Reading RG6 2AW

### *Running a Flat Management Company*

Nigel G Cox  
Jordans Publishing Ltd,  
211 St Thomas Street,  
Bristol BS1 6JS

### *RICS Residential Management Code (Service Charge)*

RICS Book (Mail Order),  
Surveyor Court, Westwood Way,  
Coventry CV 8JE  
(or direct from RICS)



