

# **The Insider's Guide to: Right to Manage**



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REAL ESTATE

# What is Right to Manage?

The Right to Manage, introduced by the Commonhold and Leasehold Reform Act 2002, is a statutory process allowing leaseholders to form a limited 'Right to Manage' company and assume the management role of their building from the landlord.

The consent of the landlord is not required to the formation of, and takeover by, a Right to Manage Company; whilst a landlord will remain in ownership of the freehold, following exercise of a Right to Manage, the tenants will be responsible for matters such as:

- collection and expenditure of the service charge;
- upkeep and repair of the building and its common parts;
- handling complaints; and
- ensuring compliance with statutory regulations.



# Forming a Right to Manage Company

A limited company must be formed by tenants who wish to exercise the Right to Manage (an 'RTM Company'). During formation of the RTM Company, Articles of Association must be drafted which incorporate the objective to acquire the right to manage the property.

All long leaseholders of residential flats within the building are entitled to become members of the RTM Company, which can either manage the building itself or employ a managing agent to do so on its behalf. Landlords are entitled to become members of the RTM Company and acquire some voting rights, but these will be dictated by how many flats in the building a landlord owns.

Landlords' costs in dealing with the RTM process should be paid by the RTM Company.



## Qualifying buildings

Buildings must satisfy the following criteria in order for a Right to Manage application to be successful:

- A building should be self-contained, or premises which form a self-contained part of a building. Buildings are defined to be self-contained where they are 'structurally detached'. Self-contained parts constitute a vertical division of the building, served, or capable of being served, by utilities independently of the rest of the building;
- The building must be made up of flats. Houses do not qualify for Right to Manage;
- Two-thirds or more of the building must be leasehold, and leases must have been granted for terms of 21 years or more;
- 75% or more of the building's floor area must be residential. Commercial spaces, such as shops or offices, must not constitute more than 25%;
- Where buildings have 4 flats or fewer, freeholders must live elsewhere in order for a building to qualify; and
- At least half of the building's tenants must be members of a Right to Manage Company before it can effect a takeover.



# Procedure

The Right to Manage claim process can be split into three distinct parts:

## Notices of Invitation to Participate

Notice is given to all qualifying tenants who have not stated whether or not they wish to become members, inviting them to take part in the claim.

The notice must state that the RTM Company intends to acquire the Right to Manage the premises, giving the names of members of the RTM Company and accompanied by a copy of the RTM Company's Articles of Association.

## Claim Notice

A formal claim notice must be given to the landlord and all qualifying tenants 14 days or more after issue of the Notice of Invitation to Participate. 50% or more of the qualifying tenants must be members of the RTM Company, participating in the claim; the Claim Notice must specify:

- a deadline for the service of any Counter-Notice, which must be at least one month following service of the Claim Notice;
- the date on which the RTM Company intends to acquire the Right to Manage, which must be at least three months following the deadline for service of any Counter-Notice; and
- the names and addresses of all qualifying, member tenants.

## Counter-Notice

Any Counter-Notice served by the landlord must be served by the date specified in the Claim Notice.

If a Counter-Notice is served, the RTM Company may thereafter apply to the First-tier Tribunal for determination and an Order to state whether or not it is entitled to acquire the Right to Manage.

Claims can be disputed on grounds where the building does not qualify, that the RTM Company has not complied with legal requirements or that the RTM Company membership does not consist of 50% of the building's tenants.

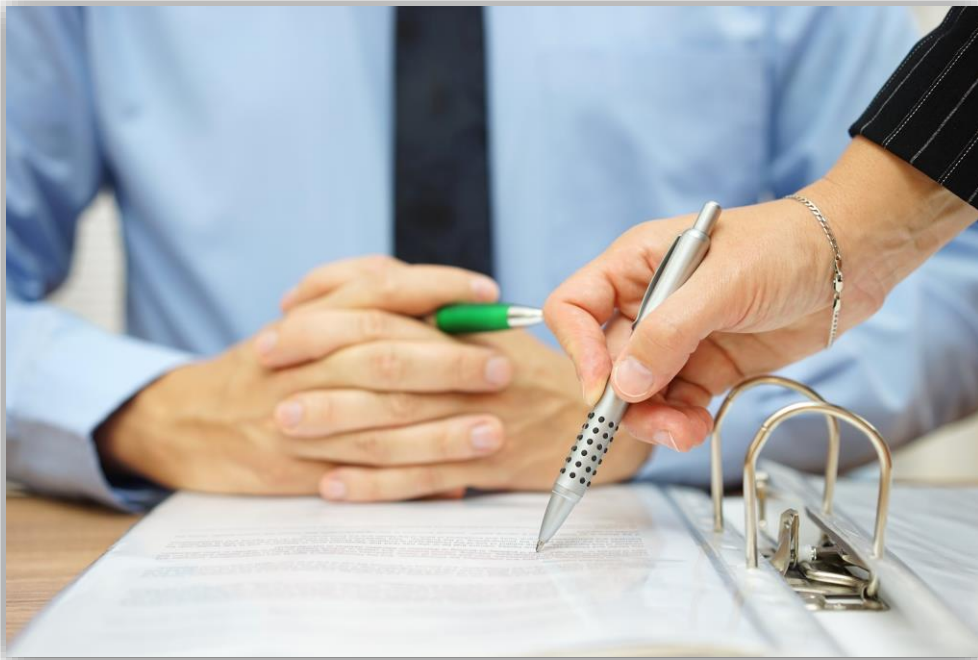
The RTM Company may then apply to the First Tier Tribunal within two months for a final determination.



# Transfer of the Right to Manage

The Right to Manage is transferred to the RTM Company on the date of the Claim Notice if the claim is accepted by the landlord.

Following transfer of the Right to Manage, the RTM Company must give the landlord at least 30 days' notice before it approves any assignment, subletting or charge. Where consent to alterations is required, 30 days' notice must be given before approval of any structural or use change to the building is given.



## Points to consider

Right to Manage can adversely affect a landlord's reversionary interest where the RTM Company does not maintain to a sufficient standard.

As ever, good communication with tenants will allow landlords to find out early whether there is a possibility of a Right to Manage claim arising. Landlords are advised to meet with tenants to discuss their concerns, which may be easily resolved without a claim being made.

If a claim is going to progress, note the qualifying tenants and those which are likely to become members. A site visit will determine whether or not the property could be classed as 'self-contained', and it may also be worthwhile obtaining the purchase and title documentation.

Legal advice should be obtained as early as possible; it may be possible to argue against the Right to Manage on the basis of technical grounds, but time limits are strict and short.



*JB Leitch Real Estate Ltd endeavours to ensure that the information contained within this guide is correct at the time of first appearance. However, and for the avoidance of doubt, we would emphasise that the law is changing constantly and affects each person or business in different ways. No information contained in this guide is a substitute for specific advice and should not be relied upon or construed as legal or professional advice. We accept no liability for loss or damage caused to those seeking to rely on information contained within this guide.*