



## Change your managing agent by claiming your 'Right to Manage'

### Background

The 1985 and 1987 Landlord and Tenant Acts and Commonhold & Leasehold Reform Act 2002 have all gradually increased the power of the lessee (also known as 'leaseholder').

Consultation requirements upon freeholders have increased. Legislation has also granted the right to inspect accounts and records held by the freeholder. More importantly, if one or more lessees feel there is an injustice, they can now take their freeholder to a Leasehold Valuation Tribunal (LVT) and get, for example, service charges deemed 'unreasonable'.

### A simple solution

But why bother with the formalities of a tribunal? Simply claim your right to manage. It's no longer necessary to prove that the freeholder is at fault or managing the block badly to claim the right to manage. **All you need is fifty percent of qualifying lessees to approve the decision** to claim the right to manage - a much simpler option than challenging the freeholder.

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## A simple process

### 1. Who qualifies for the right to manage?

Firstly, get an idea of who is committed to claiming the right to manage. You don't actually have to live in your flat to be able to participate, nor does it matter if you own your flat through a company. As long as two thirds of the flats in the block are held on long leases and fifty percent or more of the block want to participate then you can get a 'Participation Agreement' in place (participation agreement).

### 2. Set up your company

You are then legally required under the 2002 Act to set up a company called a 'right to manage company.' Our sister-organisation **Leaseholdguidance.com** can form a company for the purpose - this costs £160 + vat.

*Note – it's important to use a specialist agent rather than buy an 'off the shelf' company as the 2002 Act clearly sets out aspects of the company's constitution that are mandatory.*

Like any company you will need willing volunteers to stand as officers of the company as it will need directors and a company secretary. It may even be easier to out-source the company secretary role as running a company involves legal obligations that need to be fulfilled. All the participants should be issued a membership certificate (see the 288a form to appoint officers on the estates helpdesk).

### 3. Serve your first notice

You will have a legal obligation to invite the freeholder to become a member of your right to manage company. This is known as serving a 'participation notice'.



#### **4. Inform your landlord**

you must serve a 'notice of claim' informing your landlord of your intention to claim the right to manage the building. The freeholder then has fourteen days to reply before you can formally claim your right to manage. It is advisable to seek professional help before serving your 'notice of claim' as an invalid notice may result in having to start again. Also, you may be leaving yourselves open to the freeholder running up a bill in dealing with defective notices, which you will be liable for.

#### **5. Wait**

You may not know the outcome of your claim immediately as the freeholder has twenty-eight days to reply. The freeholder will have two options: either to accept your right and you can then take over in four months or to reject your right. There are limited grounds upon which the freeholder can object to your right, the most commonly cited are:

- two thirds of the flats are not sold on long leases
- participation notices have not been served on all relevant parties
- the building does not comprise self-contained flats
- there are non-residential parts of the building that exceed twenty five percent

Assuming the freeholder cannot find any legal reason that invalidates your claim, management could be yours three months later because the Act states that the right transfers four months from the date of the 'notice of claim'. During this period it's advisable to source replacement managing agents and review contracts with cleaners, gardeners, porters and other services. Unlike freehold purchase there is no premium to be paid to the freeholder as you are not dispossessing him of his freehold title. However you will still have to pay ground rent to the freeholder even after the right to manage is established.



## **The benefits of claiming the right to manage**

Although claiming your right to manage won't solve your short lease issues it does have many benefits. For example:

- a share/membership in the company that manages the block
- democratic voting rights over key block decisions
- the possibility of being elected as an officer of the RTM company (Director or Co. Sec.)
- potential cost savings by appointing a cheaper managing agent or by self-managing
- ability to review and set a level of service charge that matches your intentions

Do ensure that the person who signs a notice is the legal owner and remember you can serve an information notice on the freeholder and or the managing agent.

For more information on the right to manage or to take action visit [www.leaseholdguidance.com](http://www.leaseholdguidance.com)

**Leasehold** Guidance Service