

APPOINTING A MANAGING AGENT

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



Contents



<i>Introduction</i>	<i>3</i>
<i>The role of a managing agent.....</i>	<i>3</i>
<i>Benefits of using an agent</i>	<i>3</i>
<i>Appointing a managing agent.....</i>	<i>4</i>
<i>Getting the best from your managing agent</i>	<i>5</i>
<i>Agents' qualifications.....</i>	<i>5</i>
<i>Agents' insurances</i>	<i>6</i>
<i>Codes of practice</i>	<i>6</i>
<i>The contract/management agreement</i>	<i>6</i>
<i>Removing an existing agent before appointing a new one</i>	<i>6</i>
<i>Appendix 1</i>	<i>8</i>
<i>Checklist of possible services required from managing agents</i>	
<i>Appendix 2</i>	<i>10</i>
<i>Sample covering letter inviting tenders</i>	
<i>Appendix 3</i>	<i>11</i>
<i>Checklist of questions to ask prospective managing agents</i>	
<i>About this guide</i>	<i>12</i>
<i>Useful addresses</i>	<i>13</i>

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 how to go about appointing and employing a managing agent. It is particularly relevant if you are a director of a resident management or right to manage company.

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 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.

The role of a managing agent

The role of a managing agent today is a complex one and requires a professional approach. To carry out the role requires knowledge of landlord and tenant law, building construction, health and safety regulations, basic accounting and more.

There are benefits of professional management which should be balanced against the fees which leaseholders will have to bear.

Benefits of using an agent

- 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 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 RMC.
- 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 arm's 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.

- Fidelity insurance cover to protect client funds is a significant advantage over self-regulation of funds by individual members.
- Agents should hold professional indemnity cover as a further protection against negligent acts or incompetence.
- Using an agent passes some of the responsibility for compliance with leases, laws and codes of practice to the agent. BUT the directors of an RMC are responsible for setting policy and monitoring the work of the agent.

Appointing a managing agent

Here are some ideas for the process of finding an agent that suits you. Not all may be appropriate to your situation.

1. Draw up a schedule of the services you want from a prospective agent. *See Appendix 1 for a checklist.*

2. Seek recommendations from other lessees in your block and elsewhere.

3. Go to websites of possible agents and get basic information from this source. Check the First-tier Tribunal (Property Chamber) cases website for agents' names appearing.

4. Invite possible agents in for an informal meeting first before asking for a formal tender.

- It will help these informal meetings greatly if you can get hold of a copy of a standard lease for the block and of the annual statement of account for service charges. Any good agent will want to look at these.
- Explain any problems that you think will need to be tackled, current debtors, relations with current agent, state of finances of the scheme. Any good agent will want to ask you relevant questions to establish what might be being taken on.
- How well the agent can offer ways to tackle existing problems is a good test of what he/she can do for you.
- Who will be your contact if that agent takes on management? You want to meet that person or persons to see if you can work with them. What happens if that person is sick or on holiday?
- Who will handle phone calls or emails from the directors and lessees?
- Who will choose which contractors are used for the block? Do you want to retain final approval?
- Ask about disclosure of commissions including insurance if this is something you want the agent to arrange for you. Agents should not take any commissions from service contracts unless they are agreed in advance by the RMC's directors.
- How often will you get financial reports on the service charge income and expenditure? Will you be able to see the invoices and receipts documents at regular intervals?
- Some other possible relevant questions are in *Appendix 3*.

5. Speak to RMC directors in other blocks managed by the agents you then may invite to tender as the next stage. Or check out any references or testimonials you have been given.

6. Formal tender stage – *see Appendix 2 for a draft letter to use.*

7. Contract stage – both the Association of Residential Managing Agents (ARMA) and the Royal Institution of Chartered Surveyors (RICS) have model management contracts/agreements. Make sure you include in the contract a list of documents that will have to be passed on if the contract ends.

Getting the best from a 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 the agent will have;
- how much service charge money they can spend without your authority;
- response times and other timescales for action; and
- the authorised lines of reporting and communication.

Both the individual leaseholders and the agent should be clear as to from whom instruction is to be received. An agent cannot work if expected to receive instructions from all lessees. The usual and most effective arrangement is for the agent to attend, and report to, meetings of the Board of the RMC. In between meetings the Board could nominate one of its directors to be the main point of contact. 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.

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 and safety legislation.

The Board should also establish how the agent is to respond to questions from individual residents and his/her accountability to those individuals. The residents should be clearly informed by the Board of the identity of the agent, duties and limits of authority. Although the agent will be working for the residents as a whole, the employer is the Board, and the residents must be clear that the agent carries the authority and support of the Board in all his/her actions. The agent should not be placed in any position of ambiguity in dealing with individual flat-owners and, of course, cannot take instructions from them.

Agents' qualifications

Professional qualifications to look out for in some of the persons working for managing agents include membership of the Institute of Residential Property Management, RICS, or, in the social housing sector, the Chartered Institute of Housing.

For firms of agents look out for membership of certain established professional trade bodies. Many agents are members of ARMA and/or are regulated by RICS, or those who specialise in the management of retirement schemes may be members of the Association of Retirement Housing Managers (ARHM).

The advantages of the membership of a recognised professional organisation are:

- members will have professional indemnity insurance to assist you if the agent has acted negligently;
- members will hold fidelity insurance in case a member of staff is found to have stolen monies;
- members will be checked on the way they hold monies collected on behalf of their clients, ie you; and
- members will be required to have a complaint handling procedure and access to an independent ombudsman service.

Agents' insurances

It is 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, should 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 should be sure that the agent has the means for compensation or damages.

Codes of 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 for residential leasehold housing, one produced by ARHM relating to retirement housing schemes and one by RICS relevant to all lessees paying variable service charges not on retirement schemes. When appointing an agent, always ask the agent to confirm that he/she complies with the relevant code. Members of ARMA agree to follow one or both of these codes of practice.

The contract/management agreement

You could ask your solicitor to draw up a contract for you. Alternatively agents use one of several models developed by the relevant professional bodies that cover most situations and can be adapted by you.

- ARMA has a model management agreement in Plain English that its members use.
- RICS has a model agreement that can be purchased by the public.
- ARHM has a model management agreement in Plain English that its members use.

Removing an existing agent before appointing a new one

If you are unhappy with the current agent then have you tried using its complaint handling procedure and ombudsman, if available?

If you are so unhappy that you decide you want to change agents, here are some things to consider before making this decision:

- What period of notice is required in the management agreement? If there is no agreement or period in the agreement, what period would suit matters best?
- Terminate on a date that fits in with service charge payment periods or the end of the accounting year to make handover and accounting easier, if that is appropriate.
- What is the current financial position for your scheme? Is the service charge account in deficit or credit?
- Are there large outstanding arrears that will make it difficult for any agent to provide services? If you are not sure, ask the current agent.
- Is the current agent owed any unpaid management fees that will be disputed?
- What documents will be handed over to the new agent so that management can continue smoothly? Draw up a list of what you require or ask the new agent to propose a list.
- What sort of accounting statement will be drawn up as at the date of

termination? Do you need an external accountant to check it – if so, who will pay the fee?

- Do not just appoint a new agent and expect him/her to sort out a mess. The RMC directors should try to establish the true extent of any problems and be honest with any new agent that they wish to appoint.
- Your new agent may well do most of the work of handover for you but you should brief the new agent about any problems you are aware of and what you expect him or her to do. Dealing with messy handovers from the previous agent is not normal work for agents and the new agent may request an additional fee.

Appendix 1

Checklist of possible services required from managing agents

FINANCIAL

- Preparation of an annual budget for service charges
- Regular billing and collection of service charges, including management fees
- Provision of a periodic budget report of income, expenditure and cash flow
- Arrange for the preparation of draft accounts in anticipation of an examination by an independent accountant
- Preparation of a reserve fund plan relating to cyclical maintenance
- Weekly/monthly payment of wages and other invoices
- Arrears collection management
- Provision of advice on block insurance and any other appropriate cover

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 xx per year held at normally between xx am/pm)
- Administration of insurance claims

REPAIR AND MAINTENANCE MANAGEMENT

- Preparation of a long-term 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
- Represent the landlord at County Court, arbitration and Tribunals

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 xx per year held at normally between xx 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
- Company secretarial work, for example preparation and distribution of the notices for the AGM/EGMs; (NB - not all managing agents will be willing to offer this service)
- Risk management, fire and health and safety compliance

Appendix 2

Sample covering letter inviting tenders

Addressee

(Company or association's letterhead with contact address and phone/fax 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).

In addition we enclose a copy of a standard lease for the block and of the most recent annual service charge accounts.

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 3

Checklist of possible 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.
- 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?
- Will your fees carry VAT?
- 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.

About this guide

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, the Association of Residential Managing Agents, 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 Code 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. All its members offer access to an independent ombudsman scheme.

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 Welsh Government.

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Useful addresses

Tribunals

England

First-tier Tribunal (Property Chamber)

Website: www.justice.gov.uk

For Tribunal contact details, please see:

www.justice.gov.uk/contacts/hmcts/tribunals/residential-property

Wales

Residential Property Tribunal for Wales

1st Floor, West Wing, Southgate House, Wood Street, Cardiff CF10 1EW

Tel: 029 2092 2777 Fax: 029 2023 6146

Email: rpt@wales.gsi.gov.uk Website: <http://wales.gov.uk>

Other useful addresses

Her Majesty's Stationery Office (HMSO)

Copies of all legislation regulations and other official publications can be downloaded from www.legislation.gov.uk.

Alternatively printed copies can be purchased from:

The Stationery Office Ltd (TSO),

PO Box 29, Norwich, NR3 1GN)

Tel: 0870 600 5522

Online ordering: www.tsoshop.co.uk

Leasehold Advisory Service (LEASE)

Maple House, 149 Tottenham Court Road,

London W1T 7BN

Tel: 020 7383 9800 Email: info@lease-advice.org

Website: 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 Website: www.arma.org.uk

Association of Retirement Housing Managers (ARHM)

c/o EAC, 3rd Floor, 89 Albert Embankment, London SE1 7TP1 7SJ

Tel: 020 7463 0660 Email: enquiries@arhm.org

Website: www.arhm.org

The Royal Institution of Chartered Surveyors (RICS)

12 Great George Street, Parliament Square, London SW1P 3AD

Tel: 0870 333 1600 Email: contactrics@rics.org Website: www.rics.org

The Federation of Private Residents' Associations (FPRA)

PO Box 10271, Epping CM16 9DB

Tel: 0871 200 3324 Email: info@fptra.org.uk Website: www.fpra.org.uk

