



Changing your freehold or resident management company's managing agent

To know how to get a new managing agent for your management company it is first necessary to understand what the legal structure of a management company is.

Background

It all came about in the mid 1980's when the way developers built and sold flats in England and Wales began to change. Developers began to realise with legislation granting lessee's more rights to consultation, carry out management audits etc. the power balance was likely to continue to shift towards the lessee and being a freeholder was not as attractive as it was, for example, 100 years ago.

These changes led to many developers setting up management companies and selling flats on 'tri-party' leases. A tri-party lease quite simply is a lease with three parties, the freeholder, the management company and the lessees (also called leaseholders).

By creating a management company one view is that the lessees were put in charge of their estate. Another is that the freeholder was able to off-load the unprofitable loss-making obligations such as collecting service charge, litigating bad debts, dealing with the noisy dog, the party every Friday night at number 30, or the fact that number 12 only has one car parking space but continues to bring two cars onto the estate, causing havoc. In a tri-party lease the freeholder's role reduces to collecting their investment income (ground rent) and placing building insurance – taking a commission (often 15 to 30% of the premium).



Running a residents management company

Few lessees seem to realise that a residents management company is a properly constituted company that has to be run in compliance with the Companies Act. Therefore not only do the lessees need to volunteer to stand as officers of the company (directors or company secretary), but they need either to procure an agent to carry out the day-to-day running of the company or take this on themselves. By virtue of being a lessee at the block the lessee has a share or membership of the residents management company and democratic rights in the way that the management company is run.

Recognising the current lack of understanding in the sector the Association of Residential Managing Agents (ARMA) is releasing a video, which will explain the complexities of residential management companies.

Do you have the right to change your managing agent?

If your block has a management company the Board of Directors already has the right to change managing agents.

If you have the 'right to manage' your block through your management company all you need to do is go through the correct democratic process.



Making the change

If you want to push such a movement forwards the best way you can do this is to get yourself on the Board and start an initiative to competitively tender the management duties.

Get Elected as a Director

Getting elected as a Director takes an ordinary resolution approved at an Annual General Meeting (AGM) or Extraordinary General Meeting (EGM). Such a resolution would be passed by simple majority vote of those present (or voting by proxy). It would be wise to meet up with the current directors to find out whether your changing managing agent initiative is likely to receive their support.

There are several ways to find out who the current directors are:

1. from the last set of service charge accounts, this will give you a name but not their address;
2. from Companies House on line www.companieshouse.gov.uk where it costs £1 to do a search of current officers of the company; or,
3. a reputable managing agent should provide this information;
4. if all else fails you could serve an information notice under Section 93 of the Commonhold and Leasehold Reform Act 2002.

Assuming you have got the consent of the current directors to offer your services to the management company and to support your proposed election as director at a company meeting, it would be wise to write a short précis detailing your experience, objectives and the benefits this will bring the estate. In many cases a wave of apathy exists at such meetings and you may find that the residents are only too happy for a willing volunteer.



Exercise your shareholder's right to call an EGM to get shareholders' support

If you can't get the support of the current directors don't give up. The way forward is for you to exercise your shareholder's rights and instruct the Company Secretary to call an Extraordinary General meeting (EGM), with the proposed business being to appoint yourself as a director. Again the notice of this meeting should be accompanied by your resume and action plan for the site, to elicit maximum support. By law you have to give 14 clear days notice to call an EGM to pass an ordinary resolution and 21 days if calling an AGM.

Nominate an agent or start a tender process

Once elected, unless you happen to be lucky enough to have a job in public sector procurement, knowing how to select best value and choose a reputable agent may be a minefield in itself but help is at hand. At **Ringley.co.uk** you can download a free tender pack designed to help you select your new managing agent. It's filled with valuable questions that aimed at revealing the prospective agent's competence.

Visit the Association of Managing Agents (ARMA) website – www.arma.org.uk – where you'll find a list of members. These can be cross referenced against the Royal Institution of Chartered Surveyors members (RICS) at www.rics.org.uk. Membership of these organisations should be your minimum requirement.