

## Recommendations from the Law Commission on Right to Manage



In this article, we look at how the Law Commission proposes to make Right to Manage claims available to a wider variety of buildings and tenants and the process easier and cheaper to pursue.

Following consultation in July 2020, the Commission has recommended changes to the right to manage (RTM) regime. The Commission hopes to reduce costs, simplify the procedure and make RTM available to more leaseholders in a wider variety of buildings.

This article looks at the current legislation and recommended changes.

### Qualifying premises

Currently RTM is restricted to a self-contained set of premises with no more than 25% non-residential space and containing at least two flats. The focus on the physical structure of the building causes disputes and the limit on non-residential floor area excludes many mixed use developments.

Instead consider if the building is capable of independent management even if it is not self-contained. The non-residential limit is increased to 50%. There need only be one residential unit so leasehold houses are included.

### Qualifying leases

Shared ownership leases will now qualify. Business tenancies and leases which prohibit residential use will continue to be excluded but not so mixed use properties with a genuine residential purpose such as live/work



units. There may be issues of proof in this area.

The exclusion regarding resident landlords and buildings split between different freeholders will be abolished.

### **Multiple buildings**

Currently tenants cannot manage multiple buildings through a single RTM company.

The Commission recommends that any combination of buildings be claimed through a single RTM company provided each individual building qualifies and that a building not originally included in a multi-building RTM be able to join later.

### **The RTM Company**

At present only one RTM company at one time can exist for a building. Landlords may establish sham RTM companies to frustrate a future claim.

The Commission recommends abolishing this rule. To promote tenant participation, directors will be required to hold an AGM where currently they need not do so. If leaseholders lack sufficient knowledge to run a management company, free training is recommended by the Commission.

### **Acquisition process**

Currently, a notice inviting participation must be sent to all qualifying tenants before the claim notice is served. The Commission recommends this be abolished and also that all RTM notices can be signed electronically. The service process will be easier.

### **Information rights and management contracts**

Leaseholders lack sufficient information so the Commission recommends that RTM companies should be entitled to any information reasonably required and that landlords must notify material changes.

Timings of communications about management contracts will be tightened up.

### **Insurance**

The Commission concludes it is not appropriate that reinstatement obligations be acquired by an RTM but rather that the RTM and the landlord should work together to procure suitable insurance cover in joint names. Whether this is likely to work remains to be seen.

### **Shared property**

The Commission concludes that RTM companies should not automatically acquire management functions over property shared with other buildings which are not part of the RTM claim but can do so if the landlord does not object. But what if the other tenants object? What redress do they have against the RTM for failure of management?

### **Uncommitted service charges**

Currently, there is no deadline by which landlords must hand over any accrued service charge fund nor is the landlord required to chase arrears. The Commission recommends changes to address these shortfalls.



## Management costs

The Commission recommends that RTM companies be permitted to recover management costs.

## Lease consents

Currently, there is delay and uncertainty as to who is responsible for what. The Commission recommends that landlords should only have the right to receive notice of approvals relating to assignment, underletting, charging, parting with possession, making structural alterations or improvements and alterations of use. Deadlines to deal with these will be clarified. Additionally, landlords should not charge administration fees for giving consents and RTM companies should not be entitled to give retrospective consents in respect of absolute covenants.

## Costs and dispute resolution

The Commission recommends that RTM companies should no longer have to pay landlords' costs unless the RTM fails and the tenants have behaved unreasonably. Any terms in the lease which purport to enable the landlord to recover costs would be unenforceable.

## Termination of an RTM

The Commission recommends that an RTM company should be able to apply to the tribunal if it wishes to give up the RTM. Management functions will revert to whoever is responsible for them under any lease or failing that to the landlord.

## How we can help

To discuss these recommendations and how we can help, please get in touch with our [leasehold enfranchisement](#) team.